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Judicial Academy Jharkhand

READING MATERIAL

INTERDISCIPLINARY CONFERENCE ON SENSITIZATION PROGRAMME ON DOMESTIC VIOLENCE ACT, 2005

(Course No. C-2)

Target Group :-

Civil Judge (Jr. Div.), C.D.P.Os., officer Incharge of Mahia Thana

JUDICIAL ACADEMY JHARKHAND

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READING MATERIAL

INTERDISCIPLINARY CONFERENCE ON SENSITIZATION PROGRAMME ON DOMESTIC VIOLENCE ACT, 2005

Course No. : C2

Date : 23rd July, 2017 (Sunday)

Venue : Judicial Academy Jharkhand

Organised by :

Judicial Academy Jharkhand

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KUNAPAREDDY @ NOOKALA SHANKA BALAJI
VERSUS
KUNAPAREDDY SWARNA KUMARI & ANR

Bench: Hon'ble Mr. Justice A.K. SIKRI, Hon'ble Mr. Justice R.K.AGRAWAL

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on April 18, 2016.

CRIMINAL APPEAL NO(S).516/2016
(Arising out of SLP(Crl.) No. 1537/2016)

Kunapareddy @ Nookala Shanka Balaji Appellant(S)

Versus

Kunapareddy Swarna Kumari & Anr Respondent(S)

JUDGMENT

A.K. SIKRI,J.

Leave granted.

2. Learned counsel for both the parties have been finally heard at this stage.

3. The issue that arises for consideration in the instant case is whether a court dealing with the petition/complaint filed under the provisions of the Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act') has power to allow amendment to the petition/complaint originally filed. This issue has arisen in the petition/complaint filed by respondent no. 1/wife. Respondent No. 1 herein, who is the wife of the appellant, has filed a case against the appellant and his family members before the Court of IInd Additional Judicial First Class Magistrate, West Godavari, Eluru under Sections 9B & 37(2)(C) of the DV Act which is registered as Domestic Violence Case No. 20/2008. It may be mentioned here that the said petition now stands transferred to the Court of Judicial First Class Magistrate (Mobile Court), Eluru and has been renumbered as DV Case No. 29/2012. In this case, respondent no. 1 has leveled various allegations against the appellant and his family members inter alia alleging that the appellant and his family members used to harass her physically as well as mentally and by also demanding dowry. It is further alleged that she was driven out from her matrimonial home in the month of March, 2015 and initially she took shelter at her brother's house along with the children in Eluru. Thereafter, on the appellant tendering an apology to respondent no. 1 by coming to Eluru they put up their family together in Gadam Ramakrishna's House at Ashok Nagar, Eluru,but the things did not change. The following prayers are made in the said petition:

"**a)** to provide protection to the life and limb of the complainant in the hands of the respondents;

b) to grant monthly maintenance of Rs. 5,000/- to the complainant and her children each towardsher maintenance, medicines etc. and her childreneducation and maintenance;

c) to grant such other relief or reliefs if the Hon'ble Court deems fit and proper in the circumstances of the case."

4. Respondent no.1 has also filed a divorce petition before the Court of Senior Civil Judge, West Godavari, Eluru wherein she has made an application for interim maintenance as well. Thereafter, she also filed a maintenance petition under Sections 23(2) and 24 of the Hindu Marriage Act, 1955 before the Court of Family Judge, Eluru.

5. On receiving notice in DV Petition, family members of the appellant filed a petition under Section 482 Cr.P.C. in the High Court of Judicature at Hyderabad for the States of Telengana and Andhra Pradesh for quashing the proceedings in the said DV Petition. This petition was allowed by the High Court vide order dated 17.04.2009 thereby quashing the domestic violence proceedings against the family members of the appellant on the ground that there was no specific allegations against them. After the DV Petition was transferred to the Court of Judicial First Class Magistrate, Eluru, respondent no. 1 filed an application seeking amendment of the petition. By way of the said amendment petition, respondent no. 1 wanted to amend the prayer clause by incorporating some more prayers, as is clear from the following amendment in this behalf which was sought by respondent no. 1:

a) To provide protection to life and limb of the complainant in the hands of the respondent.

b) To grant monthly maintenance of Rs. 15,000/- to the complainant and her 2nd child to their maintenance instead of Rs.5000/-

c) Direct the respondent to return the Sridhana amount of Rs.3,00,000/- and 15 sovereigns of gold ornaments and other sari samanas and marriage batuvu presented to the respondent worth about 2 sovereigns wrist watch, 7 sovereign gold chain presented by the complainant and her parents.

d) Direct the respondent to pay the compensation of Rs.15 lakhs to the complaint for subjecting the compliant to physical and mental harassments besides including acts of Domestic Violence.

e) Direct the respondent to return the sari samans and other goods like worth more than Rs.10,00,000/- as per the list annexed herewith.

f) Direct the respondent to pay the cost of, litigation to the tune of Rs.25,000/- so far spent by the complainant persuing her litigation.

g) Direct the 1st respondent to provide separate residence by taking rent portion with monthly rent of Rs.10,000/-

h) Directing the respondent to return the original study certificates, medical certificates, deposits certificates and receipts etc. in the prayer portion paragraphs the following amendment

by deleting the prayer original para

b) to grant monthly maintenance of Rs.5,000/- to the complainant and her children each towards her maintenance, medicines etc. and her children education and maintenance."

6. The appellant herein opposed the said application. However, the learned Trail Court after hearing both the parties allowed the amendment. The appellant raised an objection that there was no power with the court to allow amendment of such a petition/complaint in the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). This contention was rejected by the trial court on the premise that section 26 of the DV Act, which entitles a civil court, a family court or a criminal court as well to grant any relief which is available to the complainant under Sections 18, 19, 20, 21 & 22 of the said Act, gives an indication that the provisions of the Code of Civil Procedure would squarely apply and, therefore, the court had the power to allow amendment of the petition/complaint, more so, when it was necessary for the purpose of determining the real matter in controversy and to prevent multiplicity of the litigation.

7. This order was challenged by the appellant by filing an appeal before the Court of District and Sessions Judge, Eluru. The District and Sessions Judge, Eluru set aside the order of the Trial Court holding that there was no specific provision for amendment of the complaint and allowed the appeal of the appellant. Aggrieved by that order, respondent no. 1 filed a revision petition in the High Court which has been allowed by the High Court vide impugned judgment permitting respondent no. 1 to amend the petition/complaint, thereby setting aside the order of the District and Sessions Judge and restoring the order of the Trial Court.

8. As mentioned above, in the present appeal preferred by the appellant questioning the validity of the order of the High Court, the contention of the appellant is that there is no such an provision under the DV Act which permits the Trial Court to allow such amendment. On this issue, we have heard the learned counsel for the parties at length.

9. The contention of Mr. G.V.Rao, learned counsel appearing for the appellant was that the proceedings under the DV Act are governed by the provisions of the Code of Criminal Procedure as prescribed under Section 28 of the DV Act and there is no provision for amendment in the Code. He further submitted that the court below was wrong in treating the application for amendment under Order VI Rule 17 of the Code of Civil Procedure which has no application to the proceedings under the DV Act.

10. In order to decide the aforesaid issue, we may take note of some of the salient provisions of the DV Act as well as relevant Rules framed under the said Act. We have gone through the concerned provisions of the Code. We may start our discussion with Section 28 of the DV Act which reads as under:

"**28.** Procedure.—

> **(1)** Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> **(2)** Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23."

11. No doubt this provision provides that all proceedings under Sections 12, 19 to 23 as well as offences under Section 31 are to be governed by the provisions of the Code. The instant petition, as noted above, is filed under Section 9B and 37(2)(C) of the DV Act. Section 9 enumerates duties and functions of Protection Officer and Clause (b) of sub-Section (1) thereof reads as under:

> **"(b)** to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;"

12. We have already mentioned the prayers which were made by respondent no.1 in the original petition and prayer 'A' thereof relates to Section 9. However, in prayer 'B', the respondent no.1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, prayer 'A" is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by the respondent no.1. Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

13. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the Scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality. In order to demonstrate it, we may reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the said Act, as follows:

"INTRODUCTION.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the protection of Women from Domestic Violence Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human Right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation NO. XII (1989) has recommended that State parties should act to protect women againstviolence of any kind especially the occurring within the family.

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3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

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(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, secual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or

committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting the communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence."

14. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.

15. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature.

16. In Ramesh Chander Kaushal vs. Venna Kaushal (1978) 4 SCC 70, Justice Krishna Iyer, dealing with the interpretation of Section 125 of the Code, observed as follows:

> **"9.** This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social functions to fulfill. The brooding presence of the constitutional empathy for the

weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause of the derelicts."

17. We understood in this backdrop, it cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events [escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will the have power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no. 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in S.R.Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609 in the following paras:

> **"17.** Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In U.P. Pollution Control Board vs. Modi Distillery And Ors., (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. The name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-
>
> "…The learned Single Judge has focused his attention only on the [pic] technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery…. Furthermore, the legal infirmity is of such a nature which could be easily cured..."
>
> **18.** What is discernible from the U.P. Pollution Control Board's case is that easily curable legal infirmity could be cured by means of a formal

application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

19. In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem 'Khalnayakaru' being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India."

18. What we are emphasis1 ing is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

19. In this context, provisions of Sub-Section(2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub-Section(2) as well which empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act. This provision has been incorporated by the Legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex-parte orders and

sub-Section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

> "**(2).** If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

20. The reliefs that can be granted by the final order or an by interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application etc. is not read into the aforesaid provision, the very purpose which the Act attempts to sub-serve itself may be defeated in many cases.

21. We, thus, are of the opinion that the amendment was rightly allowed by the Trial Court and there is no blemish in the impugned judgment of the High Court affirming the order of the Trial Court. This appeal is, thus, devoid of any merits and is, accordingly, dismissed with costs.

.....J.
[A.K. SIKRI]

.....J.
[R.K.AGRAWAL]

NEW DELHI;
APRIL 18, 2016

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HIRAL P. HARSORA AND ORS.
VERSUS
KUSUM NAROTTAMDAS HARSORA AND ORS.

Bench: Hon'ble Mr. Justice KURIAN JOSEPH, Hon'ble Mr. Justice R.F. NARIMAN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on Oct., 6, 2016.

CIVIL APPEAL NO. 10084 of 2016
(ARISING OUT OF SLP (CIVIL) NO. 9132 OF 2015)

Hiral P. Harsora and Ors. ...Appellants

Versus

Kusum Narottamdas Harsora and Ors. ...Respondents

JUDGMENT

R.F. NARIMAN, J.

1. Leave granted.

2. The present appeal arises out of a judgment dated 25.9.2014 of a Division Bench of the Bombay High Court. It raises an important question as to the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as "the 2005 Act").

3. On 3.4.2007, Kusum Narottam Harsora and her mother Pushpa Narottam Harsora filed a complaint under the 2005 Act against Pradeep, the brother/son, and his wife, and two sisters/daughters, alleging various acts of violence against them. The said complaint was withdrawn on 27.6.2007 with liberty to file a fresh complaint.

4. Nothing happened for over three years till the same duo of mother and daughter filed two separate complaints against the same respondents in October, 2010. An application was moved before the learned Metropolitan Magistrate for a discharge of respondent Nos. 2 to 4 stating that as the complaint was made under Section 2(a) read with Section 2(q) of the 2005 Act, it can only be made against an adult male person and the three respondents not being adult male persons were, therefore, required to be discharged. The Metropolitan Magistrate passed an order dated 5.1.2012 in which such discharge was refused. In a writ petition filed against the said order, on 15.2.2012, the Bombay High Court, on a literal construction of the 2005 Act, discharged the aforesaid three respondents from the complaint. We have been informed that this order has since attained finality.

5. The present proceedings arise because mother and daughter have now filed a writ petition, being writ petition No.300/2013, in which the constitutional validity of Section 2(q) has been challenged. Though the writ petition was amended, there was no prayer seeking any interference with the order dated 15.2.2012, which, as has already been stated hereinabove, has attained finality.

6. The Bombay High Court by the impugned judgment dated 25.9.2014 has held that Section 2(q) needs to be read down in the following manner:-

> "In view of the above discussion and in view of the fact that the decision of the Delhi High Court in Kusum Lata Sharma's case has not been disturbed by the Supreme Court, we are inclined to read down the provisions of section 2(q) of the DV Act and to hold that the provisions of "respondent" in section 2(q) of the DV Act is not to be read in isolation but has to be read as a part of the scheme of the DV Act, and particularly along with the definitions of "aggrieved person", "domestic relationship" and "shared household" in clauses (a), (f) and (s) of section 2 of the DV Act. If so read, the complaint alleging acts of domestic violence is maintainable not only against an adult male person who is son or brother, who is or has been in a domestic relationship with the aggrieved complainant- mother or sister, but the complaint can also be filed against a relative of the son or brother including wife of the son / wife of the brother and sisters of the male respondent. In other words, in our view, the complaint against the daughter-in-law, daughters or sisters would be maintainable under the provisions of the DV Act, where they are corespondent/ s in a complaint against an adult male person, who is or has been in a domestic relationship with the complainant and such corespondent/ s. It must, of course, be held that a complaint under the DV Act would not be maintainable against daughter-in-law, sister-in- law or sister of the complainant, if no complaint is filed against an adult male person of the family."

7. The present appeal has been filed against this judgment. Shri Harin P. Raval, learned senior advocate appearing on behalf of the appellants, assailed the judgment, and has argued before us that it is clear that the "respondent" as defined in Section 2(q) of the said Act can only mean an adult male person. He has further argued that the proviso to Section 2(q) extends "respondent" only in the case of an aggrieved wife or female living in a relationship in the nature of a marriage, in which case even a female relative of the husband or male partner may be arraigned as a respondent. He sought to assail the judgment on the ground that the Court has not read down the provision of Section 2(q), but has in fact read the proviso into the main enacting part of the said definition, something that was impermissible in law. He has argued before us that the 2005 Act is a penal statute and should be strictly construed in the event of any ambiguity. He further argued that in fact there was no ambiguity because the expression "adult male person" cannot be diluted in the manner done by the High Court in the impugned judgment. He cited a large number of judgments on the golden rule of literal construction, on how reading down cannot be equated to re-reading in constitutional law, and on how a proviso cannot be introduced into the main part of a

provision so as to distort its language. He also cited before us judgments which stated that even though a statute may lead to some hardship, that would not necessarily render the provision unconstitutional nor, in the process of interpretation, can a Court mend or bend the provision in the face of the plain language used. He also cited judgments before us stating that given the plain language, it is clear that it is only for the legislature to make the changes suggested by the High Court. 8. Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the respondents, countered each of these submissions. First and foremost, she argued that the 2005 Act is a piece of social beneficial legislation enacted to protect women from domestic violence of all kinds. This being the case, it is clear that any definition which seeks to restrict the reach of the Act would have to be either struck down as being violative of Article 14 of the Constitution or read down. According to her, given the object of the statute, which is discernible clearly from the statement of objects and reasons, the preamble, and various provisions of the 2005 Act which she took us through, it is clear that the expression "adult male person" is a classification not based on any intelligible differentia, and not having any rational relationship with the object sought to be achieved by the Act. In fact, in her submission, the said expression goes contrary to the object of the Act, which is to afford the largest possible protection to women from domestic violence by any person, male or female, who happens to share either a domestic relationship or shared household with the said woman. In the alternative, she argued that the High Court judgment was right, and that if the said expression is not struck down, it ought to be read down in the manner suggested to make it constitutional. She also added that the doctrine of severability would come to her rescue, and that if the said expression were deleted from Section 2(q), the Act as a whole would stand and the object sought to be achieved would only then be fulfilled. She referred to a large number of judgments on Article 14 and the doctrine of severability generally. She also argued that within the definition of "shared household" in Section 2(s) of the Act, the "respondent" may be a member of a joint family. She has adverted to the amendment made to the Hindu Succession Act in 2005, by which amendment females have also become coparceners in a joint Hindu family, and she argued that therefore the 2005 Act is not in tune with the march of statutory law in other areas. She also countered the submission of Shri Raval stating that the 2005 Act is in fact a piece of beneficial legislation which is not penal in nature but which affords various remedies which are innovative in nature and which cannot be availed of in the ordinary civil courts. She added that Section 31 alone was a penal provision for not complying with a protection order, and went on to state that the modern rule as to penal provisions is different from that sought to be contended by Shri Raval, and that such rule requires the court to give a fair interpretation to the provisions of these statutes, neither leaning in favour of the accuser or the accused. She also added that given the beneficial statute that we have to strike down/interpret, a purposive construction alone should be given, and as the offending expression "adult male person" is contrary to such purpose and would lead to absurdities and anomalies, it ought to be construed in tune with the Act as a whole, which therefore would include females, as well, as respondents. She also pointed out that, at present, the sweep of the Act was such that if a mother-in-law or sister-in-

law were to be an aggrieved person, they could only be aggrieved against adult male members and not against any opposing female member of a joint family – for example, a daughter-in-law or a sister-in-law. This will unnecessary stultify what was sought to be achieved by the Act, and would make the Act a dead letter insofar as these persons are concerned. She also argued that the Act would become unworkable in that the reliefs that were to be given would only be reliefs against adult male members and not their abettors who may be females.

9. Ms. Pinky Anand, learned Additional Solicitor General for India, more or less adopted the arguments of the counsel who appeared for the Union of India in the Bombay High Court. It was her submission that in view of the judgment in ***Kusum Lata Sharma v. State*** (Crl. M.C. No.75 of 2011 dated 2.9.2011) of the Delhi High Court, laying down that the mother-in-law is also entitled to file a complaint against the daughter-in-law under the provisions of the 2005 Act, and the SLP against the said judgment having been dismissed by the Supreme Court, her stand was that it would be open to a mother-in-law to file a complaint against her son as well as her daughter-in-law and other female relatives of the son. In short, she submitted that the impugned judgment does not require interference at our end.

10. This appeal therefore raises a very important question in the area of protection of the female sex generally. The Court has first to ascertain what exactly is the object sought to be achieved by the 2005 Act. In doing so, this Court has to see the statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole. In so doing, this Court is only following the law already laid down in the following judgments.

11. In ***Shashikant Laxman Kale v. Union of India***, (1990) 2 SCR 441, this Court was faced with the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961. After referring in detail to **Re: Special Courts Bill**, 1979 2 SCR 476 and the propositions laid down therein on Article 14 generally and a few other judgments, this Court held:-

> "It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statutory Interpretation, (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:
>
> "The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment."
>
> There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the

remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. *Thangal Kunju Musaliar v. M. Venkitachalam Potti* [(1955) 2 SCR 1196 : AIR 1956 SC 246 : (1956) 29 ITR 349] , the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in *State of West Bengal v. Union of India* [(1964) 1 SCR 371 : AIR 1963 SC 1241] that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation'. Similarly, in *Pannalal Binjraj v. Union of India* [1957 SCR 233 : AIR 1957 SC 397 : (1957) 31 ITR 565] a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act."

12. To similar effect, this Court held in ***Harbilas Rai Bansal v. State of Punjab***, (1996) 1 SCC 1, as follows:

"The scope of Article 14 has been authoritatively laid down by this Court in innumerable decisions including *Budhan Choudhry v. State of Bihar* [(1955) 1 SCR 1045 : AIR 1955 SC 191] , *Ram Krishna Dalmia v. Justice S.R. Tendolkar* [1959 SCR 279 : AIR 1958 SC 538] , *Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P.* [(1969) 1 SCC 817] and *Mohd. Hanif Quareshi v. State of Bihar* [1959 SCR 629 : AIR 1958 SC 731]. To be permissible under Article 14 of the Constitution a classification must satisfy two conditions namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, but what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

The statement of objects and reasons of the Act is as under:

"Statement of Objects and Reasons of the East Punjab Urban Rent Restriction Act, 1949 (Act 3 of 1949).— Under Article 6 of the India (Provisional Constitution) Order, 1947, any law made by the Governor of the Punjab by virtue of Section 93 of the Government of India Act, 1935, which was in force immediately before 15-8-1947, is to remain in force for two years from the date on which the Proclamation ceased to have effect, viz., 14-8-1947. A Governor's Act will, therefore, cease to have effect on 14-8-1949. It is desired that the Punjab Urban Rent Restriction Act, 1947 (Punjab Act No. VI of 1947), being a Governor's Act, be re-enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against mala fide attempts by their landlords to procure their eviction would be there even after 14-8-1949.

In order to achieve the above object, a new Act incorporating the provisions of the Punjab Urban Rent Restriction Act, 1947 with necessary modification is being enacted."

It is obvious from the objects and reasons quoted above that the primary purpose for legislating the Act was to protect the tenants against the mala fide attempts by their landlords to procure their eviction. Bona fide requirement of a landlord was, therefore, provided in the Act — as originally enacted — a ground to evict the tenant from the premises whether residential or non-residential. The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided — conforming to its objects and reasons — bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardship to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary — in a situation like this — to deny her the right to evict the tenant.

The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non-residential premises." [paras 8, 9 &13]

13. In accordance with the law laid down in these judgments it is important first to discern the object of the 2005 Act from the statement of objects and reasons:-

STATEMENT OF OBJECTS AND REASONS

1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following:-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage oradoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any female relative of husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

14. A cursory reading of the statement of objects and reasons makes it clear that the phenomenon of domestic violence against women is widely prevalent and needs redressal. Whereas criminal law does offer some redressal, civil law does not address this phenomenon in its entirety. The idea therefore is to provide various innovative remedies in favour of women who suffer from domestic violence, against the perpetrators of such violence.

15. The preamble of the statute is again significant. It states:

Preamble

"An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto."

16. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations,

be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.

17. The relevant provisions of the statute are contained in the following Sections:

"2. Definitions.— In this Act, unless the context otherwise requires,—

(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(f) "domestic relationship" 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;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

3. Definition of domestic violence.— For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(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.

Explanation I. — For the purposes of this section,—

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not havinga child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.— For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

17. Right to reside in a shared household.—

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. Protection orders.— The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie atisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of theaggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damageor removal of any property from the control of theaggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

26. Relief in other suits and legal proceedings.—

1. Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

2. Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

3. In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

31. Penalty for breach of protection order by respondent.—

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

18. It will be noticed that the definition of "domestic relationship" contained in Section 2(f) is a very wide one. It is a relationship between persons who live or have lived together in a shared household and are related in any one of four ways - blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. A reading of these definitions makes it clear that domestic relationships involve persons belonging to both sexes and includes persons related by blood or marriage. This necessarily brings within such domestic relationships male as well as female in-laws, quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belongs to a joint family of which the respondent is a member. As has been rightly pointed out by Ms. Arora, even before the 2005 Act was brought into force on 26.10.2006, the Hindu Succession Act,1956 was amended, by which Section 6 was amended, with effect from 9.9.2005, to make females coparceners of a joint Hindu family and so have a right by birth in the property of such joint family. This being the case, when a member of a joint Hindu family will now

include a female coparcener as well, the restricted definition contained in Section 2(q) has necessarily to be given a relook, given that the definition of 'shared household' in Section 2(s) of the Act would include a household which may belong to a joint family of which the respondent is a member. The aggrieved person can therefore make, after 2006, her sister, for example, a respondent, if the Hindu Succession Act amendment is to be looked at. But such is not the case under Section 2(q) of the 2005 Act, as the main part of Section 2(q) continues to read "adult male person", while Section 2(s) would include such female coparcener as a respondent, being a member of a joint family. This is one glaring anomaly which we have to address in the course of our judgment.

19. When Section 3 of the Act defines domestic violence, it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any kind against a woman, and is gender neutral. When one goes to the remedies that the Act provides, things become even clearer. Section 17(2) makes it clear that the aggrieved person cannot be evicted or excluded from a shared household or any part of it by the "respondent" save in accordance with the procedure established by law. If "respondent" is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be sub-served by reading "adult male person" as "respondent".

20. This becomes even clearer from certain other provisions of the Act. Under Section 18(b), for example, when a protection order is given to the aggrieved person, the "respondent" is prohibited from aiding or abetting the commission of acts of domestic violence. This again would not take within its ken females who may be aiding or abetting the commission of domestic violence, such as daughters-in-law and sisters-in-law, and would again stultify the reach of such protection orders.

21. When we come to Section 19 and residence orders that can be passed by the Magistrate, Section 19(1)(c) makes it clear that the Magistrate may pass a residence order, on being satisfied that domestic violence has taken place, and may restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. This again is a pointer to the fact that a residence order will be toothless unless the relatives, which include female relatives of the respondent, are also bound by it. And we have seen from the definition of "respondent" that this can only be the case when a wife or a common law wife is an aggrieved person, and not if any other woman belonging to a family is an aggrieved person. Therefore, in the case of a wife or a common law wife complaining of domestic violence, the husband's relatives including mother-in-law and sister-in-law can be arrayed as respondents and effective orders passed against them. But in the case of a mother-in-law or sister-in-

law who is an aggrieved person, the respondent can only be an "adult male person" and since his relatives are not within the main part of the definition of respondent in Section 2(q), residence orders passed by the Magistrate under Section 19(1) (c) against female relatives of such person would be unenforceable as they cannot be made parties to petitions under the Act.

22. When we come to Section 20, it is clear that a Magistrate may direct the respondent to pay monetary relief to the aggrieved person, of various kinds, mentioned in the Section. If the respondent is only to be an "adult male person", and the money payable has to be as a result of domestic violence, compensation due from a daughter-in-law to a mother-in-law for domestic violence inflicted would not be available, whereas in a converse case, the daughter-in-law, being a wife, would be covered by the proviso to Section 2(q) and would consequently be entitled to monetary relief against her husband and his female relatives, which includes the mother-in-law.

23. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of "respondent" in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. This anomaly again makes it clear that the definition of "respondent" in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it.

24. Also, the expression "adult" would have the same effect of stultifying orders that can be passed under the aforesaid sections. It is not difficult to conceive of a non-adult 16 or 17 year old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person. Also, a residence order which may be passed under Section 19(1)(c) can get stultified if a 16 or 17 year old relative enters the portion of the shared household in which the aggrieved person resides after a restraint order is passed against the respondent and any of his adult relatives. Examples can be multiplied, all of which would only lead to the conclusion that even the expression "adult" in the main part is Section 2(q) is restrictive of the object sought to be achieved by the kinds of orders that can be passed under the Act and must also be, therefore, struck down,

as this word contains the same discriminatory vice that is found with its companion expression "male".

25. Shri Raval has cited a couple of judgments dealing with the provisions of the 2005 Act. For the sake of completeness, we may refer to two of them.

26. In ***Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade***, (2011) 3 SCC 650, this Court, in a petition by a married woman against her husband and his relatives, construed the proviso to Section 2(q) of the 2005 Act. This Court held:

> "No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005." [Para 16]

27. In ***Indra Sarma v. V.K.V. Sarma***, (2013) 15 SCC 755, the appellant entered into a live-in relationship with the respondent knowing that he was a married person. A question arose before this Court as to whether the appellant could be said to be in a relationship in the nature of marriage. Negativing this contention, this Court held:

> "The appellant, admittedly, entered into a live-in relationship with the respondent knowing that he was a married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in *Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy* [(1928) 27 LW 678 : AIR 1927 PC 185] , that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in *Badri Prasad v. Director of Consolidation* [(1978) 3 SCC 527] and *Tulsa v. Durghatiya* [(2008) 4 SCC 520] . We may note that, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. The long-standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that the DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive. Parliament has to ponder over these issues, bring in proper legislation or make a

proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage." [Paras 57, 59 & 64]

28. It may be noted that in ***Badshah v. Urmila Badshah Godse & Anr.***, (2014) 1 SCC 188, this Court held that the expression "wife" in Section 125 of the Criminal Procedure Code, includes a woman who had been duped into marrying a man who was already married. In so holding, this Court held:

> "Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in *Heydon case* [(1584) 3 Co Rep 7a : 76 ER 637] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of ut res magis valeat quam pereatin such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 Cr.P.C, such a woman is to be treated as the legally wedded wife."[Para 20]

29. We will now deal with some of the cases cited before us by both the learned senior advocates on Article 14, reading down, and the severability principle in constitutional law.

30. Article 14 is in two parts. The expression "equality before law" is borrowed from the Irish Constitution, which in turn is borrowed from English law, and has been described in ***State of U.P. v. Deoman Upadhyaya,*** (1961) 1 SCR 14, as the negative aspect of equality. The "equal protection of the laws" in Article 14 has been borrowed from the 14th Amendment to the U.S. Constitution and has been described in the same judgment as the positive aspect of equality namely the protection of equal laws. Subba Rao, J. stated:

> "This subject has been so frequently and recently before this court as not to require an extensive consideration. The doctrine of equality may be briefly stated as follows: All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to

> the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose for which it is made." [at page 34]

31. In ***Lachhman Dass v. State of Punjab***, (1963) 2 SCR 353, Subba Rao, J. warned that over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive Article 14 of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality. This admonition seems to have come true in the present case, as the classification of "adult male person" clearly subverts the doctrine of equality, by restricting the reach of a social beneficial statute meant to protect women against all forms of domestic violence.

32. We have also been referred to ***D.S. Nakara v. Union of India***, (1983) 1 SCC 305. This judgment concerned itself with pension payable to Government servants. An office Memorandum of the Government of India dated 25.5.1979 restricted such pension payable only to persons who had retired prior to a specific date. In holding the date discriminatory and arbitrary and striking it down, this Court went into the doctrine of classification, and cited from ***Re: Special Courts Bill***, (1979) 2 SCR 476 and ***Maneka Gandhi v. Union of India***, (1978) 2 SCR 621, and went on to hold that the burden to affirmatively satisfy the court that the twin tests of intelligible differentia having a rational relation to the object sought to be achieved by the Act would lie on the State, once it has been established that a particular piece of legislation is on its face unequal. The Court further went on to hold that the petitioners challenged only that part of the scheme by which benefits were admissible to those who retired from service after a certain date. The challenge, it was made clear by the Court, was not to the validity of the Scheme, which was wholly acceptable to the petitioners, but only to that part of it which restricted the number of persons from availing of its benefit. The Court went on to hold:

> "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we

find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14." [para 42]

33. We were also referred to ***Rattan Arya and others v. State of Tamil Nadu and another***, (1986) 3 SCC 385, and in particular, to the passage reading thus:-

"We may now turn to S.30(ii) which reads as follows:

"Nothing contained in this Act shall apply to any residential building or part thereof occupied by anyone tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees."

By one stroke, this provision denies the benefits conferred by the Act generally on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs. 50, Rs. 500 or Rs. 5000 per month, a tenant of a residential building is protected if the rent is Rs. 50, but not if it is Rs. 500 or Rs. 5000 per month. Does it mean that the tenant of a residential building paying a rent of Rs. 500 is better able to protect himself than the tenant of a non-residential building paying a rent of Rs. 5000 per month?

> Does it mean that the tenant of a residential building who pays a rent of Rs. 500 per month is not in need of any statutory protection? Is there any basis for the distinction between the tenant of a residential building and the tenant of a non-residential building and that based on the rent paid by the respective tenants? Is there any justification at all for picking out the class of tenants of residential buildings paying a rent of more than four hundred rupees per month to deny them the |rights conferred generally on all tenants of buildings residential or non-residential by the Act? Neither from the Preamble of the Act nor from the provisions of the Act has it been possible for us even to discern any basis for the classification made by S.30(ii) of the Act."(Para 3)

34. In ***Subramanian Swamy v. CBI***, (2014) 8 SCC 682, a Constitution Bench of this Court struck down Section 6A of the Delhi Police Special Establishment Act on the ground that it made an invidious distinction between employees of the Central Government of the level of Joint Secretary and above as against other Government servants. This Court, after discussing various judgments dealing with the principle of discrimination (when a classification does not disclose an intelligible differentia in relation to the object sought to be achieved by the Act) from para 38 onwards, ultimately held that the aforesaid classification defeats the purpose of finding prima facie truth in the allegations of graft and corruption against public servants generally, which is the object for which the Prevention of Corruption Act, 1988 was enacted. In paras 59 and 60 this Court held as follows:

> "It seems to us that classification which is made in Section 6-A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988.
>
> Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. In the words of Mathew, J. in Shri Ambica Mills Ltd. [State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656 : 1974 SCC (L&S) 381 : (1974) 3 SCR 760] : (SCC p. 675, paras 53-54)
>
> "53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. …

> 54. A reasonable classification is one which includes all who are similarly situated and none who are not." Mathew, J., while explaining the meaning of the words, "similarly situated" stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crimedoer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants." [paras 59 and 60]

35. In a recent judgment, reported as ***Union of India v. N.S. Ratnam***, (2015) 10 SCC 681, this Court while dealing with an exemption notification under the Central Excise Act stated the law thus:-

> "We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in *Roop Chand Adlakha v. DDA* [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639] : "To overdo classification is to undo equality." [para 18]

36. A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words "adult male person" are contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". We, therefore, strike down the words "adult male" before the word "person" in Section 2(q), as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

Having struck down these two words from the definition of "respondent" in Section 2(q), the next question that arises is whether the rest of the Act can be implemented without the aforesaid two words. This brings us to the doctrine of severability – a doctrine well-known in constitutional law and propounded for the first time in the celebrated ***R.M.D. Chamarbaugwalla v. Union of India***, 1957 SCR 930. This judgment has been applied in many cases. It is not necessary to refer to the plethora of case law on the application of this judgment, except to refer to one or two judgments directly on point.

37. An early application of the aforesaid principle is contained in Corporation of Calcutta v. Calcutta Tramways Co. Ltd., [1964] 5 S.C.R. 25, in which a portion of Section 437(i)(b) of the Calcutta Municipal Act, 1951 was struck down as being a procedural provision which was an unreasonable restriction within the meaning of Article 19(6)

of the Constitution. Chamarbaugwalla's case was applied, and it was ultimately held that only the portion in parenthesis could be struck down with the rest of the Act continuing to apply.

38. Similarly, in Motor General Traders v. State of A.P., (1984) 1 SCC 222, Section 32(b) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 which exempted all buildings constructed on and after 26.8.1957, was struck down as being violative of Article 14 of the Constitution. This judgment, after applying Chamarbaugwalla's case in para 27, and D.S. Nakara's case in para 28, stated the law thus:-

> "On a careful consideration of the above question in the light of the above principles we are of the view that the striking down of clause (b) of Section 32 of the Act does not in any way affect the rest of the provisions of the Act. The said clause is not so inextricably bound up with the rest of the Act as to make the rest of the Act unworkable after the said clause is struck down. We are also of the view that the Legislature would have still enacted the Act in the place of the Madras Buildings (Lease and Rent Control) Act, 1949 and the Hyderabad House (Rent, Eviction and Lease) Act, 1954 which were in force in the two areas comprised in the State of Andhra Pradesh and it could not have been its intention to deny the beneficial effect of those laws to the people residing in Andhra Pradesh on its formation. After the Second World War owing to acute shortage of urban housing accommodation, rent control laws which were brought into force in different parts of India as pieces of temporary legislation gradually became almost permanent statutes. Having regard to the history of the legislation under review, we are of the view that the Act has to be sustained even after striking down clause (b) of Section 32 of the Act. The effect of striking down the impugned provision would be that all buildings except those falling under clause (a) of Section 32 or exempted under Section 26 of the Act in the areas where the Act is in force will be governed by the Act irrespective of the date of their construction." [para 29]

39. In ***Satyawati Sharma v. Union of India***, (2008) 5 SCC 287, Section 14(1)(e) of the Delhi Rent Control Act was struck down in part, inasmuch as it made an invidious distinction between bonafide requirement of two kinds of landlords, the said ground being available for residential premises only and not non residential premises. An argument was made that if the Section was struck down only in part, nothing more would survive thereafter. This was negatived by this Court in the following words:

> "In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only.

However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under:

"14. (1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

***"

While adopting this course, we have kept in view well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible—*R.M.D. Chamarbaugwalla v. Union of India* [AIR 1957 SC 628] and *Lt. Col. Sawai Bhawani Singh v. State of Rajasthan*[(1996) 3 SCC 105] . As a sequel to the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant." [paras 41 –43]

40. An application of the aforesaid severability principle would make it clear that having struck down the expression "adult male" in Section 2(q) of the 2005 Act, the rest of the Section is left intact and can be enforced to achieve the object of the legislation without the offending words. Under Section 2(q) of the 2005 Act, while defining 'respondent', a proviso is provided only to carve out an exception to a situation of "respondent" not being an adult male. Once we strike down 'adult male', the proviso has no independent existence, having been rendered otiose.

41. Interestingly the Protection from Domestic Violence Bill, 2002 was first introduced in the Lok Sabha in 2002. This Bill contained the definition of "aggrieved person", "relative", and "respondent" as follows:

"2. Definitions.

In this Act, unless the context otherwise requires,-

a) "aggrieved person" means any woman who isor has been a relative of the respondent and who alleges to have been subjected to acts of domestic violence by the respondent;"

xxxx

i) "relative" includes any person related by blood, marriage or adoption and living with the respondent;

j) "respondent' means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought

> monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be; and"

42. We were given to understand that the aforesaid Bill lapsed, after which the present Bill was introduced in the Lok Sabha on 22.8.2005, and was then passed by both Houses. It is interesting to note that the earlier 2002 Bill defined "respondent" as meaning "any person who is….." without the addition of the words "adult male", being in consonance with the object sought to be achieved by the Bill, which was pari materia with the object sought to be achieved by the present Act. We also find that, in another Act which seeks to protect women in another sphere, namely, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "respondent" is defined in Section 2(m) thereof as meaning a person against whom the aggrieved woman has made a complaint under Section 9. Here again it will be noticed that the prefix "adult male" is conspicuous by its absence. The 2002 Bill and the 2013 Act are in tune with the object sought to be achieved by statutes which are meant to protect women in various spheres of life. We have adverted to the aforesaid legislation only to show that Parliament itself has thought it reasonable to widen the scope of the expression "respondent" in the Act of 2013 so as to be in tune with the object sought to be achieved by such legislations.

43. Having struck down a portion of Section 2(q) on the ground that it is violative of Article 14 of the Constitution of India, we do not think it is necessary to go into the case law cited by both sides on literal versus purposive construction, construction of penal statutes, and the correct construction of a proviso to a Section. None of this becomes necessary in view of our finding above.

44. However, it still remains to deal with the impugned judgment. We have set out the manner in which the impugned judgment has purported to read down Section 2(q) of the impugned Act. The doctrine of reading down in constitutional adjudication is well settled and has been reiterated from time to time in several judgments, the most recent of which is contained in ***Cellular Operators Association of India v. TRAI***, (2016) 7 SCC 703. Dealing with the doctrine of reading down, this Court held:-

> "But it was said that the aforesaid Regulation should be read down to mean that it would apply only when the fault is that of the service provider. We are afraid that such a course is not open to us in law, for it is well settled that the doctrine of reading down would apply only when general words used in a statute or regulation can be confined in a particular manner so as not to infringe a constitutional right. This was best exemplified in one of the earliest judgments dealing with the doctrine of reading down, namely, the judgment of the Federal Court in Hindu Women's Rights to Property Act, 1937, In re [Hindu Women's Rights to Property Act, 1937, In re, 1941 SCC OnLine FC 3 : AIR 1941 FC 72] . In that judgment, the word "property" in Section 3 of the Hindu Women's Rights to Property Act was read down so as not to include agricultural land, which would be outside the Central Legislature's powers under the Government of India Act, 1935.This is done because it is presumed that the legislature did not intend to

transgress constitutional limitations. While so reading down the word "property", the Federal Court held: (SCC OnLine FC)

"… If the restriction of the general words to purposes within the power of the legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the legislature intended the general words which it has used to be construed only in the narrower sense: *Owners of SS Kalibia v.Wilson [Owners of SS Kalibia v. Wilson,* (1910) 11 CLR 689 (Aust)] , *Vacuum Oil Co. Pty. Ltd. v. Queensland [Vacuum Oil Co. Pty. Ltd. v. Queensland*, (1934) 51 CLR 677 (Aust)] , *R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co. [R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co.*, (1910) 11 CLR 1 (Aust)] and *British Imperial Oil Co. Ltd. v. Federal Commr. of Taxation [British Imperial Oil Co. Ltd. v. Federal Commr. of Taxation*, (1925) 35 CLR 422 (Aust)] ." (emphasis supplied)

This judgment was followed by a Constitution Bench of this Court in *DTC v.Mazdoor Congress [DTC v. Mazdoor Congress*, 1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213] . In that case, a question arose as to whether a particular regulation which conferred power on an authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating his services, or by making payment in lieu of such notice without assigning any reasons and without any opportunity of hearing to the employee, could be said to be violative of the appellants' fundamental rights. Four of the learned Judges who heard the case, the Chief Justice alone dissenting on this aspect, decided that the regulation cannot be read down, and must, therefore, be held to be unconstitutional. In the lead judgment on this aspect by Sawant, J., this Court stated: (SCC pp. 728-29, para 255)

"255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible—one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it

is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so. (emphasis supplied)" [paras 50 and 51]

45. We may add that apart from not being able to mend or bend a provision, this Court has earlier held that "reading up" a statutory provision is equally not permissible. In B.R. Kapur v. State of T.N., (2001) 7 SCC 231, this Court held: "Section 8(4) opens with the words "notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3)", and it applies only to sitting members of Legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that legislators stand in a class apart from non-legislators, but we need to express no final opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final court. That would be "reading up" the provision, not "reading down", and that is not known to the law." [para 39]

46. We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in paragraph 27, that the two complaints of 2010, in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No.300/2013 for the same. When this was pointed out, Ms. Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October, 2010. With this additional observation, this appeal stands disposed of.

……J.

(Kurian Joseph)

……J.

(R.F. Nariman)

New Delhi;

October 6, 2016.

❑❑❑

KRISHNA BHATACHARJEE
VERSUS
SARATHI CHOUDHURY AND ANR

Bench: Hon'ble Mr. Justice DIPAK MISRA, Hon'ble Mr. Justice PRAFULLA C. PANT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 20 November, 2015

CRIMINAL APPEAL NO. 1545 OF 2015
(@ SLP(Crl) No. 10223 OF 2014)

Krishna Bhatacharjee ... Appellant
Versus
Sarathi Choudhury and Anr. ... Respondents

JUDGMENT

DIPAK MISRA, J.

1. Leave granted.

2. The appellant having lost the battle for getting her Stridhan back from her husband, the first respondent herein, before the learned Magistrate on the ground that the claim preferred under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, the 2005 Act) was not entertainable as she had ceased to be an aggrieved person under Section 2(a) of the 2005 Act and further that the claim as put forth was barred by limitation; preferred an appeal before the learned Additional Sessions Judge who concurred with the view expressed by the learned Magistrate, and being determined to get her lawful claim, she, despite the repeated non-success, approached the High Court of Tripura, Agartala in Criminal Revision No. 19 of 2014 with the hope that she will be victorious in the war to get her own property, but the High Court, as is perceivable, without much analysis, declined to interfere by passing an order with Spartan austerity possibly thinking lack of reasoning is equivalent to a magnificent virtue and that had led the agonised and perturbed wife to prefer the present appeal, by special leave.

3. Prior to the narration of facts which are essential for adjudication of this appeal, we may state that the 2005 Act has been legislated, as its Preamble would reflect, to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, which we shall advert to slightly at a later stage, is in a broader spectrum. The definition of domestic violence covers a range of violence

which takes within its sweep economic abuse and the words economic abuse, as the provision would show, has many a facet.

4. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless aggrieved person under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle justice to the cause is equivalent to the salt of ocean should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

5. Presently to the narration of the facts. The marriage between the appellant and the respondent No. 1 was solemnised on 27.11.2005 and they lived as husband and wife. As the allegations proceed, there was demand of dowry by the husband including his relatives and, demands not being satisfied, the appellant was driven out from the matrimonial home. However, due to intervention of the elderly people of the locality, there was some kind of conciliation as a consequence of which both the husband and the wife stayed in a rented house for two months. With the efflux of time, the husband filed a petition seeking judicial separation before the Family Court and eventually the said prayer was granted by the learned Judge, Family Court. After the judicial separation, on 22.5.2010 the appellant filed an application under Section 12 of the 2005 Act before the Child Development Protection Officer (CDPO), O/O the District Inspector, Social Welfare & Social Education, A.D. Nagar, Agartala, Tripura West seeking necessary help as per the provisions contained in the 2005 Act. She sought seizure of Stridhan articles from the possession of the husband. The application which was made before the CDPO was forwarded by the said authority to the learned Chief Judicial Magistrate, Agartala Sadar, West Tripura by letter dated 1.6.2010. The learned Magistrate issued notice to the respondent who filed his written objections on 14.2.2011.

6. Before the learned Magistrate it was contended by the respondent that the application preferred by the wife was barred by limitation and that she could not have raised claim as regards Stridhan after the decree of judicial separation passed by the competent court. The learned Magistrate taking into consideration the admitted fact that respondent and the appellant had entered into wedlock treated her as an aggrieved person, but opined that no domestic relationship as defined under Section 2(f) of the 2005 Act existed between the parties and, therefore, wife was not entitled to file the application under Section 12 of the 2005 Act. The learned Magistrate came to hold that though the parties had not been divorced but the decree of judicial separation would

be an impediment for entertaining the application and being of this view, he opined that no domestic relationship subsisted under the 2005 Act and hence, no relief could be granted. Be it stated here that before the learned Magistrate, apart from herself, the appellant examined three witnesses and the husband had examined himself as DW-1. The learned Magistrate while dealing with the maintainability of the petition had noted the contentions of the parties as regards merits, but has really not recorded any finding thereon.

7. The aggrieved wife preferred criminal appeal No. 6(1) of 2014 which has been decided by the learned Additional Sessions Judge, Agartala holding, inter alia, that the object of the 2005 Act is primarily to give immediate relief to the victims; that as per the decision of this Court in Inderjit Singh Grewal v. State of Punjab[1] that Section 468 of the Code of Criminal Procedure applies to the proceedings under the 2005 Act and, therefore, her application was barred by time. Being of this view, the appellate court dismissed the appeal.

8. On a revision being preferred, the High Court, as is demonstrable from the impugned order, after referring to the decision in Inderjit Singh Grewal (supra), has stated that the wife had filed a criminal case under Section 498(A) IPC in the year 2006 and the husband had obtained a decree of judicial separation in 2008, and hence, the proceedings under the 2005 Act was barred by limitation. That apart, it has also in a way expressed the view that the proceedings under the 2005 Act was not maintainable.

9. In our prefatory note, we have stated about the need of sensitive approach to these kinds of cases. There can be erroneous perception of law, but as we find, neither the learned Magistrate nor the appellate court nor the High Court has made any effort to understand and appreciate the stand of the appellant. Such type of cases and at such stage should not travel to this Court. We are compelled to say so as we are of the considered opinion that had the appellate court and the High Court been more vigilant, in all possibility, there could have been adjudication on merits. Be that as it may.

10. The facts that we have enumerated as regards the status of the parties, judicial separation and the claim for Stridhan are not in dispute. Regard being had to the undisputed facts, it is necessary to appreciate the scheme of the 2005 Act. Section 2(a) defines aggrieved person which means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) defines domestic relationship which 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. Section 2(g) defines the term domestic violence which has been assigned and given the same meaning as in Section 3. Sub- section (iv) of Section 3 deals with economic abuse. As in the facts at hand, we are concerned with the economic abuse, we reproduce Section 3(iv) which reads as follows:-

Section 3. Definition of domestic violence.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

11. Section 8(1) empowers the State Government to appoint such number of Protection Officers in each district as it may consider necessary and also to notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under the 2005 Act. The provision, as is manifest, is mandatory and the State Government is under the legal obligation to appoint such Protection Officers. Section 12 deals with application to Magistrate.

Sub-sections (1) and (2) being relevant are reproduced below:-

Section 12. Application to Magistrate.-(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 such set off.

12. Section 18 deals with passing of protection orders by the Magistrate. Section 19 deals with the residence orders and Section 20 deals with monetary reliefs. Section 28 deals with procedure and stipulates that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Section 36 lays down that the provisions of the 2005 Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

13. Having scanned the anatomy of the 2005 Act, we may now refer to a few decisions of this Courts that have dealt with the provisions of the 2005 Act. In V.D. Bhanot v. Savita Bhanot[2] the question arose whether the provisions of the 2005 Act can be made applicable in relation to an incident that had occurred prior to the coming into force of the said Act. Be it noted, the High Court had rejected the stand of the respondent therein that the provisions of the 2005 Act cannot be invoked if the occurrence had taken place prior to the coming into force of the 2005 Act. This Court while dealing with the same referred to the decision rendered in the High Court which after considering the constitutional safeguards under Article 21 of the Constitution vis-à-vis the provisions of Sections 31 and 33 of the 2005 Act and after examining the Statement of Objects and Reasons for the enactment of the 2005 Act, had held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that Parliament enacted the 2005 Act in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them and further that a petition under the provisions of the 2005 Act is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. After analyzing the verdict of the High Court, the Court concurred with the view expressed by the High Court by stating thus:-

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 20 thereof.

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.

14. In Saraswathy v. Babu[3] a two-Judge Bench, after referring to the decision in V.D. Bhanot (supra), reiterated the principle. It has been held therein:-

We are of the view that the act of the respondent husband squarely comes within the ambit of Section 3 of the DVA, 2005, which defines domestic violence in wide terms.

The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent husband has not complied with the order and direction passed by the trial court and the appellate court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant wife. The appellant wife having being harassed since 2000 is entitled for protection order and residence order under Sections 18 and 19 of the DVA, 2005 along with the maintenance as allowed by the trial court under Section 20(1)(d) of the DVA, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant wife should be compensated by the respondent husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs 5,00,000 in favour of the appellant wife.

15. In the instant case, as has been indicated earlier, the courts below as well as the High Court have referred to the decision in Inderjit Singh Grewal (supra). The said case has to be understood regard being had to the factual exposè therein. The Court had referred to the decision in D. Velusamy v. D. Patchaiammal[4] wherein this Court had considered the expression domestic relationship under Section 2(f) of the Act and judgment in Savitaben Somabhai Bhatiya v. State of Gujarat[5] and distinguished the said judgments as those cases related to live-in relationship without marriage. The Court analyzing the earlier judgments opined that the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage. The said judgments were distinguished on facts as those cases related to live-in relationship without marriage. The Court opined that the parties therein had got married and the decree of the civil court for divorce subsisted and that apart a suit to declare the said judgment and decree as a nullity was still pending consideration before the competent court. In that background, the Court ruled that:- In the facts and circumstances of the case, the submission made on behalf of Respondent 2 that the judgment and decree of a civil court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by Respondent 2 to declare the said judgment and decree dated 20-3-2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the civil court subsists. On a similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the 2005 Act is maintainable, is not worth acceptance at this stage. [Emphasis supplied]

16. It may be noted that a submission was advanced by the wife with regard to the applicability of Section 468 CrPC. While dealing with the submission on the issue of limitation, the Court opined:-

..... in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394, and NOIDA Entrepreneurs Assn. v. NOIDA, (2011) 6 SCC 508.

17. As it appears, the High Court has referred to the same but the same has really not been adverted.

In fact, it is not necessary to advert to the said aspect in the present case.

18. The core issue that is requisite to be addressed is whether the appellant has ceased to be an aggrieved person because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is not so when there is a decree for judicial separation. A three-Judge Bench in Jeet Singh and Others Vs. State of U.P. and Others[6] though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.

19. In this regard, we may fruitfully refer to the authority in Hirachand Srinivas Managaonkar v. Sunanda[7] wherein the issue that arose for determination was whether the husband who had filed a petition seeking dissolution of the marriage by a decree of divorce under Section 13(1-A)(i) of the Hindu Marriage Act, 1955 can be declined relief on the ground that he had failed to pay maintenance for his wife and daughter despite an order of the court. The husband was appellant before this Court and had filed an application under Section 10 of the Hindu Marriage Act, 1955 for seeking judicial separation on the ground of adultery on the part of the appellant. Thereafter, the appellant presented the petition for dissolution of marriage by decree of divorce on the ground that there has been no resumption of cohabitation as between the parties to the marriage for a period of more than one year after passing of the decree for judicial separation. The stand of the wife was that the appellant having failed to pay the maintenance as ordered by the court, the petition for divorce filed by the husband was liable to be rejected inasmuch he was trying to get advantage of his own wrong for getting the relief. The High Court accepted the plea of the wife and refused to grant the prayer of the appellant seeking divorce. It was contended before this Court that the only condition for getting divorce under Section 13(1-A)(i) of the Hindu Marriage Act, 1955 is that there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the

passing of the decree for judicial separation in a proceeding to which both the spouses are parties. It was urged that if the said condition is satisfied the court is required to pass a decree of divorce. On behalf of the wife, the said submissions were resisted on the score that the husband had been living in continuous adultery even after passing of the decree of judicial separation and had reasonably failed to maintain the wife and daughter. The Court proceeded to analyse Section 13(1-A)(i) of the Hindu Marriage Act, 1955. Analysing the provisions at length and speaking about judicial separation, it expressed that after the decree for judicial separation was passed on the petition filed by the wife it was the duty of both the spouses to do their part for cohabitation. The husband was expected to act as a dutiful husband towards the wife and the wife was to act as a devoted wife towards the husband. If this concept of both the spouses making sincere contribution for the purpose of successful cohabitation after a judicial separation is ordered then it can reasonably be said that in the facts and circumstances of the case the husband in refusing to pay maintenance to the wife failed to act as a husband. Thereby he committed a wrong within the meaning of Section 23 of the Act. Therefore, the High Court was justified in declining to allow the prayer of the husband for dissolution of the marriage by divorce under Section 13(1- A) of the Act.

20. And, the Court further stated thus:-

... The effect of the decree is that certain mutual rights and obligations arising from the marriage are as it were suspended and the rights and duties prescribed in the decree are substituted therefor. The decree for judicial separation does not sever or dissolve the marriage tie which continues to subsist.

It affords an opportunity to the spouse for reconciliation and readjustment. The decree may fall by a conciliation of the parties in which case the rights of the respective parties which float from the marriage and were suspended are restored. Therefore the impression that Section 10(2) vests a right in the petitioner to get the decree of divorce notwithstanding the fact that he has not made any attempt for cohabitation with the respondent and has even acted in a manner to thwart any move for cohabitation does not flow from a reasonable interpretation of the statutory provisions. At the cost of repetition it may be stated here that the object and purpose of the Act is to maintain the marital relationship between the spouses and not to encourage snapping of such relationship.

21. It is interesting to note that an issue arose whether matrimonial offence of adultery had exhausted itself when the decree for judicial separation was granted and, therefore, it cannot be said that it is a new fact or circumstance amounting to wrong which will stand as an obstacle in the way of the husband to obtain the relief which he claims in the divorce proceedings. Be it stated that reliance was placed on the decision of Gujarat High Court in Bai Mani v. Jayantilal Dahyabhai[8].

This Court did not accept the contention by holding that living in adultery on the part of the husband is a continuing matrimonial offence, and it does not get frozen or wiped out merely on passing of a decree for judicial separation which merely suspends certain duties and obligations of the spouses in connection with their marriage and

does not snap the matrimonial tie. The Court ruled that the decision of the Gujarat High Court does not lay down the correct position of law. The Court approved the principle stated by the Madras High Court in the case of Soundarammal v. Sundara Mahalinga Nadar[9] in which a Single Judge had taken the view that the husband who continued to live in adultery even after decree at the instance of the wife could not succeed in a petition seeking decree for divorce and that Section 23(1)(a) barred the relief.

22. In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the later, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicial separated, the appellant wife has ceased to be an aggrieved person is wholly unsustainable.

23. The next issue that arises for consideration is the issue of limitation. In the application preferred by the wife, she was claiming to get back her stridhan. Stridhan has been described as saudayika by Sir Gooroodas Banerjee in Hindu Law of Marriage and Stridhan which is as follows:-

First, take the case of property obtained by gift. Gifts of affectionate kindred, which are known by the name of saudayika stridhan, constitute a womans absolute property, which she has at all times independent power to alienate, and over which her husband has only a qualified right, namely, the right of use in times of distress.

24. The said passage, be it noted, has been quoted Pratibha Rani v. Suraj Kumar and Another[10]. In the said case, the majority referred to the stridhan as described in Hindu Law by N.R. Raghavachariar and Maines Treatise on Hindu Law. The Court after analyzing the classical texts opined that:-

It is, therefore, manifest that the position of stridhan of a Hindu married womans property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt.

25. In the said case, the Court ruled:-

... a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for

not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property.

26. The decision rendered in the said case was referred for a fresh look by a three-Judge Bench. The three-Judge Bench Rashmi Kumar (Smt) v. Mahesh Kumar Bhada[11] while considering the issue in the said case, ruled that :-

9. A womans power of disposal, independent of her husbands control, is not confined to saudayika but extends to other properties as well. Devala says: A womans maintenance (vritti), ornaments, perquisites (sulka), gains (labha), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress. In N.R. Raghavachariars Hindu Law Principles and Precedents, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with Definition of Stridhana. In para 469 dealing with Sources of acquisition it is stated that the sources of acquisition of property in a womans possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with Gifts to a maiden. Para 471 deals with Wedding gifts and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the brides stridhana. In para 481 at page 426, it is stated that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with powers during coverture it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof.

27. After so stating the Court proceeded to rule that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need

to establish any further special agreement to establish that the property was given to the husband or other member of the family.

Further, the Court observed that it is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. Thereafter, the Court adverted to the concept of entrustment and eventually concurred with the view in the case of Pratibha Rani (supra). It is necessary to note here that the question had arisen whether it is a continuing offence and limitation could begin to run everyday lost its relevance in the said case, for the Court on scrutiny came to hold that the complaint preferred by the complainant for the commission of the criminal breach of trust under Section 406 of the Indian Penal Code was within limitation.

28. Having appreciated the concept of Stridhan, we shall now proceed to deal with the meaning of continuing cause of action. In Raja Bhadur Singh v. Provident Fund Inspector and Others[12] the Court while dealing with the continuous offence opined that the expression continuing offence is not defined in the Code but that is because the expressions which do not have a fixed connotation or a static import are difficult to define. The Court referred to the earlier decision in State of Bihar v. Deokaran Nenshi[13] and reproduced a passage from the same which is to the following effect:-

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

29. The Court further observed :-

This passage shows that apart from saying that a continuing offence is one which continues and a non-continuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence. Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a non-continuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar.

30. Thereafter, the Court referred to the authorities and adverted to Deokaran Nenshi (supra) and eventually held:-

The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the

offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence...

31. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of aggrieved person clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. Economic abuse as it has been defined in Section 3(iv) of the said Act has a large canvass.

Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of continuing offence gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of continuing offence and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.

32. Consequently, the appeal is allowed and the orders passed by the High Court and the courts below are set aside. The matter is remitted to the learned Magistrate to proceed with the application under Section 12 of the 2005 Act on merits.

.....J.

[Dipak Misra]

....., J.

[Prafulla C. Pant]

New Delhi

November 20, 2015

[1] (2011) 12 SCC 588

[2] (2012) 3 SCC 183

[3] (2014) 3 SCC 712

[4] (2010) 10 SCC 469

[5] (2005) 3 SCC 636

[6] (1993) 1 SCC 325

[7] (2001) 4 SCC 125

[8] AIR 1979 Guj 209

[9] AIR 1980 Mad 294

[10] (1985) 2 SCC 370

[11] (1997) 2 SCC 397

[12] (1984) 4 SCC 222

[13] (1972) 2 SCC 890

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SHALU OJHA VERSUS PRASHANT OJHA

Bench : Hon'ble Mr. Jusitce J. CHELAMESWAR, Hon'ble Mr. Justice A.K. SIKRI

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 18 September, 2014

CRIMINAL APPEAL NO.2070 OF 2014
(Arising out of Special Leave Petition (Crl.) No.6220 OF 2014)

Shalu Ojha Appellant
Versus
Prashant Ojha Respondent

JUDGMENT

CHELAMESWAR, J.

1. Leave granted.

2. This is an unfortunate case where the provisions of the Protection of Women from Domestic Violence Act, 2005 are rendered simply a pious hope of the Parliament and a teasing illusion for the appellant.

3. The appellant is a young woman who got married to the respondent on 20.04.2007 in Delhi according to Hindu rites and customs, pursuant to certain information placed by the respondent on the website known as Sycorian Matrimonial Services Ltd..

4. According to the appellant, she was thrown out of the matrimonial home within four months of the marriage on 14.8.2007. Thereafter, the respondent started pressurizing the appellant to agree for dissolution of marriage by mutual consent. As the appellant did not agree for the same, the respondent filed a petition for divorce being H.M.A. No.637 of 2007 under Section 13(1) of the Hindu Marriage Act, 1955 on 17.10.2007 before the Additional District Judge, Tis Hazari Courts, Delhi. The said petition was dismissed by an order dated 03.10.2008. Within four months, the respondent filed another petition on 08.04.2009 once again invoking Section 13(1) of the Hindu Marriage Act, 1955 before the Additional District Judge, Patiala House Courts, Delhi being H.M.A. No.215 of 2009 and the same on being transferred is pending before the Family Court, Saket and renumbered as H.M.A. No.266 of 2009.

5. On 04.06.2009, the appellant filed a complaint case No.120/4/09 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the DV Act).

6. The said complaint case came to be disposed of by the learned Metropolitan Magistrate, New Delhi by his order dated 05.07.2012. By the said order, the Magistrate granted an amount of Rs.2.5 lacs towards monthly maintenance of the appellant which included

rental charges for alternative accommodation. The respondent was made liable to pay such monthly maintenance from the date of filing of the petition, i.e. from 04.06.2009. The monthly maintenance was made payable on or before 10th of each succeeding month. The learned Magistrate further directed that the arrears of the maintenance be cleared by 05.12.2012.

7. Aggrieved by the above order, the respondent carried the matter in appeal under Section 29 of the DV Act in Criminal Appeal No.23 of 2012 before the learned Additional Sessions Judge, Rohini, New Delhi. On 10.01.2013, the learned Additional Sessions Judge while granting stay of the execution of the order under appeal passed an order directing the respondent to pay the entire arrears of the maintenance due to the appellant till the presentation of the appeal within a period of two months.

8. Since the respondent did not pay the arrears, the appellant moved an application for execution of the order dated 10.01.2013.

9. By an order dated 07.05.2013, Criminal Appeal No.23 of 2013 preferred by the respondent was dismissed by the learned Sessions Judge for non- compliance of the interim directions dated 10.01.2013.

10. Aggrieved by the order dated 07.05.2013, the respondent filed Crl. Misc. Case No.1975 of 2013 and Crl. Misc. Application No.78-34 of 2013 for interim directions in the High Court of Delhi on 08.05.2013. The High Court initially declined to pass an interim order in the said appeal. Aggrieved by the same the respondent approached this Court in SLP (Crl.) No.6509-6510 of 2013 which was dismissed in limine on 13.08.2013 with a direction to the parties to apply for mediation.

11. Pursuant to the said direction, the respondent filed Crl. Misc. Application No.12547 of 2013 in Crl. Misc. Case No.1975 of 2013 for direction to refer the matter to Mediation. The matter was referred accordingly. Eventually the mediation failed. On receipt of such failure report, the appeal was again listed before the High Court on 10.09.2013. The High Court directed the respondent to pay an amount of Rs.10 lakhs in two instalments and that the execution petition filed by the appellant for the recovery of the arrears be kept in abeyance.

12. Thereafter, an application was filed by the appellant before the High Court seeking direction to the respondent for the payment of monthly maintenance (current period) in terms of order dated 05.7.2012 of the learned Metropolitan Magistrate (supra). It appears that the matter underwent number of adjournments but no orders have been passed by the High Court.

13. In the said background, the appellant filed Special Leave Petition (Crl.) No.2210 of 2014 in this Court. The said petition came to be disposed of on 31.03.2014 by setting aside the interim stay granted by the High Court on the execution petition filed by the appellant. This Court categorically observed that - it is open to the petitioner to execute the order of maintenance passed by the learned Metropolitan Magistrate and requested the High Court to dispose of the appeal of the respondent expeditiously.

14. Strangely, when the appellants application for the payment of current maintenance in C.M. No.18869 of 2013 was listed on 27.5.2014 before the High Court along with other connected matters in Appeal (Crl. Misc. Case No.1975 of 2013) preferred by the respondent, the application of the appellant was dismissed as not pressed on representation made by the counsel appearing for the appellant. The appellant appeared in person before us and made a statement that such instructions not to press the application were never given to the counsel who appeared in the High Court and hence the present appeal.

15. We have heard the appellant-in-person and learned counsel appearing on behalf of the respondent.

16. The learned counsel appearing on behalf of the respondent pleaded inability to make the payment of the arrears and the current maintenance due to the appellant in terms of the order passed by the learned Metropolitan Magistrate on 05.07.2012 on the ground that the respondents annual income as can be seen from his income-tax returns for the last two years is only around Rs.2.50 lakhs per annum.

17. The appellant submitted that the income-tax returns of the respondent do not reflect the true picture of the income of the respondent. The appellant pointed out the profile of the respondent placed on the website of Sycorian Matrimonial Services Ltd. wherein the respondents personal income is shown as Rs.50 lakhs to Rs.1 crore per annum and monthly income of Rs.5 lakhs. He was shown to be a Managing Director or Director of four companies, the details of which are as under:

|Sr. No.|Organization |Designation |

|1 |M/s Utkarsh Art Press Pvt. Ltd.|Managing Director/Share || | |Holder |

|2 |M/s Empress Infonet Pvt. Ltd. |Director/Share Holder |

|3 |Hotel Urban Pind |Director |

|4 |M/s Brahmani Apparel Pvt. Ltd. |Director/Share Holder |

18. Apart from that, the appellant also placed reliance on a article published in weekly magazine Business World (Issue dated 10.03.2014) wherein some information regarding a posh restaurant known as Zerruco by Zilli at The Ashok, New Delhi was published. The article named the respondent along with one Kashif Farooq as the restaurateurs. According to the article, the restaurant was set up at astounding cost of Rs.7 crore. The relevant portion of the article reads as follows: If chef Back has been feeding American entertainment industry stars. London-based Aldo Zilli is well-known for his celeb-patronised Italian bites. He has just made his Asian foray with Zerruco by Zilli, set in the partly al fresco-partly indoors space at The Ashoka New Delhi that used to house Mashrabiya. The menu is simple, fresh and Med salads, grills, the occasional show-offy gelato ravioli but this is one of those big lifestyle restaurants that we seem to be losing more recently with the spurt in made-to-look-like-mom-and-pop places.

Restaurateurs Kashif Farooq and Prashant Ojha known in the clubbing/partying circuits have brought in Zilli as part of their ambitious plans to grow and get taken

seriously in the F&B realm. The restaurant (that will turn into a lounge/club in the evenings) has been set up at astounding Rs.7 crore cost. You can look to this one as an alternate to the upscale, casual, Olive-like spaces.

19. Before we proceed to take any decision in the matter, we deem it appropriate to make a brief survey of the DV Act insofar as it is relevant for the present purpose. The preamble of the Act states that this is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected or incidental thereto.

20. Domestic violence is defined under Section 3 as any act, omission or commission or conduct of any adult male who is or has been in domestic relationship.

Section 3. Definition of domestic violence.For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it 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 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 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 otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

21. The expression domestic relationship is defined under Section 2(f)[1]. The expressions physical abuse, sexual abuse, verbal and emotional abuse and economic abuse are explained in Explanation-1 to Section 3.

22. Section 12 of the Act recognizes the right of an aggrieved person[2] (necessarily a woman by definition) to present application to the Magistrate seeking one or more reliefs under the Act. The reliefs provided under the Act are contained in Sections 17 to 22. Section 17 creates a right in favour of a woman/aggrieved person to reside in a shared household defined under Section 2(s)[3].

23. Section 18 deals with various orders that can be passed by the Magistrate dealing with the application of an aggrieved person under Section 12. Section 19 provides for various kinds of residence orders which a Magistrate dealing with an application under Section 12 can pass in favour of a woman. Section 20 authorizes the Magistrate dealing with an application under Section 12 to direct the respondent to pay monetary relief to the aggrieved person. Section 20 reads as follows:

Section 20. Monetary reliefs.(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to, ...

the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2). The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3). The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4). The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in- charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5). The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6). Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent. (emphasis supplied)

24. Section 21 deals with the jurisdiction of the Magistrate to pass orders relating to custody of children of the aggrieved person. Section 22 deals with compensation orders which authorizes the Magistrate to pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress caused by the act of domestic violence committed by the respondent. The Magistrate receiving a complaint under Section 12 is authorized under the Act to pass anyone of the orders under the various provisions discussed above appropriate to the facts of the complaint.

25. Section 29 provides for an appeal to the Court of Session against any order passed by the Magistrate under the Act either at the instance of the aggrieved person or the respondent.

26. One important factor to be noticed in the context of the present case is that while Section 23 expressly confers power on the Magistrate to grant interim orders, there is no express provision conferring such power on the Sessions Court in exercise of its appellate jurisdiction. Section 23 reads as follows:

Section 23. Power to grant interim and ex parte orders.(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that

there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

27. It can be seen from the DV Act that no further appeal or revision is provided to the High Court or any other Court against the order of the Sessions Court under Section 29.

28. It is in the background of the abovementioned Scheme of the DV Act this case is required to be considered. The appellant made a complaint under Section 12 of the DV Act. The Magistrate in exercise of his jurisdiction granted maintenance to the appellant. The Magistrates legal authority to pass such an order is traceable to Section 20(1)(d) of the DV Act.

29. Questioning the correctness of the Magistrates order in granting the maintenance of Rs.2.5 lakhs per month the respondent carried the matter in appeal under Section 29 to the Sessions Court and sought stay of the execution of the order of the Magistrate during the pendency of the appeal.

Whether the Sessions Court in exercise of its jurisdiction under Section 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in an appropriate case. We only note that there is no express grant of power conferred on the Sessions Court while such power is expressly conferred on the Magistrate under Section 23.

Apart from that, the power to grant interim orders is not always inherent in every Court. Such powers are either expressly conferred or implied in certain circumstances. This Court in Super Cassettes Industres Limited v. Music Broadcast Private Limited, (2012) 5 SCC 488, examined this question in detail. At any rate, we do not propose to decide whether the Sessions Court has the power to grant interim order such as the one sought by the respondent herein during the pendency of his appeal, for that issue has not been argued before us.

30. We presume (we emphasize that we only presume for the purpose of this appeal) that the Sessions Court does have such power. If such a power exists then it can certainly be exercised by the Sessions Court on such terms and conditions which in the opinion of the Sessions Court are justified in the facts and circumstances of a given case. In the alternative, if the Sessions Court does not have the power to grant interim orders during the pendency of the appeal, the Sessions Court ought not to have stayed the execution of the maintenance order passed by the Magistrate. Since the respondent did not comply with such conditional order, the Sessions Court thought it fit to dismiss the appeal. Challenging the correctness of the said dismissal, the respondent carried the matter before the High Court invoking Section 482 of the Code of Criminal Procedure, 1973 and Article 227 of the Constitution.

31. The issue before the High Court in Crl. MC. No. 1975 of 2013 is limited i.e. whether the sessions court could have dismissed the respondents appeal only on the ground

that respondent did not discharge the obligation arising out of the conditional interim order passed by the sessions court.

Necessarily the High Court will have to go into the question whether the sessions court has the power to grant interim stay of the execution of the order under appeal before it.

32. In a matter arising under a legislation meant for protecting the rights of the women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant. No doubt, such interim orders are now vacated. In the process the appellant is still awaiting the fruits of maintenance order even after 2 years of the order.

33. We find it difficult to accept that in a highly contested matter like this the appellant would have instructed her counsel not to press her claim for maintenance. In our view, the High Court ought not to have accepted the statement of the counsel without verification. The impugned order is set aside.

34. We are of the opinion that the conduct of the respondent is a gross abuse of the judicial process. We do not see any reason why the respondents petition Crl. MC No. 1975 of 2013 should be kept pending. Whatever be the decision of the High Court, one of the parties will (we are sure) approach this Court again thereby delaying the conclusion of the litigation. The interests of justice would be better served if the respondents appeal before the Sessions Court is heard and disposed of on merits instead of going into the residuary questions of the authority of the appellate Court to grant interim orders or the legality of the decision of the Sessions Court to dismiss the appeal only on the ground of the non- compliance by the respondent with the conditions of the interim order. The Criminal Appeal No.23/2012 stands restored to the file of the Sessions Court.

35. We also direct that the maintenance order passed by the magistrate be executed forthwith in accordance with law. The executing court should complete the process within 8 weeks and report compliance in the High Court. We make it clear that such hearing by the Sessions Court should only be after the execution of the order of maintenance passed by the Magistrate.

36. In the event of the respondents success in the appeal, either in full or part, the Sessions Court can make appropriate orders regarding the payments due to be made by the respondent in the execution proceedings.

The appeal is disposed off accordingly.

.....J.
(J. Chelameswar)
.....J.
(A.K. Sikri)

New Delhi; September 18, 2014

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PRAKASH NAGARDAS DUBAL-SHAHA
VERSUS
SOU. MEENA PRAKASH DUBAL SHAH & ORS.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 320 OF 2016
[Arising out of S.L.P.(Crl.)No.4188 of 2013]

Prakash Nagardas Dubal-Shaha .....Appellant
Versus
Sou. Meena Prakash Dubal Shah & Ors. .....Respondents

JUDGMENT

SHIVA KIRTI SINGH, J.

1. By the impugned judgment and order dated 24.1.2013 the learned Single Judge of High Court of Judicature at Bombay has allowed Criminal Revision Petition No. 79 of 2012 preferred by the respondents by reversing order of learned Sessions Court and restoring that of learned Judicial Magistrate First Class, Miraj passed in Criminal Miscellaneous Application No. 147/2011.

2. The facts relevant for adjudication of relevant issue arising in this appeal lie within a narrow compass. Respondent no. 1 is wife of appellant, respondent no. 2 is unmarried daughter and respondent no. 3 is minor son born out of marriage between the appellant and respondent no. 1. The aforesaid three contesting respondents initiated the present proceedings before the learned Magistrate by preferring an application under Sections 12, 18, 19, 20, 21 and 22 of Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act"). Learned Magistrate noticed the case of rival parties including undisputed facts such as solemnization of the marriage on 27.3.1986 as per Hindu rites. It is the case of contesting respondents/applicants that the appellant has qualification of D. Pharmacy and has a shop named Vijay Medical situated at a favourable location. Since the wife is handicapped by right leg, not only the husband made uncharitable remarks and meted out ill treatment but also neglected her by regularly coming to home late. He also made demands for money which the parents of the wife met from time to time. He defaulted in payment of instalments of a flat situated at Grimar Complex, in the year 2001 and when the concerned bank wanted to seize that property wife's relation came to their help and paid the loan on transfer of the property in the name of the wife. The wife has alleged that the appellant had a girlfriend whom he subsequently married and from that marriage also he has a son. It is also her case that due to mental and physical abuse, she agreed to file an application for divorce by mutual consent but the appellant did not fulfill the agreed term of paying her Rs. 5,00,000/- as alimony. Hence the application for divorce ultimately

got dismissed. The wife claimed for maintenance for herself and children on the ground that the appellant is living with the second wife and although he is earning Rs. 40,000/- from the shop, he is not paying anything towards their maintenance. She claimed Rs. 10,000/- per month as maintenance for herself and same amount for each of her children and also a compensation of Rs. 50,00,000/-.

3. The appellant denied all the allegations. He claimed that he has stopped running his medicine shop and rented it out to another person. He alleged that his wife had negative attitude and therefore she had made his life miserable. He also denied the second marriage and claimed that after the flat was transferred in the name of the wife he was driven out and therefore he is living separately. According to him the wife is capable of maintaining herself and children and the application was filed only to harass him.

4. After considering the case of both the parties and the materials produced by them, the learned Magistrate held that the application filed by the wife was maintainable and she was eligible to claim remedy under the Act because after the rejection of divorce petition, she remained a lawfully wedded wife of appellant. He also held that appellant committed act of domestic violence. The defence of the appellant that he has rented out shop for a meagre amount of Rs 3,000/- to one Rajashri Patil was rejected. The learned Magistrate considered the birth certificate of son of the appellant from the alleged second wife as well as the related circumstances and came to a finding that appellant had performed second marriage, was living with the other woman and was therefore guilty of domestic violence. Ultimately, by way of maintenance the learned Magistrate fixed Rs. 5,000/- per month for the wife, same amount for the daughter and Rs. 4,000/- for the minor son. Some education cost was also allowed in favour of two children from the date of final disposal of the case but maintenance was allowed from the date of filing of the application.

5. The appellant preferred Criminal Appeal No. 335 of 2011 before the Additional Sessions Judge, Sangli who allowed the same by order dated 13.1.2012 mainly on the ground that since the husband wife had initiated divorce proceedings at an earlier point of time, the Protection of Women from Domestic Violence Act which came into force only later in 2005 was wrongly invoked by the wife and her application was not maintainable. This reasoning of the Sessions Court was not accepted by the High Court which has noted the fact that the divorce proceeding did not result in divorce and hence the marital relationship continued and in view of second marriage by the husband, cruelty on the wife stood established. Such act would constitute mental domestic violence and hence the wife was entitled to seek maintenance.

6. Having given anxious consideration to the relevant facts and materials and on careful perusal of orders passed by learned Magistrate, Sessions Court and the High Court and appreciating those orders in the light of the submissions advanced before us, we have no hesitation in affirming the views of the High Court. The unsuccessful divorce proceedings cannot adversely affect the maintainability of application filed by the contesting respondents under the Act. Even on merits of other issues the views taken

by the learned Magistrate are cogent and supported by relevant materials. Hence the High Court rightly interfered with the order of the Sessions Court and confirmed that of the learned Magistrate. We therefore find no good reasons to interfere. The appeal is therefore dismissed.

……J.

[DIPAK MISRA]

……..J.

[SHIVA KIRTI SINGH]

New Delhi.

April 22, 2016.

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SARASWATHY VERSUS BABU

Bench : Hon'ble Mr. Justice SUDHANSU JYOTI MUKHOPADHAYA,
Hon'ble Mr. Justice V. GOPALA GOWDA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 25 November, 2013

CRIMINAL APPEAL NO. 1999 OF 2013
(arising out of SLP(Crl.)No.2190 of 2012)

Saraswathy ...Appellant
Versus
Babu ...Respondent

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. Leave granted. This appeal has been preferred by the appellant-wife against the judgment and order dated 13th December, 2011 passed by the High Court of Judicature at Madras. By the impugned judgment, the High Court dismissed the criminal revision case filed by the appellant and thus affirmed the order of First Appellate Court.

2. The pertinent facts of the case are as follows:

The parties to the present dispute are married to each other and the said marriage was solemnized on 17th February, 2000. According to the appellant, she brought 50 sovereign gold ornaments and 1 kg silver articles as stridhan also Rs.10,000/- was given to the respondent. After marriage the appellant lived in her matrimonial house at Padi, Chennai. After four months of the marriage, the respondent-husband and his family demanded more dowry in the form of cash and jewels. The appellant was not able to satisfy the said demand. Therefore, she was thrown out of her matrimonial house by the respondent and her in-laws. Another allegation of the appellant is that after sending out the appellant from her matrimonial house, the respondent-husband intended to marry again. On hearing such rumour, the appellant filed petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as, the HM Act, 1955) bearing no. H.M.O.P. No. 216 of 2001 before the Principal Subordinate Judge, Chengalpattu, Tamil Nadu for restitution of conjugal rights.

The respondent-husband on the other hand filed H.M.O.P. No. 123 of 2002 under Section 13(1) (ia) and (iv) of the HMA Act, 1955 before the Principal Subordinate Judge, Chengalpattu, Tamil Nadu for dissolution of marriage between the appellant and the respondent .

On 5th April, 2006, the learned Principal Subordinate Judge, Chengalpattu, Tamil Nadu dismissed the petition for dissolution of marriage filed by the respondent-husband

and allowed the petition for restitution of conjugal rights filed by the appellant-wife with the condition that the appellant should not insist for setting up of a separate residence by leaving the matrimonial home of the respondent.

In the year 2008, the appellant filed Crl. M.P. No. 2421 of 2008 before learned XIII Metropolitan Magistrate, Egmore, Chennai against the respondent seeking relief under Section 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, the PWD Act, 2005). The learned XIII Metropolitan Magistrate, Egmore, Chennai partly allowed the same and directed the respondent to give maintenance of Rs.2,000/- per month to the appellant to meet out her medical expenses, food, shelter and clothing expenses. The Magistrate Courts held that the appellant is in domestic relationship with the respondent and the appellant being the wife of the respondent has a right to reside in the shared household. The officer in charge of the nearest Police Station was directed to give protection to the appellant for implementation of the residence orders and was also directed to assist in the implementation of the protection order.

The respondent-husband being aggrieved preferred Criminal Appeal No. 339 of 2008 before the Sessions Court (Vth Additional Judge) at Chennai.

In the meantime, as per the order passed by the XIII Metropolitan Magistrate, Egmore, Chennai the appellant-wife went to her matrimonial house for staying with the respondent-husband house along with Protection Officer. However, the respondent did not obey the order of the Court and refused to allow the appellant-wife to enter the house and locked the door from outside and went out.

On 22nd December, 2008, the appellant filed a complaint against the respondent for not obeying the order of the learned XIII Metropolitan Magistrate, Egmore, Chennai and the same was registered in Ambatur T3 Korattur Police Station as FIR No. 947 of 2008 under Section 31,32 and 74 of the PWD Act, 2005. The case was committed to the learned XIII Metropolitan Magistrate, Egmore, Chennai and registered as Criminal Miscellaneous Petition No. 636 of 2011.

In the meantime, the Criminal Appeal No. 339 of 2008 filed by the respondent-husband was partly allowed by the Sessions Court (Vth Addl. Judge) at Chennai on 21st October, 2010. Sessions Courts by the said order set aside the order prohibiting the respondent-husband from committing acts of domestic violence as against the appellant-wife by not allowing her to live in the shared household and the order directing the respondent to reside in the house owned by respondents mother and upheld the order granting maintenance of Rs.2,000/- per month in favour of the appellant- wife by the respondent-husband.

3. Aggrieved by the aforesaid order, the appellant-wife filed Crl. R.C. No. 1321 of 2010 before the High Court. A criminal miscellaneous petition no.1 of 2010 was also filed in the said revision application. On 23rd December, 2010, the High Court granted an interim stay to the above order passed by the learned Sessions Court (Vth Addl. Judge) at Chennai.

4. In the meantime, while the matter was pending before the High Court, the learned XIII Metropolitan Magistrate, Egmore, Chennai passed an order on 24th February, 2011 in Crl. Misc. Petition No. 636 of 2011 (arising out of FIR No. 947 of 2008) and directed the SHO, Ambatur T3 Korattur Police Station to break the door of the respondents house in the presence of the Revenue Inspector and make accommodation for the appellant with further direction to the SHO to inquire about the belongings in the respondents house in presence of the family members of the respondent with further direction to submit the report to the respondent as well as the Protection Officer. The respondent-husband thereafter filed a petition for vacating the order of stay dated 23rd December, 2010 and vide order dated 9th March, 2011 the High Court vacated the order of stay and made it clear that appellant-wife can go and reside with her husband in his rental residence at Guduvancherry. As the order aforesaid was not complied with by the respondent-husband the appellant-wife filed Contempt Petition No. 958 of 2011 against the respondent-husband for wantonly disobeying the order dated 9th March, 2011 passed by the High Court.

5. The High Court closed the contempt petition vide order dated 21st July, 2011 with following observation:

In view of the categorical submission made by the Ld. Counsel for the respondent as well as the statement made by the respondent herein by appearing before this court and stating that the respondent undertakes not to prevent the contempt petitioner from entering inside the premises at Door No. 80, Karpagambal Nagar, Nadivaram, Guduvancherry, Chennai and the contempt petitioner also agreed to occupy and stay in the above said premises from 01.08.2011, the contempt petition is hereby closed.

6. Thereafter the appellant made representation before Sub Inspector of Police, Guduvancherry and stated that the respondent-husband has given false address and in order to comply with the courts order, the appellant went to the address and on enquiry came to know that the address was a bogus one. The appellant thereby submitted a complaint and requested the police to enquire from the respondent to ascertain the real facts so as to ensure that the courts order is executed in its letter and spirit.

7. When the matter was pending before the Police, the High Court decided the criminal miscellaneous case filed by the appellant and held that although the offending acts of the respondent could be construed as offences under other enactments it could not be construed as acts of domestic violence under the PWD Act, 2005 until the Act came into force. The High Court dismissed the revisional application.

8. From the bare perusal of the impugned judgment passed by the High Court, we find that the High Court framed the following question:

4. The primary question that arises for consideration is whether acts committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and which fall within the definition of the term Domestic Violence as informed in the Act could form the basis of an action.

9. The High Court after taking into consideration the stand taken by the parties held as follows:

5. This court would first concern itself with whether acts which now constitute domestic violence but committed prior to the coming into force of the Act would form a basis of an action thereunder. With due respect to the authorities above cited, this court would inform that the fundamental issue stands unaddressed. The Act cam into force on 2005. It cannot be disputed that several wrongful actions which might have amounted to offences such as cruelty and demand for dowry cannot have taken the description of Domestic violence till such time the act came into force. In other words the offending acts could have been construed as offences under other enactments but could not have been construed as acts of Domestic Violence until the act came into force. Therefore, what was not Domestic violence as defined in the Act till the Act came into force could not have formed the basis of an action. Ignorance of law is no excuse but the application of this maxim on any date prior to the coming into force of the Act could only have imputed knowledge of offence as subsisted prior to coming into force of the Act. It is true that it is only violation of orders passed under the Act which are made punishable. But those very orders could be passed only in the face of acts of domestic violence. What constituted domestic violence was not known until the passage of the act and could not have formed the basis of a complaint of commission of Domestic violence.

10. From the judgment passed by the Trial Court (XIII Metropolitan Magistrate, Egmore, Chennai dated 5th December, 2008) we find that the appellant filed petition against her husband Babu seeking relief under Sections 18, 19, 20 and 22 under the PWD Act, 2005. Sections 18, 19, 20 and 22 read as follows:

18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-(1) While disposing of an application under sub- section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order

a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

b) directing the respondent to remove himself from the shared household;

c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of

rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.-(1) While disposing of an application under sub- section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973(2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub- section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent,

which amount may be adjusted towards the monetary relief payable by the respondent.

22. Compensation orders.-In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

11. The Trial Court having noticed the provisions of PWD Act, 2005 and the fact that the appellant-wife was prevented by the respondent-husband to enter the matrimonial house even after the order passed by the Subordinate Judge, granted protection under Section 18 with further direction to the respondent-husband under Section 19 to allow the appellant-wife to enter in the shared household and not to disturb the possession of the appellant- wife and to pay maintenance of Rs.2,000/- per month to meet her medical expenses, food and other expenses. However, no compensation or damages was granted in favour of the appellant-wife.

Notices were issued on the respondent but inspite of service, no affidavit has been filed by the respondent denying the averments made in the petition.

12. Section 2 (g) of PWD Act, 2005 states that domestic violence has the same meaning as assigned to it in Section 3 of PWD Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates to economic abuse which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household as evident from clause (c) of Section 3(iv).

13. In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term Domestic Violence as defined under Section 3 of the PWD Act, 2005.

14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in V.D. Bhanot v. Savita Bhanot (2012) 3 SCC 183. In the said case, this Court held as follows:

12. 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 Section 18, 19 and 20 thereof. 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,

15. We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the PWD Act, 2005, which defines domestic violence in wide term. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force PWD Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the Trial Court and the Appellate Court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under Section 18 and 19 of the PWD, Act, 2005 along with the maintenance as allowed by the Trial Court under Section 20 (d) of the PWD, Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant-wife.

16. The order passed by the High Court is set aside with a direction to the respondent-husband to comply with the orders and directions passed by the courts below with regard to residence and maintenance within three months. The respondent-husband is further directed to pay a sum of Rs.5,00,000/- in favour of the appellant-wife within six months from the date of this order. The appeal is allowed with aforesaid observations and directions. However, there shall be no separate order as to costs.

.....J.

(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.

(V. GOPALA GOWDA)

NEW DELHI,

NOVEMBER 25, 2013.

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INDRA SARMA VERSUS V.K.V.SARMA

Bench: Hon'ble Mr Justice K.S. RADHAKRISHNAN, Hon'ble Mr Justice PINAKI CHANDRA GHOSE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 26 November, 2013

CRIMINAL APPEAL NO. 2009 OF 2013
(@ SPECIAL LEAVE PETITION (CRL.) NO.4895 OF 2012)

Indra Sarma ...Appellant
Versus
V.K.V. Sarma ...Respondent

JUDGMENT

K.S. RADHAKRISHNAN, J.

1. Leave granted.

2. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

3. We are, in this case, concerned with the question whether a live-in relationship would amount to a relationship in the nature of marriage falling within the definition of domestic relationship under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short the DV Act) and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to domestic violence within the meaning of Section 3 of the DV Act.

FACTS:

4. Appellant and respondent were working together in a private company. The Respondent, who was working as a Personal Officer of the Company, was a married person having two children and the appellant, aged 33 years, was unmarried. Constant contacts between them developed intimacy and in the year 1992, appellant left the job from the above-mentioned Company and started living with the respondent in a shared household. Appellants family members, including her father, brother and sister, and also the wife of the respondent, opposed that live-in-relationship. She has also maintained the stand that the respondent, in fact, started a business in her name and that they were earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Appellant has also stated that both of them lived together in a shared household and, due to their relationship, appellant became pregnant on three occasions, though all resulted in abortion. Respondent, it was alleged, used to force the appellant to take contraceptive methods to avoid

pregnancy. Further, it was also stated that the respondent took a sum of Rs.1,00,000/- from the appellant stating that he would buy a land in her name, but the same was not done. Respondent also took money from the appellant to start a beauty parlour for his wife. Appellant also alleged that, during the year 2006, respondent took a loan of Rs.2,50,000/- from her and had not returned. Further, it was also stated that the respondent, all along, was harassing the appellant by not exposing her as his wife publicly, or permitting to suffix his name after the name of the appellant. Appellant also alleged that the respondent never used to take her anywhere, either to the houses of relatives or friends or functions. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint Bank account, execute documents, etc. Respondents family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.

5. Appellant then preferred Criminal Misc. No. 692 of 2007 under Section 12 of the DV Act before the III Additional Chief Metropolitan Magistrate, Bangalore, seeking the following reliefs:

1) Pass a Protection Order under Section 18 of the DV Act prohibiting the respondent from committing any act of domestic violence against the appellant and her relatives, and further prohibiting the respondent from alienating the assets both moveable and immoveable properties owned by the respondent;

2) Pass a residence order under Section 19 of the DV Act and direct the respondent to provide for an independent residence as being provided by the respondent or in the alternative a joint residence along with the respondent where he is residing presently and for the maintenance of Rs.25,000/- per month regularly as being provided earlier or in the alternative to pay the permanent maintenance charges at the rate of Rs.25,000/- per month for the rest of the life;

3) Pass a monetary order under Section 20 of the DV Act directing the respondent to pay a sum of Rs.75,000/- towards the operation, pre and post operative medication, tests etc and follow up treatments;

4) Pass a compensation order under Section 22 of the DV Act to a sum of Rs.3,50,000/- towards damages for misusing the funds of the sister of the appellant, mental torture and emotional feelings; and

5) Pass an ex-parte interim order under Section 23 of the DV Act directing the respondent to pay Rs.75,000/- towards the medical expenses and pay the maintenance charges @ Rs.25,000/- per month as being paid by the respondent earlier.

6. Respondent filed detailed objections to the application stating that it was on sympathetical grounds that he gave shelter to her in a separate house after noticing the fact that she was abandoned by her parents and relatives, especially after the demise of her father. She had also few litigations against her sister for her fathers property and she had approached the respondent for moral as well as monetary support since

they were working together in a Company. The respondent has admitted that he had cohabited with the appellant since 1993. The fact that he was married and had two children was known to the appellant. Pregnancy of the appellant was terminated with her as well as her brothers consent since she was not maintaining good health. The respondent had also spent large amounts for her medical treatment and the allegation that he had taken money from the appellant was denied. During the month of April, 2007, the respondent had sent a cheque for Rs.2,50,000/- towards her medical expenses, drawn in the name of her sister which was encashed. Further, it was stated, it was for getting further amounts and to tarnish the image of the respondent, the application was preferred under the DV Act. Before the learned Magistrate, appellant examined herself as P.W.1 and gave evidence according to the averments made in the petition. Respondent examined himself as R.W.1. Child Development Project Officer was examined as R.W.2. The learned Magistrate found proof that the parties had lived together for a considerable period of time, for about 18 years, and then the respondent left the company of the appellant without maintaining her. Learned Magistrate took the view that the plea of domestic violence had been established, due to the non-maintenance of the appellant and passed the order dated 21.7.2009 directing the respondent to pay an amount of Rs.18,000/- per month towards maintenance from the date of the petition.

7. Respondent, aggrieved by the said order of the learned Magistrate, filed an appeal before the Sessions Court under Section 29 of the DV Act. The Appellate Court, after having noticed that the respondent had admitted the relationship with appellant for over a period of 14 years, took the view that, due to their live-in relationship for a considerable long period, non-maintenance of the appellant would amount to domestic violence within the meaning of Section 3 of the DV Act. The appellate Court also concluded that the appellant has no source of income and that the respondent is legally obliged to maintain her and confirmed the order passed by the learned Magistrate.

8. The respondent took up the matter in appeal before the High Court. It was contended before the High Court that the appellant was aware of the fact that the respondent was a married person having two children, yet she developed a relationship, in spite of the opposition raised by the wife of the respondent and also by the appellants parents. Reliance was also placed on the judgment of this Court in D. Velusamy v. D. Patchaiammal (2010) 10 SCC 469 and submitted that the tests laid down in Velusamy case (supra) had not been satisfied. The High Court held that the relationship between the parties would not fall within the ambit of relationship in the nature of marriage and the tests laid down in Velusamy case (supra) have not been satisfied. Consequently, the High Court allowed the appeal and set aside the order passed by the Courts below. Aggrieved by the same, this appeal has been preferred.

9. Shri Anish Kumar Gupta, learned counsel appearing for the appellant, submitted that the relationship between the parties continued from 1992 to 2006 and since then, the respondent started avoiding the appellant without maintaining her. Learned counsel submitted that the relationship between them constituted a relationship in the nature of marriage within the meaning of Section 2(f) of the DV Act, which takes in every

relationship by a man with a woman, sharing household, irrespective of the fact whether the respondent is a married person or not. Learned counsel also submitted that the tests laid down in Velusamy case (supra) have also been satisfied.

10. Ms. Jyotika Kalra, learned amicus curiae, took us elaborately through the provisions of the DV Act as well as the objects and reasons for enacting such a legislation. Learned amicus curiae submitted that the Act is intended to provide for protection of rights of women who are victims of violence of any type occurring in the family. Learned amicus curiae also submitted that the various provisions of the DV Act are intended to achieve the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the Constitution of India. Learned amicus curiae also made reference to the Malimath Committee report and submitted that a man who marries a second wife, during the subsistence of the first wife, should not escape his liability to maintain his second wife, even under Section 125 CrPC. Learned amicus curiae also referred to a recent judgment of this Court in Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and Another (2013) 2 SCC 137 in support of her contention.

11. Mr. Nikhil Majithia, learned counsel appearing for the respondent, made extensive research on the subject and made available valuable materials. Learned counsel referred to several judgments of the Constitutional Courts of South Africa, Australia, New Zealand, Canada, etc. and also referred to parallel legislations on the subject in other countries. Learned counsel submitted that the principle laid down in Velusamy case (supra) has been correctly applied by the High Court and, on facts, appellant could not establish that their relationship is a relationship in the nature of marriage so as to fall within Section 2(f) of the DV Act. Learned counsel also submitted that the parties were not qualified to enter into a legal marriage and the appellant knew that the respondent was a married person. Further, the appellant was not a victim of any fraudulent or bigamous marriage and it was a live-in relationship for mutual benefits, consequently, the High Court was right in holding that there has not been any domestic violence, within the scope of Section 3 of the DV Act entitling the appellant to claim maintenance.

12. We have to examine whether the non maintenance of the appellant in a broken live-in-relationship, which is stated to be a relationship not in the nature of a marriage, will amount to domestic violence within the definition of Section 3 of the DV Act, enabling the appellant to seek one or more reliefs provided under Section 12 of the DV Act.

13. Before examining the various issues raised in this appeal, which have far reaching consequences with regard to the rights and liabilities of parties indulging in live-in relationship, let us examine the relevant provisions of the DV Act and the impact of those provisions on such relationships.

D.V. ACT

14. The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective

protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

15. Domestic Violence is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.

16. Chapter IV is the heart and soul of the DV Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act. The Magistrate, while entertaining an application from an aggrieved person under Section 12 of the DV Act, can grant the following reliefs:

1) Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;

2) The Magistrate, under Section 18 of the DV Act, can pass a protection order in favour of the aggrieved person and prohibit the respondent from:

a) committing any act of domestic violence;

b) aiding or abetting in the commission of acts of domestic violence;

c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

g) committing any other act as specified in the protection order.

3) The Magistrate, while disposing of an application under Section 12(1) of the DV Act, can pass a residence order under Section 19 of the DV Act, in the following manner:

19. Residence orders.- (1) While disposing of an application under sub- section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

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(4) An aggrieved person, while filing an application under Section 12(1) of the DV Act, is also entitled, under Section 20 of the DV Act, to get monetary reliefs to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,-

20. Monetary reliefs.- (1) While disposing of an application under sub- section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

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The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(5) The Magistrate, under Section 21 of the DV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

(6) The Magistrate, in addition to other reliefs, under Section 22 of the DV Act, can pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

17. Section 26 of the DV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a Civil Court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

18. Section 3 of the DV Act deals with domestic violence and reads as under:

3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(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.

Explanation I.- For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes" domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

19. In order to examine as to whether there has been any act, omission, or commission or conduct so as to constitute domestic violence, it is necessary to examine some of the

definition clauses under Section 2 of the DV Act. Section 2(a) of the DV Act defines the expression aggrieved person as follows:

2(a). Aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) defines the expression domestic relationship as follows:

2(f). Domestic relationship 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. Section 2(q) defines the expression respondent as follows:

2(q). Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner. Section 2(s) defines the expression shared household and reads as follows:

2(s). shared household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

20. We are, in this case, concerned with a live-in relationship which, according to the aggrieved person, is a relationship in the nature of marriage and it is that relationship which has been disrupted in the sense that the respondent failed to maintain the aggrieved person, which, according to the appellant, amounts to domestic violence. The respondent maintained the stand that the relationship between the appellant and the respondent was not a relationship in the nature of marriage but a live-in-relationship simplicitor and the alleged act, omission, commission or conduct of the respondent would not constitute domestic violence so as to claim any protection orders under Section 18, 19 or 20 of the DV Act.

21. We have to first examine whether the appellant was involved in a domestic relationship with the respondent. Section 2(f) refers to five categories of relationship, such as, related by consanguinity, marriage, relationship in the nature of marriage, adoption, family members living together as a joint family, of which we are, in this case, concerned with an alleged relationship in the nature of marriage.

22. Before we examine whether the respondent has committed any act of domestic violence, we have to first examine whether the relationship between them was a relationship in the nature of marriage within the definition of Section 3 read with Section 2(f) of the DV Act. Before examining the term relationship in the nature of marriage, we have to first examine what is marriage, as understood in law.

MARRIAGE AND MARITAL RELATIONSHIP:

23. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the Consortium Omnis Vitae which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. ORegan, J., in Dawood and Another v. Minister of Home Affairs and Others 2000 (3) SA 936 (CC) noted as follows:

Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This

importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends....

25. South African Constitutional Court in various judgments recognized the above mentioned principle. In Satchwell v. President of the Republic of South Africa and Another 2002 (6) SA 1 (CC), Du Toit and Another v. Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae) 2003 (2) SA 198 (CC), the Constitutional Court of South Africa recognized the right free to marry and to raise family. Section 15(3)(a)(i) of the Constitution of South Africa, in substance makes provision for the recognition of marriages concluded under the tradition, or a system of religious, personal or family law. Section 9(3) of the Constitution of South Africa reads as follows:

The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

26. Article 23 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

27. Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

28. Parties in the present case are Hindus by religion and are governed by the Hindu Marriage Act, 1955. The expression marriage, as stated, is not defined under the Hindu Marriage Act, but the conditions for a Hindu marriage are dealt with in Section 5 of the Hindu Marriage Act and which reads as under:

5. Conditions for a Hindu marriage - A marriage may be solemnized between any two hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two.

29. Section 7 of the Hindu Marriage Act deals with the Ceremonies for a Hindu marriage and reads as follows:

7. Ceremonies for a Hindu marriage. -

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

30. Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of public significance, since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as a civil right has been recognised by various courts all over the world, for example, Skinner v. Oklahoma 316 US 535 (1942), Perez v. Lippold 198 P.2d 17, 20.1 (1948), Loving v. Virginia 388 US 1 (1967).

31. We have referred to, in extenso, about the concept of marriage and marital relationship to indicate that the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or defacto relationship.

32. Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship. This Court in Pinakin Mahipatray Rawal v. State of Gujarat (2013) 2 SCALE 198 held that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

RELATIONSHIP IN THE NATURE OF MARRIAGE:

33. Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

a) Consanguinity

b) Marriage

c) Through a relationship in the nature of marriage

d) Adoption

e) Family members living together as joint family.

34. The definition clause mentions only five categories of relationships which exhausts itself since the expression means, has been used. When a definition clause is defined to mean such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression include so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression relationship in the nature of marriage.

35. We have already dealt with what is marriage, marital relationship and marital obligations. Let us now examine the meaning and scope of the expression relationship in the nature of marriage which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is relationship in the nature of marriage which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not wish to live in such a relationship, that relationship

comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression in the nature of.

37. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship in the nature of marriage so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship in the nature of marriage.

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the nature of marriage, so far as the aggrieved person is concerned.

e) Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

38. Section 2(f) of the DV Act though uses the expression two persons, the expression aggrieved person under Section 2(a) takes in only woman, hence, the Act does not

recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

39. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence, have a common sense/ balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the nature of marriage. Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression relationship in the nature of marriage, of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression in the nature of marriage. Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment.

40. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression relationship in the nature of marriage, certain guiding principles have to be evolved since the expression has not been defined in the Act.

41. Section 2(f) of the DV Act defines domestic relationship to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression relationship in the nature of marriage is also described as defacto relationship, marriage like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

42. Courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. Legislatures too, of late, through legislations started giving benefits to heterosexual cohabitants.

43. In U.K. through the Civil Partnership Act, 2004, the rights of even the same-sex couple have been recognized. Family Law Act, 1996, through the Chapter IV, titled Family Homes and Domestic Violence, cohabitants can seek reliefs if there is domestic violence. Canada has also enacted the Domestic Violence Intervention Act, 2001. In

USA, the violence against woman is a crime with far-reaching consequences under the Violence Against Women Act, 1994 (now Violence Against Women Reauthorization Act, 2013).

44. The Interpretation Act, 1984 (Australia) has laid down certain indicators to determine the meaning of de facto relationship, which are as follows:

13A . De facto relationship and de facto partner, references to (1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

(2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential

(a) the length of the relationship between them;

(b) whether the 2 persons have resided together;

(c) the nature and extent of common residence;

(d) whether there is, or has been, a sexual relationship between them;

(e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(f) the ownership, use and acquisition of their property (including property they own individually);

(g) the degree of mutual commitment by them to a shared life;

(h) whether they care for and support children;

(i) the reputation, and public aspects, of the relationship between them.

xxx xxx xxx

xxx xxx xxx

45. The Domestic and Family Violence Protection Act, 2012 (Queensland) has defined the expression couple relationship to mean as follows:

18. Meaning of couple relationship

1) xxx xxx xxx

2) In deciding whether a couple relationship exists, a court may have regard to the following

a) the circumstances of the relationship between the persons, including, for example

(i) the degree of trust between the persons; and

(ii) the level of each persons dependence on, and commitment to, the other person;

b) the length of time for which the relationship has existed or did exist;

c) the frequency of contact between the persons;

d) the degree of intimacy between the persons.

3) Without limiting sub-section (2), the court may consider the following factors in deciding whether a couple relationship exists-

a) Whether the trust, dependence or commitment is or was of the same level;

b) Whether one of the persons is or was financially dependent on the other;

c) Whether the persons jointly own or owned any property;

d) Whether the persons have or had joint bank accounts;

e) Whether the relationship involves or involved a relationship of a sexual nature;

f) Whether the relationship is or was exclusive.

4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).

5) A couple relationship may exist between two persons whether the persons are of the same or a different gender.

6) A couple relationship does not exist merely because two persons date or dated each other on a number of occasions.

46. The Property (Relationships) Act, 1984 of North South Wales, Australia also provides for some guidelines with regard to the meaning and content of the expression de facto relationship, which reads as follows:

1 4 De facto relationships (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:

(a) who live together as a couple, and

(b) who are not married to one another or related by family.

(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:

(a) the duration of the relationship,

(b) the nature and extent of common residence,

(c) whether or not a sexual relationship exists,

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,

(e) the ownership, use and acquisition of property,

(f) the degree of mutual commitment to a shared life,

(g) the care and support of children,

(h) the performance of household duties,

(i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in subsection (2) (a)-(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship.

47. In Re Marriage of Lindsay, 101 Wn.2d 299 (1984), Litham v. Hennessey 87 Wn.2d 550 (1976), Pennington 93 Wash.App. at 917, the Courts in United States took the view that the relevant factors establishing a meretricious relationship include continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. The Courts also ruled that a relationship need not be long term to be characterized as meretricious relationship. While a long term relationship is not a threshold requirement, duration is a significant factor. Further, the Court also noticed that a short term relationship may be characterized as a meretricious, but a number of other important factors must be present.

48. In Stack v. Dowden [2007] 2 AC 432, Baroness Hale of Richmond said:

Cohabitation comes in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage.. So many couples are cohabiting with a view to marriage at some later date as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans: John Ermisch, Personal Relationships and Marriage Expectations (2000) Working Papers of the Institute of Social and Economic Research: Paper 2000-27. Cohabitation is much more likely to end in separation than is marriage, and cohabitations which end in separation tend to last for a shorter time than marriages which end in divorce. But increasing numbers of couples cohabit for long periods without marrying and their reasons for doing so vary from conscious rejection of marriage as a legal institution to regarding themselves as good as married anyway: Law Commission, Consultation Paper No 179, Part 2, para 2.45.

49. In MW v. The Department of Community Services [2008] HCA 12, Gleeson, CJ, made the following observations:

Finn J was correct to stress the difference between living together and living together as a couple in a relationship in the nature of marriage or civil union. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of marriage or civil union. One consequence of

relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved.

50. In Lynam v. The Director-General of Social Security (1983) 52 ALR 128, the Court considered whether a man and a woman living together as husband and wife on a bona fide domestic basis and Fitzgerald, J. said:

Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test.

51. Tipping, J. in Thompson v. Department of Social Welfare (1994) 2 SZLR 369 (HC), listed few characteristics which are relevant to determine relationship in the nature of marriage as follows:

(1) Whether and how frequently the parties live in the same house.

(2) Whether the parties have a sexual relationship.

(3) Whether the parties give each other emotional support and companionship.

(4) Whether the parties socialize together or attend activities together as a couple.

(5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.

(6) Whether the parties share household and other domestic tasks.

(7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.

(8) Whether the parties run a common household, even if one or other partner is absent for periods of time.

(9) Whether the parties go on holiday together.

(10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple.

52. Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In Lata Singh v. State of U.P. [AIR 2006 SC 2522] it was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the

occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

53. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce. For the first time, through, the DV Act, the Parliament has recognized a relationship in the nature of marriage and not a live-in relationship simplicitor.

54. We have already stated, when we examine whether a relationship will fall within the expression relationship in the nature of marriage within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression relationship in the nature of marriage under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

(1) Duration of period of relationship Section 2(f) of the DV Act has used the expression at any point of time, which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

(2) Shared household The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

(3) Pooling of Resources and Financial Arrangements Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

(4) Domestic Arrangements Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining

or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

(5) Sexual Relationship Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

(6) Children Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

(7) Socialization in Public Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

(8) Intention and conduct of the parties Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

STATUS OF THE APPELLANT

56. Appellant, admittedly, entered into a live-in-relationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy, AIR 1927 PC 185, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in Badri Prasad v. Director of Consolidation 1978 (3) SCC 527 and Tulsa v. Durghatiya 2008 (4) SCC 520. In Gokal Chand v. Parvin Kumari AIR 1952 SC 231 this Court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabition is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not ones husband or wife, cannot be said to be a relationship in the nature of marriage.

57. We may note, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is that of a

concubine or a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

58. Velusamy case (supra) stated that instances are many where married person maintain and support such types of women, either for sexual pleasure or sometimes for emotional support. Woman, a party to that relationship does suffer social disadvantages and prejudices, and historically, such a person has been regarded as less worthy than the married woman. Concubine suffers social ostracism through the denial of status and benefits, who cannot, of course, enter into a relationship in the nature of marriage.

59. We cannot, however, lose sight of the fact that inequities do exist in such relationships and on breaking down such relationship, the woman invariably is the sufferer. Law of Constructive Trust developed as a means of recognizing the contributions, both pecuniary and non-pecuniary, perhaps comes to their aid in such situations, which may remain as a recourse for such a woman who find herself unfairly disadvantaged. Unfortunately, there is no express statutory provision to regulate such types of live-in relationships upon termination or disruption since those relationships are not in the nature of marriage. We can also come across situations where the parties entering into live-in-relationship and due to their joint efforts or otherwise acquiring properties, rearing children, etc. and disputes may also arise when one of the parties dies intestate.

60. American Jurisprudence, Second Edition, Vol. 24 (2008) speaks of Rights and Remedies of property accumulated by man and woman living together in illicit relations or under void marriage, which reads as under:

Although the courts have recognized the property rights of persons cohabiting without benefit of marriage, these rights are not based on the equitable distribution provisions of the marriage and divorce laws because the judicial recognition of mutual property rights between unmarried cohabitants would violate the policy of the state to strengthen and preserve the integrity of marriage, as demonstrated by its abolition of common-law marriage.

61. Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. See S. Khushboo v. Kanniammal and another (2010) 5 SCC 600.

62. Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage.

63. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safely, life, limb or well- being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.

ALIENATION OF AFFECTION

64. Appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort, i.e. interference in the marital relationship with intentionally alienating respondent from his family, i.e. his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent..

65. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in- relationships are not relationships in the nature of marriage. Appellants and the respondents relationship is, therefore, not a relationship

in the nature of marriage because it has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage and the appellants status is lower than the status of a wife and that relationship would not fall within the definition of domestic relationship under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to domestic violence under Section 3 of the DV Act.

66. We have, on facts, found that the appellants status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

67. We are conscious of the fact that if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the respondent, especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

68. We, therefore, find no reason to interfere with the judgment of the High Court and the appeal is accordingly dismissed.

.....J.

(K.S. Radhakrishnan)

.....J.

(Pinaki Chandra Ghose)

New Delhi

November 26, 2013

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V.D.BHANOT VERSUS SAVITA BHANOT

Bench: Hon'ble Mr. Justice ALTAMAS KABIR, Hon'ble Mr. Justice J. CHELAMESWAR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 7 February, 2012

SPECIAL LEAVE PETITION (Crl.) NO. 3916 OF 2010

V.d. Bhanot ... Petitioner
Vs.
Savita Bhanot ... Respondent

ORDER

ALTAMAS KABIR, J.

1. The Special Leave Petition is directed against the judgment and order dated 22nd March, 2010, passed by the Delhi High Court in Cr.M.C.No.3959 of 2009 filed by the Respondent wife, Mrs. Savita Bhanot, questioning the order passed by the learned Additional Sessions Judge on 18th September, 2009, dismissing the appeal filed by her against the order of the Metropolitan Magistrate dated 11th May, 2009.

2. There is no dispute that marriage between the parties was solemnized on 23rd August, 1980 and till 4th July, 2005, they lived together. Thereafter, for whatever reason, there were misunderstandings between the parties, as a result whereof, on 29th November, 2006, the Respondent filed a petition before the Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as the "PWD Act", seeking various reliefs. By his order dated 8th December, 2006, the learned Magistrate granted interim relief to the Respondent and directed the Petitioner to pay her a sum of Rs.6,000/- per month. By a subsequent order dated 17th February, 2007, the Magistrate passed a protection/residence order under Sections 18 and 19 of the above Act, protecting the right of the Respondent wife to reside in her matrimonial home in Mathura. The said order was challenged before the Delhi High Court, but such challenge was rejected.

3. In the meantime, the Petitioner, who was a member of the Armed Forces, retired from service on 6th December, 2007, and on 26th February, 2008, he filed an application for the Respondent's eviction from the Government accommodation in Mathura Cantonment. The learned Magistrate directed the Petitioner herein to find an alternative accommodation for the Respondent who had in the meantime received an eviction notice requiring her to vacate the official accommodation occupied by her. By an order dated 11th May, 2009, the learned Magistrate directed the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, which she claimed to be her permanent matrimonial home. The learned Magistrate directed that if this was not possible, a reasonable accommodation in the vicinity of Nirman

Vihar was to be made available to the Respondent wife. She further directed that if the second option was also not possible, the Petitioner would be required to pay a sum of Rs.10,000/- per month to the Respondent as rental charges, so that she could find a house of her choice.

4. Being dissatisfied with the order passed by the learned Metropolitan Magistrate, the Respondent preferred an appeal, which came to be dismissed on 18th September, 2009, by the learned Additional Sessions Judge, who was of the view that since the Respondent had left the matrimonial home on 4th July, 2005, and the Act came into force on 26th October, 2006, the claim of a woman living in domestic relationship or living together prior to 26th October, 2006, was not maintainable. The learned Additional Sessions Judge was of the view that since the cause of action arose prior to coming into force of the PWD Act, the Court could not adjudicate upon the merits of the Respondent's case.

5. Before the Delhi High Court, the only question which came up for determination was whether the petition under the provisions of the PWD Act, 2005, was maintainable by a woman, who was no longer residing with her husband or who was allegedly subjected to any act of domestic violence prior to the coming into force of the PWD Act on 26th October, 2006. After considering the constitutional safeguards under Article 21 of the Constitution, vis-`-vis, the provisions of Sections 31 and 33 of the PWD Act, 2005, and after examining the statement of objects and reasons for the enactment of the PWD Act, 2005, the learned Judge held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that the Parliament enacted the PWD Act, 2005, in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them. The learned Judge accordingly held that a petition under the provisions of the PWD Act, 2005, is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. The learned Judge, accordingly, set aside the order passed by the Additional Sessions Judge and directed him to consider the appeal filed by the Respondent wife on merits.

6. As indicated hereinbefore, the Special Leave Petition is directed against the said order dated 22nd March, 2010, passed by the Delhi High Court and the findings contained therein.

7. During the pendency of the Special Leave Petition, on 15th September, 2011, the Petitioner appearing in-person submitted that the disputes between him and the Respondent had been resolved and the parties had decided to file an application for withdrawal of the Special Leave Petition. The matter was, thereafter, referred to the Supreme Court Mediation Centre and during the mediation, a mutual settlement signed by both the parties was prepared so that the same could be filed in the Court

for appropriate orders to be passed thereupon. However, despite the said settlement, which was mutually arrived at by the parties, on 17th January, 2011, when the matter was listed for orders to be passed on the settlement arrived at between the parties, an application filed by the Petitioner was brought to the notice of the Court praying that the settlement arrived at between the parties be annulled. Thereafter, the matter was listed in-camera in Chambers and we had occasion to interact with the parties in order to ascertain the reason for change of heart. We found that while the wife was wanting to rejoin her husband's company, the husband was reluctant to accept the same. For reasons best known to the Petitioner, he insisted that the mutual settlement be annulled as he was not prepared to take back the Respondent to live with him.

8. The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. 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 20 thereof. 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.

9. On facts it may be noticed that the couple has no children. Incidentally, the Respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the Petitioner at Mathura, being his official residence, while in service. After more than 31 years of marriage, the Respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs.6,000/- which the Petitioner was directed by the Magistrate by order dated 8th December, 2006, to give to the Respondent each month. By a subsequent order dated 17th February, 2007, the Magistrate also passed a protection-cum-residence order under Sections 18 and 19 of the PWD Act, protecting the rights of the Respondent wife to reside in her matrimonial home in Mathura. Thereafter, on the Petitioner's retirement from service, the Respondent was compelled to vacate the accommodation in Mathura and a direction was given by the Magistrate to the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, and if that was not possible, to provide a sum of Rs.10,000/- per month to the Respondent towards rental charges for acquiring an accommodation of her choice.

10. In our view, the situation comes squarely within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court.

However, considering the fact that the couple is childless and the Respondent has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, we are of the view that keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High

Court requires to be modified. We, therefore, modify the order passed by the High Court and direct that the Respondent be provided with a right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof. As far as any monetary relief is concerned, the same has already been provided by the learned Magistrate and in terms of the said order, the Respondent is receiving a sum of Rs.6,000/- per month towards her expenses.

11. Accordingly, in terms of Section 19 of the PWD Act, 2005, we direct the Petitioner to provide a suitable portion of his residence to the Respondent for her residence, together with all necessary amenities to make such residential premises properly habitable for the Respondent, within 29th February, 2012. The said portion of the premises will be properly furnished according to the choice of the Respondent to enable her to live in dignity in the shared household. Consequently, the sum of Rs.10,000/- directed to be paid to the Respondent for obtaining alternative accommodation in the event the Petitioner was reluctant to live in the same house with the Respondent, shall stand reduced from Rs.10,000/- to Rs.4,000/-, which will be paid to the Respondent in addition to the sum of Rs.6,000/- directed to be paid to her towards her maintenance. In other words, in addition to providing the residential accommodation to the Respondent, the Petitioner shall also pay a total sum of Rs.10,000/- per month to the Respondent towards her maintenance and day-to-day expenses.

12. In the event, the aforesaid arrangement does not work, the parties will be at liberty to apply to this Court for further directions and orders.

The Special Leave Petition is disposed of accordingly.

13. There shall, however, be no order as to costs.

.....J.

(ALTAMAS KABIR)

.....J.

(J. CHELAMESWAR)

New Delhi

Dated:07.02.2012

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INDERJIT SINGH GREWAL VERSUS STATE OF PUNJAB & ANR

Bench : Hon'ble Mr. Justice P. SATHASIVAM, Hon'ble Mr. Justice B.S. CHAUHAN

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 23 August, 2011

CRIMINAL APPEAL NO. 1635 of 2011
(Arising out of SLP(Crl.) No. 7787 of 2010)

Inderjit Singh Grewal ...Appellant
Versus
State of Punjab & Anr. ...Respondents

JUDGMENT

DR. B.S. CHAUHAN, J.

1. Leave granted.

2. The instant appeal reveals a very sorry state of affair where the wife files a criminal complaint before the competent court to initiate criminal proceedings against her husband alleging that they had obtained decree of divorce by playing fraud upon the court without realising that in such a fact-situation she herself would be an accomplice in the crime and equally responsible for the offence. More so, the appeal raises a substantial question of law as to whether the judgment and decree of a competent Civil Court can be declared null and void in collateral proceedings, that too, criminal proceedings.

3. This criminal appeal arises from the judgment and final order dated 9.8.2010 in Criminal Misc. No. M-29339 of 2009 (O&M) passed by the High Court of Punjab & Haryana at Chandigarh, by which the High Court has dismissed the application filed by the appellant under Section 482 of Code of Criminal Procedure, 1973 (hereinafter called as `Cr.P.C.') for quashing the complaint No. 87/02/09 dated 12.6.2009 filed by respondent no. 2 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called the `Act 2005').

4. Facts and circumstances giving rise to present case are as under:

A. That the appellant and respondent no. 2 got married on 23.9.1998 at Jalandhar as per Sikh rites and from the said wedlock a son, namely, Gurarjit Singh was born on 5.10.1999. The parties to the marriage could not pull on well together because of temperamental differences and decided to get divorce and, therefore, filed HMA Case No. 168 of 19.9.2007 before the District Judge, Ludhiana under Section 13-B of Hindu Marriage Act, 1955 (hereinafter called the `Act 1955') for dissolution of marriage by mutual consent. In the said case, statements of appellant and

respondent no. 2 were recorded on 19.9.2007 and proceedings were adjourned for a period of more than six months to enable them to ponder over the issue.

B. The parties again appeared before the court on 20.3.2008 on second motion and their statements were recorded and both of them affirmed that it was not possible for them to live together and, therefore, the learned District Judge, Ludhiana vide judgment and order dated 20.3.2008 allowed the said petition and dissolved their marriage.

C. Respondent no. 2 filed a complaint before Senior Superintendent of Police, Ludhiana against the appellant on 4.5.2009 under the provisions of the Act 2005 alleging that the decree of divorce obtained by them was a sham transaction. Even after getting divorce, both of them had been living together as husband and wife. She was forced to leave the matrimonial home. Thus, she prayed for justice. The said complaint was sent to SP, City-I, Ludhiana for conducting inquiry.

The said SP, City-I conducted the full-fledged inquiry and submitted the report on 4.5.2009 to the effect that the parties had been living separately after divorce and, no case was made out against the present appellant. However, he suggested to seek legal opinion in the matter.

D. Accordingly, legal opinion dated 2.6.2009 was sought, wherein it was opined that the parties had obtained the divorce decree by mutual consent and the allegations made by respondent no. 2 against the appellant were false and baseless and the purpose of filing the complaint was only to harass the appellant.

E. Respondent no. 2 subsequently filed a complaint under the Act 2005 on 12.6.2009. The learned Magistrate issued the summons to the appellant on the same date. The Magistrate vide order dated 3.10.2009 summoned the minor child for counseling. The appellant, being aggrieved of the order of Ld. Magistrate dated 12.6.2009, filed application dated 13.10.2009 under Section 482 Cr.P.C. for quashing the complaint dated 12.6.2009.

F. In the meanwhile, respondent no. 2 filed Civil Suit on 17.7.2009 in the court of Civil Judge (Senior Division), Ludhiana, seeking declaration that the judgment and decree dated 20.3.2008, i.e. decree of divorce, was null and void as it had been obtained by fraud. The said suit is still pending.

G. Respondent no. 2 also filed application dated 17.12.2009 under Guardians and Wards Act, 1890 for grant of custody and guardianship of the minor child Gurarjit Singh and the same is pending for consideration before the Additional Civil Judge (Senior Division), Ludhiana.

H. Respondent no. 2 on 11.2.2010 also lodged an FIR under Sections 406, 498-A, 376, 120-B of the Indian Penal Code, 1860 (hereinafter called `IPC') against the appellant and his mother and sister.

I. The High Court vide impugned judgment and order dated 9.8.2010 dismissed the application filed by the appellant.

Hence, this appeal.

5. Shri Ranjit Kumar, learned senior counsel appearing for the appellant has submitted that the High Court erred in rejecting the application of the appellant under Section 482 Cr.P.C., as none of the reliefs claimed by the respondent no.2 could be entertained by the criminal court while dealing with the complaint; the complaint itself is time barred, thus, the Magistrate Court could not take cognizance thereof. The complaint has been filed because of malice in order to extract money from the appellant. More so, the plea of fraud alleged by the respondent no.2 in the complaint for obtaining the decree of divorce before the Civil Court as per her own version, succinctly reveals that she herself had been a party to this fraud. The High Court failed to appreciate as to what extent her version could be accepted as she herself being the accomplice in the said offence of fraud committed upon the court. Even if the allegations made therein are true, she is equally liable for punishment under Section 107 IPC. More so, the reliefs claimed by the respondent no. 2 in the civil suit for declaring the decree of divorce as null and void and in another suit for getting the custody of the child referred to hereinabove, would meet her requirements. Thus, the appeal deserves to be allowed.

6. On the contrary, Shri Manoj Swarup, learned counsel appearing for the respondent no.2 has vehemently opposed the appeal contending that decree of divorce is a nullity as it has been obtained by fraud. The relationship of husband and wife between the appellant and respondent no.2 still subsists and thus, complaint is maintainable.

The court has to take the complaint on its face value and the allegations made in the complaint require adjudication on facts. The issue of limitation etc. can be examined by the Magistrate Court itself.

The appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Before we proceed to determine the case on merit, it is desirable to highlight the admitted facts of the case:

I. Appellant and respondent no.2 are highly qualified persons.

Both of them are employed and economically independent. Appellant is an Assistant Professor and respondent no. 2 is a Lecturer. The appellant is Ph.D and respondent no.2 has registered herself for Ph.D.

They are competent to understand the complications of law and other facts prevailing in the case.

II. Both of them got married in year 1998 and had been blessed with a son in year 1999. There was no complaint by respondent no.2 against the appellant of any cruelty, demand of dowry etc. before getting the decree of divorce dated 20.3.2008 by mutual consent.

III. The decree of divorce has been obtained under Section 13-B of the Act 1955. Respondent no.2 was examined by the court on first motion on 19.9.2007 wherein she stated, inter-alia, as under:

> "We are living separately from each other since 23.9.2005. Now there is no chance of our living together as husband and wife."

IV. Respondent no.2 was examined in the second motion by the learned District Judge, Ludhiana on 20.3.2008, wherein she stated as under:

> "My statement was recorded on 19.9.2007 alongwith the statement of my husband Inderjit Singh Grewal. Six months time was given to us to ponder over the matter but we could not reconcile. One child was born from our wedlock namely Gurarjit Singh Grewal whose custody has been handed over by me to my husband Inderjit Singh Grewal and he shall look after the welfare of the said child. We have settled all our disputes regarding dowry articles and past and future permanent alimony. Now there is nothing left out against each other. A draft of Rs.3,00,000/- ....has been received by me towards permanent alimony and maintenance and in lieu of dowry articles left by me in the matrimonial home. We are living separately since 23.9.2005. After that there is no co-habitation between us. There is no scope of our living together as husband and wife. I will remain bound by the terms and conditions as enshrined in the petition. I have left with no claim against petitioner No.1. Our marriage may be dissolved by passing a decree of divorce by mutual consent."

V. The learned District Judge, Ludhiana granted the decree of divorce dated 20.3.2008 observing as under:

> "They have settled all their disputes regarding dowry articles, past and future alimony....They are living separately from each other since 23.9.2005...The petitioners have not been able to reconcile....The petitioners have settled all their disputes regarding dowry, stridhan and past and future permanent alimony....The custody of the son of the petitioners is handed over to Inderjit Singh Grewal by Amandeep Kaur. The petition is allowed. The marriage between the petitioners is henceforth declared dissolved...."

VI. The complaint dated 4.5.2009 filed by respondent no. 2 before the Senior Superintendent of Police, Ludhiana was investigated by the Superintendent of Police, City-I, Ludhiana. He recorded statements of several neighbours and maid servant working in appellant's house and submitted the report to the effect that as the husband and wife could not live together, they obtained the decree of divorce by mutual consent.

However, the complainant Amandeep Kaur had alleged that she was induced by her husband to get divorce for settling in the United States and it was his intention to kick her out from the house. However, the husband stated that she had been paid Rs.3,00,000/- in the court by draft and Rs.27,00,000/- in cash for

which the husband Inderjit Singh Grewal had entered into an agreement to sell his ancestral property.

The complainant had not been living with the appellant after the decree of divorce and they were not having physical relationship with each other. It was further suggested in the report that legal opinion may also be taken.

VII. Legal opinion dated 2.6.2009 had been to the effect that the parties had taken divorce by mutual consent due to their differences.

The allegation to the extent that they had been living together even after divorce were false and baseless and had been labelled only to harass the appellant.

9. The instant case is required to be considered in the aforesaid factual backdrop.

So far as the complaint dated 12.6.2009 is concerned, there had been allegation of mis-behaviour against the appellant during the period of year 2005. Respondent no. 2 alleged that during that period she had not been treated well by the appellant, thus, she had to take shelter in the house of her parents; all her belongings including the dowry articles were kept by the appellant and his parents. She has further given details how both of them have obtained decree of divorce by mutual consent as they wanted to settle in United States and therefore, they had decided to get divorce on paper so that the appellant may go to U.S.A. and get American citizenship by negotiating a marriage of convenience with some U.S. citizen and divorce her and again re-marry the complainant. She further alleged that even after decree of divorce she had been living with the appellant till 7.2.2009 and continued co-habitation with him. They had visited several places together during this period. The child had been forcibly snatched from her by the appellant. Therefore, she was entitled to the custody of the minor child along with other reliefs.

10. The question does arise as to whether reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the Civil Court dated 20.3.2008 subsists.

Respondent no.2 has prayed as under:

> "It is therefore prayed that the respondent no.1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that the respondent no.1 be directed to pay to her a sum of Rs.15,000/- per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the respondents be directed to restore to her all the dowry articles as detailed in Annexure A to C or in the alternative they be directed to pay to her a sum of Rs.22,95,000/- as the price of the dowry articles. Affidavit attached."

Thus, the reliefs sought have been threefolds:

(a) Custody of the minor son;

(b) right of residence; and

(c) restoration of dowry articles.

11. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law". It is a trite that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine". An act of fraud on court is always viewed seriously. (Vide: Meghmala & Ors. v. G. Narasimha Reddy & Ors., (2010) 8 SCC 383)

12. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court.

The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. (Vide: State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors., AIR 1996 SC 906; and Tayabbhai M. Bagasarwalla & Anr. v. Hind Rubber Industries Pvt. Ltd., AIR 1997 SC 1240).

13. In Sultan Sadik v. Sanjay Raj Subba & Ors., AIR 2004 SC 1377, this Court held that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

14. In M. Meenakshi & Ors. v. Metadin Agarwal (dead) by Lrs. & Ors., (2006) 7 SCC 470, this Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The Court observed as under:-

"It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est. An order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof." (Emphasis added) Similar view has been reiterated by this Court in Sneh Gupta v.Devi Sarup & Ors., (2009) 6 SCC 194.

From the above, it is evident that even if a decree is void ab initio, declaration to that effect has to be obtained by the person aggrieved from the competent court. More so, such a declaration cannot be obtained in collateral proceedings.

15. Respondent no.2 herself had been a party to the fraud committed by the appellant upon the civil court for getting the decree of divorce as alleged by her in the impugned complaint. Thus, according to her own admission she herself is an abettor to the crime.

A person alleging his own infamy cannot be heard at any forum as explained by the legal maxim "allegans suam turpetudinem non est audiendus". No one should have an advantage from his own wrong (commondum ex injuria sua memo habere debet). No action arises from an immoral cause (ex turpi cause non oritur action). Damage suffered by consent is not a cause of action (volenti non fit injuria). The statements/allegations made by the respondent no.2 patently and latently involve her in the alleged fraud committed upon the court.

Thus, she made herself disentitled for any equitable relief.

16. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit offence. (Vide: Faguna Kanta Nath v. The State of Assam, AIR 1959 SC 673; and Jamuna Singh v. State of Bihar AIR 1967 SC 553). If more than one person combining both in intent and act, commit an offence jointly, each is guilty, as if he has done the whole act alone. Offence has been defined under Section 40 IPC and Section 43 IPC defines illegality. Making false statement on oath before the court is an offence under Section 191 IPC and punishable under Section 193 IPC.

17. While granting the decree of divorce, the statement of respondent no.2 had been recorded in the first as well as in the second motion as mentioned hereinabove. Period of more than 6 months was given to her to think over the issue. However, she made a similar statement in the second motion as well.

18. As per the statutory requirement, the purpose of second motion after a period of six months is that parties may make further efforts for reconciliation in order to save their marriage. There is also obligation on the part of the court under Section 23(2) of the Act 1955 to make every endeavour to bring about a reconciliation between the parties.

In Jagraj Singh v. Birpal Kaur, AIR 2007 SC 2083, this Court held that conjugal rights are not merely creature of statute but inherent in the very institution of marriage. Hence, the approach of a court of law in matrimonial matters should be "much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire". The court should not give up the effort of reconciliation merely on the ground that there is no chance for reconciliation or one party or the other says that there is no possibility of living together.

Therefore, it is merely a misgiving that the courts are not concerned and obligated to save the sanctity of the institution of marriage.

19. In Smt. Sureshta Devi v. Om Prakash, AIR 1992 SC 1304, this Court held that mere filing the petition for divorce by mutual consent does not authorise the court to make a decree for divorce. The interregnum waiting period from 6 to 18 months is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The court must be satisfied about the bona fides and the consent of the parties for the reason that court gets jurisdiction to make a decree for divorce only on mutual consent at the time

of enquiry. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard. Thus, withdrawal of consent can be unilateral prior to second motion. The Court further observed:

"The 'living separately' for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression 'living separately', connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The. parties may be living in different houses and yet they could live as husband and wife. What seems to be necesssary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they 'have not been able to live together' seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved." (Emphasis added)

20. For grant of divorce in such a case, the Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent. (Vide: Hitesh Bhatnagar v. Deepa Bhatnagar, AIR 2011 SC 1637).

21. Respondent no.2, who did not change her stand in the second motion and obtained a sham decree of divorce as alleged by her asked the criminal court to sit in appeal against the judgment and decree of the competent Civil Court. The complaint was filed before the Magistrate, Jalandhar while the decree of divorce had been granted by the District Judge, Ludhiana i.e. of another district. Therefore, it is beyond our imagination as under what circumstances a subordinate criminal court can sit in appeal against the judgment and order of the superior Civil Court, having a different territorial jurisdiction.

22. In the facts and circumstances of the case, the submission made on behalf of respondent no.2 that the judgment and decree of a Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by the respondent no.2 to declare the said judgment and decree dated 20.3.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the Civil Court subsists. On the similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the Act 2005 is maintainable, is not worth acceptance at this stage.

23. In D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469, this Court considered the expression "domestic relationship" under Section 2(f) of the Act 2005 placing reliance on earlier judgment in Savitaben Somabhai Bhatiya v. State of Gujarat & Ors., (2005)

3 SCC 636 and held that relationship "in the nature of marriage" is akin to a common law marriage. However, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

The said judgments are distinguishable on facts as those cases relate to live-in relationship without marriage. In the instant case, the parties got married and the decree of Civil Court for divorce still subsists. More so, a suit to declare the said judgment and decree as a nullity is still pending consideration before the competent court.

24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida & Ors., (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.

26. The appeal succeeds and is allowed. The impugned judgment and order dated 9.8.2010 is hereby set aside. Petition filed by the appellant under Section 482 Cr.P.C. is allowed. Complaint No. 87/02/09 pending before the Magistrate, Jalandhar and all orders passed therein are quashed.

Before parting with the case, we clarify that respondent no.2 shall be entitled to continue with her other cases and the court concerned may proceed in accordance with law without being influenced by the observations made herein. The said observations have been made only to decide the application under Section 482 Cr.P.C. filed by the appellant.

.....J.

(P. SATHASIVAM)

.....J.

(Dr. B.S. CHAUHAN)

New Delhi August 23, 2011

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D.VELUSAMY VERSUS D.PATCHAIAMMAL

Bench : Hon'ble Mr. Justice MARKANDEY KATJU, Hon'ble Mr. Justice T.S. THAKUR

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Decided on 21 October, 2010

CRIMINAL APPEAL NOS. 2028-2029 OF 2010
[Arising out of Special Leave Petition (Crl.) Nos.2273-2274/2010]

D. Velusamy .. Appellant

-versus-

D. Patchaiammal .. Respondent

JUDGMENT

MARKANDEY KATJU, J.

1. Leave granted.

2. Heard learned counsel for the appellant. None has appeared for the respondent although she has been served notice. We had earlier requested Mr. Jayant Bhushan, learned Senior counsel to assist us as Amicus Curiae in the case, and we record our appreciation of Mr. Bhushan who was of considerable assistance to us.

3. These appeals have been filed against the judgment of the Madras High Court dated 12.10.2009.

4. The appellant herein has alleged that he was married according to the Hindu Customary Rites with one Lakshmi on 25.6.1980. Out of the wedlock with Lakshmi a male child was born, who is now studying in an Engineering college at Ooty. The petitioner is working as a Secondary Teacher in Thevanga Higher Secondary School, Coimbatore.

5. It appears that the respondent-D. Patchaiammal filed a petition under Section 125 Cr.P.C. in the year 2001 before the Family Court at Coimbatore in which she alleged that she was married to the appellant herein on 14.9.1986 and since then the appellant herein and she lived together in her father's house for two or three years. It is alleged in the petition that after two or three years the appellant herein left the house of the respondent's father and started living in his native place, but would visit the respondent occasionally.

6. It is alleged that the appellant herein (respondent in the petition under Section 125 Cr.P.C.) deserted the respondent herein (petitioner in the proceeding under Section 125 Cr.P.C.) two or three years after marrying her in 1986. In her petition under Section 125 Cr.P.C. she alleged that she did not have any kind of livelihood and she is unable to maintain herself whereas the respondent (appellant herein) is a Secondary Grade Teacher drawing a salary of Rs.10000/- per month. Hence it was prayed that the

respondent (appellant herein) be directed to pay Rs.500/- per month as maintenance to the petitioner.

7. In both her petition under Section 125 Cr.P.C. as well as in her deposition in the case the respondent has alleged that she was married to the appellant herein on 14.9.1986, and that he left her after two or three years of living together with her in her father's house.

8. Thus it is the own case of the respondent herein that the appellant left her in 1988 or 1989 (i.e. two or three years after the alleged marriage in 1986). Why then was the petition under Section 125 Cr.P.C. filed in the year 2001, i.e. after a delay of about twelve years, shall have to be satisfactorily explained by the respondent. This fact also creates some doubt about the case of the respondent herein.

9. In his counter affidavit filed by the appellant herein before the Family Court, Coimbatore, it was alleged that the respondent (appellant herein) was married to one Lakshmi on 25.6.1980 as per the Hindu Marriage rites and customs and he had a male child, who is studying in C.S.I. Engineering college at Ooty. To prove his marriage with Lakshmi the appellant produced the ration card, voter's identity card of his wife, transfer certificate of his son, discharge certificate of his wife Lakshmi from hospital, photographs of the wedding, etc.

10. The learned Family Court Judge has held by his judgment dated 5.3.2004 that the appellant was married to the respondent and not to Lakshmi. These findings have been upheld by the High Court in the impugned judgment.

11. In our opinion, since Lakshmi was not made a party to the proceedings before the Family Court Judge or before the High Court and no notice was issued to her hence any declaration about her marital status vis-`- vis the appellant is wholly null and void as it will be violative of the rules of natural justice. Without giving a hearing to Lakshmi no such declaration could have validly be given by the Courts below that she had not married the appellant herein since such as a finding would seriously affect her rights. And if no such declaration could have been given obviously no declaration could validly have been given that the appellant was validly married to the respondent, because if Lakshmi was the wife of the appellant then without divorcing her the appellant could not have validly married the respondent.

12. It may be noted that Section 125 Cr.P.C. provides for giving maintenance to the wife and some other relatives. The word `wife' has been defined in Explanation (b) to Section 125(1) of the Cr.P.C. as follows :

> "Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

13. In Vimala (K) vs. Veeraswamy (K) [(1991) 2 SCC 375], a three- Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word `wife' the Court held:

> "..the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term `wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term `wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision."

14. In a subsequent decision of this Court in Savitaben Somabhat Bhatiya vs. State of Gujarat and others, AIR 2005 SC 1809, this Court held that however desirable it may be to take note of the plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of `wife'. The Bench held that this inadequacy in law can be amended only by the Legislature.

15. Since we have held that the Courts below erred in law in holding that Lakshmi was not married to the appellant (since notice was not issued to her and she was not heard), it cannot be said at this stage that the respondent herein is the wife of the appellant. A divorced wife is treated as a wife for the purpose of Section 125 Cr.P.C. but if a person has not even been married obviously that person could not be divorced. Hence the respondent herein cannot claim to be the wife of the appellant herein, unless it is established that the appellant was not married to Lakshmi.

16. However, the question has also be to be examined from the point of view of The Protection of Women from Domestic Violence Act, 2005. Section 2(a) of the Act states :

> "2(a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent";

Section 2(f) states :

> "2(f) "domestic relationship" 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"; Section 2(s) states
>
> "2(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both

> jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

Section 3(a) states that an act will constitute domestic violence in case it-

> "3(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 (emphasis supplied)

17. The expression "economic abuse" has been defined to include :

> "(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance".
>
> (emphasis supplied)

18. An aggrieved person under the Act can approach the Magistrate under Section 12 for the relief mentioned in Section 12(2). Under Section 20(1)(d) the Magistrate can grant maintenance while disposing of the application under Section 12(1).

19. Section 26(1) provides that the relief mentioned in Section 20 may also be sought in any legal proceeding, before a civil court, family court or a criminal court.

20. Having noted the relevant provisions in The Protection of Women from Domestic Violence Act, 2005, we may point out that the expression `domestic relationship' includes not only the relationship of marriage but also a relationship `in the nature of marriage'. The question, therefore, arises as to what is the meaning of the expression `a relationship in the nature of marriage'. Unfortunately this expression has not been defined in the Act. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.

21. In our opinion Parliament by the aforesaid Act has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case the person who enters into either relationship is entitled to the benefit of the Act.

22. It seems to us that in the aforesaid Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been

commented upon by this Court in S. Khushboo vs. Kanniammal & Anr. (2010) 5 SCC 600 (vide para 31).

23. When a wife is deserted, in most countries the law provides for maintenance to her by her husband, which is called alimony. However, earlier there was no law providing for maintenance to a woman who was having a live-in relationship with a man without being married to him and was then deserted by him.

24. In USA the expression `palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him (see `palimony' on Google). The first decision on palimony was the well known decision of the California Superior Court in Marvin vs. Marvin (1976) 18 C3d660. This case related to the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony. Subsequently in many decisions of the Courts in USA, the concept of palimony has been considered and developed. The US Supreme Court has not given any decision on whether there is a legal right to palimony, but there are several decisions of the Courts in various States in USA. These Courts in USA have taken divergent views, some granting palimony, some denying it altogether, and some granting it on certain conditions. Hence in USA the law is still in a state of evolution on the right to palimony.

25. Although there is no statutory basis for grant of palimony in USA, the Courts there which have granted it have granted it on a contractual basis. Some Courts in USA have held that there must be a written or oral agreement between the man and woman that if they separate the man will give palimony to the woman, while other Courts have held that if a man and woman have lived together for a substantially long period without getting married there would be deemed to be an implied or constructive contract that palimony will be given on their separation.

26. In Taylor vs. Fields (1986) 224 Cal. Rpr. 186 the facts were that the plaintiff Taylor had a relationship with a married man Leo. After Leo died Taylor sued his widow alleging breach of an implied agreement to take care of Taylor financially and she claimed maintenance from the estate of Leo. The Court of Appeals in California held that the relationship alleged by Taylor was nothing more than that of a married man and his mistress. It was held that the alleged contract rested on meretricious consideration and hence was invalid and unenforceable. The Court of Appeals relied on the fact that Taylor did not live together with Leo but only occasionally spent weekends with him. There was no sign of a stable and significant cohabitation between the two.

27. However, the New Jersey Supreme Court in Devaney vs. L' Esperance 195 N.J., 247 (2008) held that cohabitation is not necessary to claim palimony, rather "it is the promise to support, expressed or implied, coupled with a marital type relationship, that are indispensable elements to support a valid claim for palimony". A law has now been passed in 2010 by the State legislature of New Jersey that there must be a written agreement between the parties to claim palimony.

28. Thus, there are widely divergent views of the Courts in U.S.A. regarding the right to palimony. Some States like Georgia and Tennessee expressly refuse to recognize palimony agreements.

29. Written palimony contracts are rare, but some US Courts have found implied contracts when a woman has given up her career, has managed the household, and assisted a man in his business for a lengthy period of time. Even when there is no explicit written or oral contract some US Courts have held that the action of the parties make it appear that a constructive or implied contract for grant of palimony existed.

30. However, a meretricious contract exclusively for sexual service is held in all US Courts as invalid and unenforceable.

31. In the case before us we are not called upon to decide whether in our country there can be a valid claim for palimony on the basis of a contract, express or implied, written or oral, since no such case was set up by the respondent in her petition under Section 125 Cr.P.C.

32. Some countries in the world recognize common law marriages. A common law marriage, sometimes called de facto marriage, or informal marriage is recognized in some countries as a marriage though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry (see details on Google).

33. In our opinion a `relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(see `Common Law Marriage' in Wikipedia on Google) In our opinion a `relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a `shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a `domestic relationship'.

34. In our opinion not all live in relationships will amount to a relationship in the nature of marriag8e to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

35. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression `relationship in the nature of marriage' and not `live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.

36. In feudal society sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror, as depicted in Leo Tolstoy's novel `Anna Karenina', Gustave Flaubert's novel `Madame Bovary' and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.

37. However, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The Protection of Women from Domestic Violence Act, 2005.

38. Coming back to the facts of the present case, we are of the opinion that the High Court and the learned Family Court Judge erred in law in holding that the appellant was not married to Lakshmi without even issuing notice to Lakshmi. Hence this finding has to be set aside and the matter remanded to the Family Court which may issue notice to Lakshmi and after hearing her give a fresh finding in accordance with law. The question whether the appellant was married to the respondent or not can, of course, be decided only after the aforesaid finding.

39. There is also no finding in the judgment of the learned Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. In our opinion such findings were essential to decide this case. Hence we set aside the impugned judgment of the High Court and Family Court Judge, Coimbatore and remand the matter to the Family Court Judge to decide the matter afresh in accordance with law and in the light of the observations made above. Appeals allowed.

.....J.

(MARKANDEY KATJU)

.....J.

(T. S. THAKUR)

NEW DELHI;

21st OCTOBER, 2010

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JAPANI SAHOO VERSUS CHANDRA SEKHAR MOHANTY

Bench: Hon'ble Mr. Justice C.K. THAKKER, Hon'ble Mr. Justice TARUN CHATTERJEE

SUPREME COURT OF INDIA

Decided on 27 July, 2007

CRIMINAL APPEAL NO. 942 OF 2007
ARISING OUT OF SPECIAL LEAVE PETITION (CRL) NO. 4174 OF 2006

Japani Sahoo ... Petitioner
Versus
Chandra Sekhar Mohanty ... Respondent

JUDGMENT

1. Leave granted.

2. An important and interesting question of law has been raised by the appellant in the present appeal which is directed against the judgment and order passed by the High Court of Orissa on June 20, 2006 in Crl. M. C. No. 5148 of 1998. By the said order, the High Court quashed criminal proceedings initiated against the respondent- accused for offences punishable under Sections 294 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

3. Brief facts of the case are that the appellant is a complainant who is inhabitant of village Damana under Chandrasekharpur Police Station. He had constructed many shops on his land on the side of the main road of Chandrasekharpur Bazar from which he was earning substantial amount by way of rent. It is alleged by the complainant that the accused was, at the relevant time, Inspector of Police at Chandrasekharpur Police Station and was aware that the complainant was receiving good amount of income from shop rooms erected by him.

4. According to the complainant, on February 2, 1996, a Constable of Chandrasekharpur Police Station came to his house and informed him that he was wanted by Officer-in-charge of the Police Station (Bada Babu) at 9 p.m. with monthly bounty. It was alleged by the complainant that even prior to the above incident, he was repeatedly asked by the accused to pay an amount of Rs.5,000/- per month as illegal gratification, but he did not oblige the accused. At about 9.30 p.m. on February 2, 1996, the complainant went to Chandrasekharpur Police Station where the accused was waiting for him anxiously to extract money. As soon as the complainant entered the Police Station, the accused abused him by using filthy language. The complainant was shocked. The accused pushed him as a result of which he fell down and sustained bodily pain. The accused also threatened the complainant that if the latter would not pay an amount of Rs.5,000/- by next morning, the former would book him in serious cases like 'NDPS' and dacoity. The complainant silently returned home. On the next day, he went to his lawyer and narrated the incident. His lawyer advised him to lodge a complaint

before a competent Court instead of lodging FIR against the accused. Accordingly, on February 5, 1996, the appellant filed a complaint being ICC Case No.45 of 1996 in the Court of Sub Divisional Judicial Magistrate (SDJM), Bhubaneswar against the respondent-accused for commission of offences punishable under Sections 161, 294, 323 and 506, IPC.

5. As stated by the appellant, the SDJM examined witnesses produced by the appellant-complainant between March 29, 1996 and July 24, 1996. The matter was adjourned from time to time. Ultimately, on August 8, 1997, the learned Magistrate on the basis of statement of witnesses, took cognizance of the complaint filed by the complainant and issued summons fixing December 19, 1997 for appearance of accused observing inter alia that on the basis of the statements recorded, prima facie case had been made out for commission of offences punishable under Sections 294 and 323, IPC.

6. According to the appellant, the summons was served on the respondent-accused but he did not remain present. After more than one year of issuance of summons, non-bailable warrant was issued by the learned Magistrate on September 23, 1998. The accused thereafter surrendered on November 23, 1998. He, however, filed a petition in the High Court of Orissa on November 20, 1998 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') for quashing criminal proceedings contending, inter alia, that no cognizance could have been taken by the Court after the period of one year of limitation prescribed for the offences under Sections 294 and 323, IPC and the complaint was barred by limitation. A prayer was, therefore, made by the accused to set aside order dated August 8, 1997 as also order of issuance of non- bailable warrant dated September 23, 1998 by quashing criminal proceedings.

7. A counter was filed by the complainant asserting that admittedly, the complaint was filed by him in the Court of SDJM within three days of the incident i.e. the incident took place on February 2, 1996 and the complaint was filed on February 5, 1996. There was, therefore, no question of the complaint being barred by limitation. According to the complainant, the question of limitation should be considered on the basis of an act of filing complaint; and not an act of taking cognizance by the Court. It was submitted that two acts, viz. (i) act of filing complaint and (ii) act of taking cognizance are separate, distinct and different. Whereas the former was within the domain of the complainant, the latter was in the exclusive control of the Court. The accused, according to the complainant, was labouring under the misconception that the 'countdown' begins from the date of taking cognizance by the Court and not from the date of instituting a complaint by the complainant. It was, therefore, submitted that the complaint was within time and should be decided on merits.

8. The High Court, in the order impugned in the present appeal, held that the date relevant and material for deciding the bar of limitation under the Code was the date of taking cognizance by the Court. Since the offences under Sections 294 and 323 were punishable for six months and one year respectively, cognizance thereof ought to have been taken within one year of the commission of offences. Cognizance was admittedly

taken on August 8, 1997, i.e. after more than one year of the commission of offences and as such, it was barred by limitation under Section 468 of the Code. The learned Magistrate had not condoned delay by exercising power under Section 473 of the Code and hence, the complaint was liable to be dismissed on the ground of limitation. The proceedings were accordingly quashed. The complainant has questioned the legality of the order passed by the High Court.

9. We have heard the learned counsel for the parties.

10. The learned counsel for the appellant contended that the High Court committed an error of law in holding that the complaint filed by the complainant was barred by limitation. According to him, when the complaint was filed within three days from the date of incident complained of, the learned Magistrate was wholly justified in proceeding with the said complaint treating it within the period of limitation. It was stated that the complainant produced his witnesses who were examined between March 29, 1996 and July 24, 1996 and after taking into consideration the statements of those witnesses and after application of mind, the learned Magistrate took cognizance of offences and issued summons under Sections 294 and 323, IPC. It was also submitted that provisions of Section 468 must be read reasonably by construing that the action must be taken by the complainant of filing a complaint or taking appropriate proceedings in a competent Court of Law. Once the complainant takes such action, he cannot be penalized or non-suited for some act/omission on the part of the Court in not taking cognizance. It was submitted that taking of cognizance was within the domain of the Magistrate and not within the power, authority or jurisdiction of the complainant and the act of Court cannot adversely or prejudicially affect a party to a litigation. It was also submitted that the respondent- accused abused his position and misused his powers and, by administering threat and intimidating the complainant, wanted to extract money by resorting to illegal means. The complainant, therefore, by proceeding in a recognized legal mode, instituted a complaint and there was no reason for the High Court to abruptly terminate the proceedings half-way without entering into merits of the matter. It was, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the High Court and by directing the learned Magistrate to decide the matter on merits.

11. The learned counsel for the respondent- accused, on the other hand, supported the order passed by the High Court. He submitted that the bar imposed by the Code is against 'taking cognizance' and not filing complaint. The High Court properly interpreted Section 468, applied to the facts of the case and held that since cognizance was taken by the Court after one year, the provision of law had been violated and the complaint was barred by limitation. No fault can be found against such an order and the appeal deserves to be dismissed.

12. Before we proceed to deal with the question, it would be appropriate if we consider the relevant provisions of law. Chapter XXXVI (Sections 466-473) has been inserted in the Code of Criminal Procedure, 1973 (new Code) which did not find place in the Code of Criminal Procedure, 1898 (old Code). This Chapter prescribes period of limitation

for taking cognizance of certain offences. Section 467 is a 'dictionary' provision and defines the phrase 'period of limitation' to mean the period specified in Section 468 for taking cognizance of an offence. Sub-section (1) of Section 468 bars a Court from taking cognizance of certain offences of the category specified in sub-section (2) after expiry of the period of limitation. It is material and may be quoted in extenso.

Section 468. Bar to taking cognizance after lapse of the period of limitation.D(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

13. Section 469 declares as to when the period of limitation would commence. Sections 470-471 provide for exclusion of period of limitation in certain cases. Section 472 deals with 'continuing' offences. Section 473 is an overriding provision and enables Courts to condone delay where such delay has been properly explained or where the interest of justice demands extension of period of limitation.

14. The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well- known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of Law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.

15. In Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr., (1969) 2 SCR 438 : AIR 1970 SC 962, this Court stated:

> "This takes us to the contention whether the prosecution must be quashed because of the delay in instituting the same. It is urged on behalf of the accused that because of the delay in launching the same, the present prosecution amounts to an abuse of the process of the

> Court. The High Court has repelled that contention. It has come to the conclusion that the delay in filing the complaint is satisfactorily explained. That apart, it is not the case of the accused that any period of limitation is prescribed for filing the complaint. Hence the court before which the complaint was filed could not have thrown out the same on the sole ground that there has been delay in filing it. The question of delay in filing a complaint may be a circumstance to be taken into consideration in arriving at the final verdict. But by itself it affords no ground for dismissing the complaint. Hence we see no substance in the contention that the prosecution should be quashed on the ground that there was delay in instituting the complaint". (emphasis supplied)

16. At the same time, however, ground reality also cannot be ignored. Mere delay may not bar the right of the 'Crown' in prosecuting 'criminals'. But it also cannot be overlooked that no person can be kept under continuous apprehension that he can be prosecuted at 'any time' for 'any crime' irrespective of the nature or seriousness of the offence. "People will have no peace of mind if there is no period of limitation even for petty offences".

17. The Law Commission considered the question in the light of legal systems in other countries and favoured to prescribe period of limitation for initiating criminal proceedings of certain offences.

18. In the Statement of Objects and Reasons, it had been observed;

> "There are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission."

19. The Joint Committee of Parliament also considered the following as sufficient grounds for prescribing the period of limitation; (1) As time passes the testimony of witnesses becomes weaker and weaker because of lapse of memory and evidence becomes more and more uncertain with the result that the danger of error becomes greater.

(2) For the purpose of peace and repose, it is necessary that an offender should not be kept under continuous apprehension that he may be prosecuted at any time particularly because with multifarious laws creating new offences many persons at sometime or other commit some crime or the other. People will have no peace of mind if there is no period of limitation even for petty offences.

(3) The deterrent effect of punishment is impaired if prosecution is not launched and punishment is not inflicted before the offence has been wiped off the memory of persons concerned.

(4) The sense of social retribution which is one of the purposes of criminal law loses its edge after the expiry of long period.

(5) The period of limitation would put pressure on the organs of criminal prosecution to make every effort to ensure the detection and punishment of the crime quickly. (vide Report, dated December 4, 1972; pp. xxx-xxxi)

20. It is thus clear that provisions as to limitation have been inserted by Parliament in the larger interest of administration of criminal justice keeping in view two conflicting considerations;

(i) the interest of persons sought to be prosecuted (prospective accused);

(ii) and organs of State (prosecuting agencies).

21. In State of Punjab v. Sarwan Singh, (1981) 3 SCR 349 : AIR 1981 SC 1054, this Court stated: "The object which the statutes seek to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India. It is, therefore, of the utmost importance that any prosecution, whether by the State or a private complainant must abide by the letter of law or take the risk of the prosecution failing on the ground of limitation".

22. Bearing in mind the above fundamental principles, let us examine the rival contentions and conflicting decisions on the point.

23. Admittedly in the instant case, the offence was alleged to have been committed by the accused on February 2, 1996 and complaint was filed on February 5, 1996. It was punishable under Sections 294, 323, 161 read with 506, IPC. It is not in dispute that the learned Magistrate took cognizance of an offence punishable under Sections 294 and 323, IPC on August 8, 1997. Concededly, the period of limitation for an offence punishable under Sections 294 and 323 is six months and hence, it was barred under Section 468 of the Code if the material date is taken to be the date of congnizance by the Magistrate.

24. The learned counsel for the parties drew our attention to decisions of various High Courts as also of this Court. From the decisions cited, it is clear that at one time, there was cleavage of opinion on interpretation of Section 468 of the Code. According to one view, the relevant date is the date of filing of complaint by the complainant. As per that view, everything which is required to be done by the complainant can be said to have been done as soon as he institutes a complaint. Nothing more is to be done by him at that stage. It is, therefore, the date of filing of complaint which is material for the purpose of computing the period of limitation under Section 468 of the Code.

25. According to the other view, however, the law places an embargo on Court in taking cognizance of an offence after lapse of period of limitation and hence, the material date is the date on which the Magistrate takes cognizance of offence. If such cognizance is taken after the period prescribed in sub-section (2) of Section 468 of the Code, the complaint must be held to be barred by limitation.

26. Let us consider some of the decisions on the point.

27. In Jagannathan & Ors. v. State, 1983 Crl.LJ 1748 (Mad), an occurrence took place on March 2, 1981. Investigation was completed by May 6, 1981 and the Magistrate took cognizance for offences punishable under Sections 448, 341 and 323, IPC on March 12, 1982 after the expiry of period of limitation prescribed under clause (b) of sub-section (2) of Section 468 of the Code.

28. Dismissing the complaint on the ground of limitation, a single Judge of the High Court of Madras observed;

> "Therefore, when the punishments provided for these offences are one year and less, the cognizance of the offences ought to have been taken within a period of one year from the date of the offences. Indisputably the trial Court has taken cognizance of the offences beyond the statutory period of limitation of one year. On that ground, the entire proceeding in C.C. 78 of 1982 on the file of the Court below is quashed."

29. In Court on its own motion v. Sh. Shankroo, 1983 Crl. LJ 63 (HP), the offence in question alleged to have been committed by the accused was punishable under Section 33 of the Forest Act, 1927 of illicit felling of trees. The offence was punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both. It was said to have been committed by the accused on March 26, 1979, but the challan was presented in the Court on August 11, 1980, i.e. after a period of one year. The Court held that the challan ought to have been filed within one year and since it was not done, "the Court had no jurisdiction to take cognizance of the offence". The proceedings were, therefore, ordered to be dropped.

30. In Shyam Sunder Sarma v. State of Assam & Ors, 1988 Crl. LJ 1560 (Gau), the Court held that cognizance of offence ought to be taken within the period of limitation. In Shyam Sunder, the offence in question was punishable under Sections 448, 427, 336 and 323 read with 34, IPC. It was alleged to have been committed on May 28, 1974. The matter was submitted before the Magistrate on June 11, 1974. But after the investigation, the police submitted the charge-sheet on December 8, 1978 and process was issued by the Magistrate on January 2, 1979. It was held by the Court that the cognizance could not be said to have been taken on June 11, 1974 when the matter was submitted to the Magistrate, but only on January 2, 1979 when the process was issued. It was clearly barred by limitation and since the offence was not a "continuing offence" within the meaning of Section 472 of the Code, prosecution was barred by limitation.

31. In Bipin Kalra v. State, 2003 Crl LJ (NOC) 51 (Del), the High Court held that valid cognizance in respect of an offence punishable under Section 323, IPC could be taken within one year 'from the date of commission of offence'. Cognizance could not be taken after lapse of that period.

32. In Dr. Harihar Nath Garg v. State of Madhya Pradesh, (2003) 3 Crimes 412 (MP), the offence with which the Court was concerned was punishable under Section 491, IPC. The incident was of June 27, 1996 and charge-sheet was filed on January 17, 1997, i.e. after a period of six months. It was held to be barred by limitation and the proceedings were quashed.

33. In Dandapani & Ors. v. State by Sub-Inspector of Police, Tiruvannamalai Town, (2002) 1 Crimes 675 (Mad), offences punishable under Sections 147, 148, 325, 427, 323 and 324, IPC had been committed by the accused on February 1, 1999. The case was registered on the same day. Cognizance was taken by the Magistrate on February 11, 2000 for an offence of affray punishable under Section 160, IPC. It was held that prosecution was barred by limitation and was liable to be quashed. Referring to an earlier decision in ARU v. State, 1993 L.W. (Cri) 127, the Court observed that the investigating agency and the prosecuting authority must be aware of the Law of Limitation and its link to cognizance contemplated under Section 468 of the Code and they should perform their duties diligently.

34. There are, however, several decisions wherein the courts have taken the view that the relevant date for the purpose of deciding the period of limitation is the date of filing of complaint or initiation of proceedings and not of taking cognizance by a Magistrate or a Court.

35. The leading decision on the point is Kamal H. Javeri & Anr. v. Chandulal Gulabchand Kothari & Anr. of the High Court of Bombay reported in 1985 Crl. LJ 1215 (Bom). In that case, a complaint was filed for an offence punishable under Section 500, IPC within the period of limitation, but the process was issued by the Metropolitan Magistrate after the prescribed period of limitation. The Court was called upon to consider and interpret Sections 468, 469 and 473 of the Code. The Court examined the relevant provisions of the Code and observed;

The Limitation Act prescribes the limitation for taking action in the Court of law and if the action is taken after the expiry of the period prescribed under the Limitation Act, the remedy is said to be barred. The same principle would also apply while considering the question of limitation provided under Section 468 of the Cr. P.C. I may give an illustration to demonstrate how the submission of Shri Vashi in connection with the interpretation of Section 468, will lead to illogical situation and disastrous result. It is also well settled that a party can take action on the last date of the limitation prescribed under the Act. (1) Suppose a complaint is filed on the last day of limitation prescribed under the Act and if on that date the Magistrate is on leave and/or otherwise unable to hear the party and/or apply his mind to the complaint on that date then naturally his complaint will have to be held barred by limitation if arguments of Shri Vashi are to be accepted.

(2) Suppose a complaint is filed quite in advance before the expiry of the period of limitation and if the Magistrate in his discretion postpones the issue of process by directing an investigation under Section 202, Cr. P.C. and if that, investigation is not completed within the prescribed period of limitation, naturally the Magistrate shall not be able to apply his mind and take cognizance and/or issue the process until report Under Section 202 of the Code is received and in that event the complaint will have to be dismissed on the ground that the Court cannot take cognizance of an offence after the expiry of the period of limitation from the date of offence. There could be several such situations. The complaint although filed

within limitation but the Magistrate due to some or other reasons beyond his control could not apply his mind and take cognizance of the complaint and/or could not issue the process within the prescribed period of limitation as provided under Section 468 of the Code, then the complaint will have to be dismissed in limine. So also if the Magistrate takes cognizance after the period prescribed under Section 468 of the Code the said order of taking cognizance would render illegal and without jurisdiction. In such contingencies can the complainant be blamed who has approached the Court quite within limitation prescribed under the Act but no cognizance could be taken for the valid and good reasons on the part of the Magistrate and should the complainant suffer for no fault on his part. This could not be the object of the framers of the provisions of Section 468, Cr. P.C.

36. After referring to several decisions, the Court held that the limitation prescribed under Section 468 of the Code should be related to the filing of complaint and not to the date of cognizance by the Magistrate or issuance of process by the Court.

37. In Basavantappa Basappa Bannihalli & Anr. v. Shankarappa Marigallappa Bannihalli, 1990 Crl LJ 360 (Kant), a complaint was filed within ten days of the occurrence, but cognizance was taken by the Magistrate after the period of limitation prescribed by the Code. Following Kamal Javeri, the Court held that the relevant date would be date of filing complaint and not of taking cognizance by the Magistrate for deciding the bar of limitation.

38. In Anand R. Nerkar v. Smt. Rahimbi Shaikh Madar & Ors., 1991 Crl. LJ 557 (Bom), the High Court held that the relevant date for deciding the period of limitation is the date of prosecution of complaint by the complainant in the Court and not the date on which process is issued. It was observed that various sections of the Code make it clear that before taking cognizance of a complaint, the Magistrate has to consider certain preliminary issues, such as, jurisdiction of court, inquiry by police, securing appearance of accused, etc. It, therefore, necessarily follows, observed the Court, that the material date is not the date of issuance of process, but the date of filing of complaint. Subsequent steps after the filing of the complaint, such as, examination of witnesses, consideration of case on merits, etc. are by the court. Moreover, taking cognizance or issuance of process depends on the time available to the court over which the complainant has no control. It would, therefore, be wholly unreasonable to hold that a complaint even if presented within the period of limitation would be held barred by limitation merely because the Court took time in taking cognizance or in issuing process.

39. In Zain Sait v. Intex-Painter, etc., 1993 Crl. LJ 2213 (Ker), the Court held that the crucial date for computing period of limitation would be date of filing of complaint. Limitation under Section 468 of the Code has to be reckoned with reference to date of complaint and not with reference to date of taking cognizance. It was also observed that there could be a case where a complaint is filed on the last day of limitation and on account of inconvenience or otherwise of the court, the sworn statement of the complainant

could be recorded on a later date and the Magistrate takes cognizance after the expiry of limitation. If the date of cognizance is taken as the date for determining the period of limitation, it would be penalizing the party for no fault of his. Such a construction cannot be placed on Section 468 of the Code. [See also Malabar Market Committee v. Nirmala, (1988) 2 Ker LT 420]

40. In Labour Enforcement Officer (Central) Cochin, v. Avarachan & Ors., 2004 Crl. LJ 2582 (Ker), the same High Court held that starting point of limitation is the date when the complaint is presented in the Court and not the date on which cognizance is taken. If the initial presentation of the complaint is within the period of limitation prescribed by the Code, it cannot be dismissed as barred by limitation and proceedings cannot be dropped.

41. In Hari Jai Singh & Anr. v. Suresh Kumar Gupta, 2004 Crl LJ 3768 (HP), it was held that the period of limitation should be counted from the date of presentation of complaint and not from the date of issuance of process by the Magistrate. In that case, defamatory news was published on May 31, 1995 and a complaint was presented on May 14, 1998, well within three years prescribed for the purpose. Process was, however, issued by the trial Magistrate on November 12, 1998, i.e. after three years. It was held by the Court that the complaint could not be dismissed on the ground of limitation.

42. The Court said;

The words "A Magistrate taking cognizance of an offence on complaint shall examine on oath the complainant and the witnesses present" evidently provides the manner in which the Magistrate taking cognizance on the complaint is to proceed to take preliminary evidence of the complainant on the basis of which he is to determine whether process against the accused is to be issued or not. Therefore, with reference to the context it cannot be held for the purpose of Section 468 of the Code that the Magistrate invariably takes cognizance of offences only when he decides to issues process against the accused under Section 204 of the Code. Therefore, for all intents and purposes of Section 468 of the Code, a Court must be deemed to have taken cognizance on a criminal complaint at the stage of presentation of the complaint to the Court and its proceedings therewith as provided under Section 200 of the Code. To hold contrary, will lead to injustice and defeat the provisions of the Code intended to promote the administration of criminal justice. It cannot be disputed that after the presentation of the complaint the Magistrate has to examine the complainant and his witnesses or postpone the issue of process and inquire into the case himself or direct an investigation to be made by the police officer or by such other person as he thinks fit for the purposes of deciding whether or not there is sufficient ground for proceeding. These processes in a given case are likely to take time and are dependent on the time available with the Magistrate or the person who has been directed to investigate the allegations made in the complaint and early conclusion of these processes is not within the power and control of the complainant. Therefore, it would be unreasonable to hold that a complaint even if presented within the period of limitation but the process against the accused is not issued by the Magistrate within the period of limitation,

the Court shall be debarred from taking cognizance of an offence. Therefore, it will be rational and reasonable to hold that the period of limitation is to be determined in view of the date of presentation of the complaint and not with regard to the date when the process is ordered to be issued by the Magistrate against the accused under Section 204 of the Code.

43. We may now refer to some of the decisions of this Court. The first in point of time was Surinder Mohan Vikal v. Ascharaj Lal Chopra, (1978) 2 SCC 403. In that case a complaint under Section 500, IPC was filed on February 11, 1976. It was alleged that the accused had committed an offence of defamation on March 15, 1972. A petition was, therefore, filed by the accused in the High Court under Section 482 of the Code for quashing proceedings on the ground that the complaint was barred by limitation. Upholding the contention and observing that the complaint was time-barred, the Court observed; "But, as has been stated, the complaint under Section 500, IPC was filed on February 11, 1977, much after the expiry of that period. It was therefore not permissible for the Court of the Magistrate to take cognizance of the offence after the expiry of the period of limitation." (emphasis supplied)

44. It is thus clear in that case the complaint itself was filed after the expiry of period of limitation which was held barred under Section 468 of the Code.

45. In Rashmi Kumar (Smt.) v. Mahesh Kumar Bhada, (1997) 2 SCC 397 : JT 1996 (11) SC 175, a complaint was filed by the wife against her husband on September 10, 1990 for an offence punishable under Section 406, IPC. It was alleged in the complaint that she demanded from the respondent-husband return of jewellery and household articles on December 5, 1987, but the respondent refused to return stridhana to the complainant-wife and she was forced to leave matrimonial home. The complaint was admittedly within the period of three years from the date of demand and refusal of stridhana by the respondent-husband. The complaint was held to be within time and the matter was decided on merits.

46. In State of H.P. v. Tara Dutt & Anr., (2000) 1 SCC 230 : JT 1999 (9) SC 215, this Court held that in computing the period of limitation where the accused is charged with major offences, but convicted only for minor offences, the period of limitation would be determined with reference to major offences.

47. Special reference may be made to Bharat Damodar Kale & Anr. v. State of A.P., (2003) 8 SCC 559 : JT 2003 Supp (2) SC 569. This Court there considered the scheme of the Code and particularly Section 468 thereof and held that the crucial date for computing the period of limitation is the date of filing of complaint and not the date when the Magistrate takes cognizance of an offence. In Bharat Damodar, a complaint was filed by Drugs Inspector against the accused for offences punishable under the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954. The complaint was lodged in the Court on March 3, 2000 in respect of offence detected on March 5, 1999. The period of limitation was one year. The Magistrate took cognizance of the offence on March 25, 2000. Now, if the date of complaint was to be taken into consideration, it was within time, but if the date of cognizance by the Magistrate was the material date,

admittedly it was barred by time. The Court considered the relevant provisions of the Code, referred to Rashmi Kumar and held the complaint within time observing that the material date for deciding the period of limitation was the date of filing of complaint and not the date of taking cognizance by the Magistrate.

48. The Court observed;

"On facts of this case and based on the arguments advanced before us we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to delay in instituting the prosecution or to delay in taking cognizance. As noted above according to learned counsel for the appellants the limitation prescribed under the above Chapter applies to taking of cognizance by the concerned court therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the Chapter-Heading of Chapter XXXVI of the Code which reads thus : "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the Heading of the Chapter the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 471 indicates while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said Section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the

part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant.(emphasis supplied)

49. The learned counsel for the appellant-accused, no doubt, submitted relying on the italicized portion quoted above, that the Court was not right in observing that the argument of the accused was based on and inspired by the 'Chapter Heading' of Chapter XXXVI of the Code which reads "Limitation for taking cognizance of certain offences". The counsel submitted that the Court proceeded to decide the point primarily on the basis of the argument advanced by the accused that the limitation prescribed by the 'Chapter Heading' applied to taking of cognizance and not filing of complaint, which was not correct. He submitted that apart from title (Chapter Heading), Section 468 itself places bar and puts embargo on taking cognizance of an offence by a Court. It expressly provides and explicitly states that "No court shall take cognizance of an offenceO" Bharat Damodar, thus, submitted the learned counsel, is per incuriam and is not binding upon this Court. The counsel, therefore, submitted that in that case the matter may be referred to a larger Bench.

50. We are unable to uphold the contention. We are equally not impressed by the argument of the learned counsel for the accused that the decision in Bharat Damodar is per incuriam. We have gone through the said decision. We have also extracted hereinabove paragraph 10 wherein the contention of the accused had been dealt with by this Court and negatived. It is true that in that case, the Court observed that taking clue from Chapter Heading (Chapter XXXVI : Limitation for taking cognizance of certain offences), an argument was advanced that if cognizance is not taken by the Court within the period prescribed by Section 468(2) of the Code, the complaint must be held barred by limitation. But, it is not true that this Court rejected the said argument on that ground. The Court considered the relevant provisions of the Code and negatived the contention on 'cumulative reading of various provisions'. The Court noted that so far as cognizance of an offence is concerned, it is an act of Court over which neither the prosecuting agency nor the complainant has control. The Court also referred to the well-known maxim "actus curiae neminem gravabit" (an act of Court shall prejudice none). It is the cumulative effect of all considerations on which the Court concluded that the relevant date for deciding whether the complaint is barred by limitation is the date of the filing of complaint and not issuance of process or taking of cognizance by Court.

51. We are in agreement with the law laid down in Bharat Damodar. In our judgment, the High Court of Bombay was also right in taking into account certain circumstances, such as, filing of complaint by the complainant on the last date of limitation, non availability of Magistrate, or he being busy with other work, paucity of time on the part of the Magistrate/Court in applying mind to the allegations levelled in the complaint, postponement of issuance of process by ordering investigation under sub-section (3) of Section 156 or Section 202 of the Code, no control of complainant or prosecuting agency on taking cognizance or issuing process, etc. To us, two things, namely; (1) filing of complaint or initiation of criminal proceedings; and (2) taking cognizance or

issuing process are totally different, distinct and independent. So far as complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process or any other action which the law contemplates. The complainant has no control over those proceedings. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the Court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the Court nor he can be non suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the Court well within the time prescribed by law. In such cases, the doctrine "actus curiae neminem gravabit" (an act of Court shall prejudice none) would indeed apply. [Vide Alexander Rodger v. Comptoir D'Escompte, (1871) 3 LR PC 465]. One of the first and highest duties of all Courts is to take care that an act of Court does no harm to suitors. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the Court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

52. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14 of the Constitution.

53. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a Court. We, therefore, overrule all decisions in which it has been held that

the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/Court and not of filing of complaint or initiation of criminal proceedings.

54. In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible.

55. Appeal is accordingly allowed.

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S.R. BATRA AND ANR VERSUS SMT. TARUNA BATRA

Bench: Hon'ble Mr. Justice S.B. SINHA, Hon'ble Mr. Justice MARKANDEY KATJU

Supreme Court of India

Decided on 15 December, 2006

Appeal (Civil) 5837 of 2006

S.R. Batra and Anr. ... Petitioner
Versus
Smt. Taruna Batra ... Respondent

JUDGMENT

MARKANDEY KATJU, J.

Leave granted.

This appeal has been filed against the impugned judgment of the Delhi High Court dated 17.1.2005 in C.M.M. No. 1367 of 2004 and C.MM. No. 1420 of 2004.

Heard learned counsel for the parties and perused the record.

The facts of the case are that respondent Smt. Taruna Batra was married to Amit Batra, son of the appellants, on 14.4.2000.

After the marriage respondent Taruna Batra started living with her husband Amit Batra in the house of the appellant no.2 in the second floor. It is not disputed that the said house which is at B-135, Ashok Vihar, Phase-I, Delhi belongs to the appellant no.2 and not to her son Amit Batra.

Amit Batra filed a divorce petition against his wife Taruna Batra, and it is alleged that as a counter blast to the divorce petition Smt. Taruna Batra filed an F.I.R. under Sections 406/498A/506 and 34 of the Indian Penal Code and got her father-in-law, mother-in-law, her husband and married sister-in-law arrested by the police and they were granted bail only after three days.

It is admitted that Smt. Taruna Batra had shifted to her parent's residence because of the dispute with her husband. She alleged that later on when she tried to enter the house of the appellant no.2 which is at property No. B-135, Ashok Vihar, Phase-I, Delhi she found the main entrance locked and hence she filed Suit No. 87/2003 for a mandatory injunction to enable her to enter the house. The case of the appellants was that before any order could be passed by the trial Judge on the suit filed by their daughter-in- law, Smt. Taruna Batra, along with her parents forcibly broke open the locks of the house at Ashok Vihar belonging to appellant No. 2, the mother- in-law of Smt. Taruna Batra. The appellants alleged that they have been terrorized by their daughter-in-law and for some time they had to stay in their office.

It is stated by the appellants that their son Amit Batra, husband of the respondent, had shifted to his own flat at Mohan Nagar, Ghaziabad before the above litigation between the parties had started.

The learned trial Judge decided both the applications for temporary injunction filed in suit no.87/2003 by the parties by his order on 4.3.2003. He held that the petitioner was in possession of the second floor of the property and he granted a temporary injunction restraining the appellants from interfering with the possession of Smt. Taruna Batra, respondent herein.

Against the aforesaid order the appellants filed an appeal before the Senior Civil Judge, Delhi who by his order dated 17.9.2004 held that Smt. Taruna Batra was not residing in the second floor of the premises in question. He also held that her husband Amit Batra was not living in the suit property and the matrimonial home could not be said to be a place where only wife was residing. He also held that Smt. Taruna Batra had no right to the properties other than that of her husband. Hence, he allowed the appeal and dismissed the temporary injunction application.

Aggrieved, Smt. Taruna Batra filed a petition under Article 227 of the Constitution which was disposed of by the impugned judgment. Hence, these appeals.

The learned Single Judge of the High Court in the impugned judgment held that the second floor of the property in question was the matrimonial home of Smt. Taruna Batra. He further held that even if her husband Amit Batra had shifted to Ghaziabad that would not make Ghaziabad the matrimonial home of Smt. Taruna Batra. The Learned Judge was of the view that mere change of the residence by the husband would not shift the matrimonial home from Ashok Vihar, particularly when the husband had filed a divorce petition against his wife. On this reasoning, the learned Judge of the High Court held that Smt. Taruna Batra was entitled to continue to reside in the second floor of B-135, Ashok Vihar, Phase-I, Delhi as that is her matrimonial home.

With respect, we are unable to agree with the view taken by the High Court.

As held by this Court in B.R. Mehta v. Atma Devi and Ors., [1987] 4 SCC 183, whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right exists in India.

In the same decision it was observed "it may be that with change of situation and complex problems arising it is high time to give the wife or the husband a right of occupation in a truly matrimonial home, in case of the marriage breaking up or in case of strained relationship between the husband and the wife."

In our opinion, the above observation is merely an expression of hope and it does not lay down any law. It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother- in-law.

Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house.

Appellant No. 2, the mother-in-law of Smt. Taruna Batra has stated that she had taken a loan for acquiring the house and it is not a joint family property. We see no reason to disbelieve this statement.

Learned counsel for the respondent then relied upon the Protection of Women from Domestic Violence Act, 2005. He stated that in view of the said Act respondent Smt. Taruna Batra cannot be dispossessed from the second floor of the property in question.

It may be noticed that the finding of the learned Senior Civil Judge that in fact Smt. Taruna Batra was not residing in the premises in question is a finding of fact which cannot be interfered with either under Article 226 or 227 of the Constitution. Hence, Smt. Taruna Batra cannot claim any injunction restraining the appellants from dispossessing her from the property in question for the simple reason that she was not in possession at all of the said property and hence the question of dispossession does not arise.

Apart from the above, we are of the opinion that the house in question cannot be said to be a `shared household' within the meaning of Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act'). Section 2(s) states:

> "`shared household` means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household".

Learned counsel for the respondent Smt. Taruna Batra has relied upon Sections 17 and 19(1) of the aforesaid Act, which state:

"17. (1)Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

19. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order--

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman". Learned counsel for the respondent Smt. Taruna Batgra stated that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. He contended that since admittedly the respondent had lived in the property in question in the past, hence the said property is her shared household.

We cannot agree with this submission.

If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.

It is well settled that any interpretation which leads to absurdity should not be accepted.

Learned counsel for the respondent Smt Taruna Batra has relied upon Section 19(1)(f) of the Act and claimed that she should be given an alternative accommodation. In our opinion, the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, and a `shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a `shared household'.

No doubt, the definition of `shared household' in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.

In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside and the order of Senior Civil Judge dismissing the injunction application of Smt. Taruna Batra is upheld. No costs.

Contempt Petition (C) No. 38/2006 In view of the judgment given above, the contempt petition stands dismissed.

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CHITRANJAN PRASAD SINGH VERSUS STATE OF BIHAR & ANR

CORAM: Hon'ble Mr. Justice DINESH KUMAR SINGH

IN THE HIGH COURT OF JUDICATURE AT PATNA

Decided on 15 October, 2015

CRIMINAL REVISION NO.388 OF 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- BEGUSARAI

1. Chitranjan Prasad Singh Son of Sharda Prasad Singh resident of Mohalla Suhird Nagar, Police Station- Begusarai Town (Lohiya Nagar Out Post) in the district of Begusarai being Permanent resident of Village Manjhaul, Panchamahala, Police Station- Cheriya Bariyarpur in the district of Begusarai. .... Petitioner/s

Versus

1. The State of Bihar, 2. Smt. Uma Devi Wife of Sri Nalini Ranjan Singh resident of Village- Manjhaul, Panchamahala Police Station- Cheriya, Bariyarpur in the district of Begusarai. .... Respondent/s

Appearance :

For the Petitioner/s : Mrs. Anita Kumari Singh, Advocate For the Respondent/s : Mr. Rajesh Kumar, APP

JUDGMENT

The present Revision Application is directed against the judgment dated 9.4.2014 passed by Sri Parshuram Shukla, the learned Sessions Judge, Begusarai in Cr. Appeal No. 46 of 2013 setting aside the judgment dated 16.4.2013 passed by Sri Gaurav Anand, the learned Judicial Magistrate Ist Class, Begusarai in Domestic Violence Case No. 12 P of 2012 whereby the application of O.P. No. 2 under Section 12(1) of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act') was dismissed holding the dispute between the parties as a property dispute.

Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 The factual matrix of the matter is that O.P. No. 2 Smt. Uma Devi filed an application on 5.7.2012 under Section 12(1) of the Act claiming Protection order under Section 18, Residence order under Section 19, Monetary relief under Section 20 of the Act and also claiming compensation under Section 22 of the Act.

The long and short of the case is that the petitioner is brother in law (Devar) of the O.P. No. 2. It is admitted case of the parties that Late Sharda Prasad Singh had three sons, namely, Nalini Ranjan Pd. Singh, Chittaranjan Pd. Singh and Arvind Prasad Singh and the O. P. No. 2 is the wife of Nalini Ranjan Prasad Singh. Chittaranjan Prasad Singh is the petitioner before this court. The O.P. No. 2 claims to be the owner of the land and house situated at Mauza

- Suhird Nagar appertaining to Khata No. 25, Khesra No. 64, having an area of 3 kathas, corresponding to Holding No. 312, 312(ka), under Begusarai Municipal Corporation. OP no.2 claims to have purchased the said land through registered Sale Deed dated 09.07.1960 with her stridhan. The name of OP No.2 got mutated subsequent to the purchase vide Mutation Case No. 1160 of 1983-84 and thereafter she has been paying rent. Subsequently, OP no.2 constructed a house with her stridhan over the aforesaid 3 kathas of land and on creation of municipal holding she has been paying rent to the municipal corporation. The OP no.2 started residing at Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 Begusarai in the aforesaid house with her two daughters but her husband started residing at his native village Majhaul, hence, the father-in-law of OP No. 2 namely Late Sharda Pd. Singh started residing with the O.P. No. 2, as guardian. The petitioner Chittaranjan Pd. Singh being brother-in-law (devar) of OP No.2 was allowed to stay in one of the rooms of the aforesaid house to look after her daughter, as the father-in-law had become very old. The wife of Chittaranjan Pd. Singh also purchased 3 kathas of land in the aforesaid plot on 09.07.1960 through another sale deed with her stridhan and she is also coming in possession of her purchased land. The further case of OP no.2 is that in Begusarai town two houses were constructed, from joint family income, at two different places; one at Bagha Road, Muhalla Suhird Nagar at Begusarai and the other at Mungeri Ganj, Begusarai. The family, under a mutual agreement, decided that one storeyed building situated at Suhird Nagar will be in exclusive possession of petitioner Chittaranjan Pd. Singh whereas another two-storeyed building at Mungeri Ganj will be in exclusive possession of the other two brothers. Subsequently, after marriage of two daughters of O.P. No. 2, the behaviour of the petitioner changed towards OP No.2 when he started inflicting physical and mental torture upon OP No.2, as a result she fell seriously ill and finally her son-in-law took her to Delhi for treatment after locking the house, Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 except one room which was in possession of the petitioner. After her recovery from illness, the husband of OP No.2 took her to the native village for proper nursing and care but subsequently when they came to Begusarai for having better medical facilities, they were surprised to find that the lock of the room was broken and the petitioner was utilizing entire house including household articles of O.P. No.2. For some time, the petitioner allowed the OP No.2 to reside in the house but in the month of July, 2009 he again forcibly ousted her from the house. Thereafter, OP NO.2 filed petition before the Bihar State Women commission on 27.08.2009 as well as on 11.04.2011 with a prayer for recovery of possession of the house in question leading to registration of Case No. 1166 of 2009 against the petitioner. The Bihar State Women Commission (hereinafter referred to as the Commission'), vide order dated 22.06.2011 directed the authorities to remove the petitioner from the present house. The petitioner preferred writ application being CWJC No. 12694 of 2011 against the order of Women Commission before this Court and this Court vide order dated 28.03.2012 set aside the order of the Commission holding that the jurisdiction of the Commission is restricted to the matters relating to providing safeguards to women under the law. The Commission has the power to look into the matters which deprive a woman of her rights and implementation of laws in all such Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 matters which have been defined under sub clause (f) of sub clause (1) of Section 10 of Bihar State Women Act, 1999, hence, the order passed by the Commission was held to be without jurisdiction

and was set aside. Thereafter, the application under Section 12(1) of the Act was filed by the O.P. No. 2 before the learned CJM, Begusarai on 05.07.2012.

The petitioner being opposite party appeared in the case and filed show cause on 01.10.2012 stating therein that the application is not maintainable, since the same has been filed in order to grab the joint family property, as the father of the petitioner Late Sharda Pd. Singh was a prominent Mukhtar, practicing at Civil Court, Begusarai. Initially he used to reside in a rental house along with his two children i.e., the petitioner and Arvind Pd. Singh, whereas the husband of OP No. 2 Nalini Ranjan Pd Singh used to reside at his native village at Manjhaul for looking after the agriculture and farming of the joint family. The property in question was purchased in 1960 from the joint family income, while the husband of OP No. 2 was deputed and authorized to get the sale deed registered with regard to 3 kathas of land, who got the same registered in the name of OP No. 2, instead of registering it in the name of his father late Sharda Pd. Singh. The family being joint, no objection was raised, since the husband of O.P. No. 2 was the eldest son of late Sharda Pd. Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 Singh. The father of the petitioner got the house constructed over the said land in 1961 and started residing in the newly constructed house alongwith the petitioner, whereas the OP No.2 and her husband used to reside at the native village at Manjhaul from where their children got their education and their marriages were solemnized. OP No.2 never lived at Begusarai nor her children ever studied at Begusarai. The petitioner's telephone connection, voter card, voter list of the family, ration card and electric bills of the petitioner incorporate the address of the property in question, which suggests that the petitioner was actually in possession of property in question. The further case of the petitioner is that by virtue of family arrangements the agricultural land and the house situated at native village at Manjhaul had been allotted to the husband of OP No.2 and in lieu thereof, only vacant land was given to the petitioner and his younger brother Arvind. When OP No.2 failed to get the petitioner evicted through a proceeding initiated before Bihar State Women Commission, then in the garb of the domestic violence, an application was filed under the Act for taking possession of the premises in question.

The learned Judicial Magistrate, Begusarai, after hearing the parties and considering the evidence, came to the conclusion that the claimant has not mentioned any specific date, manner or overt act of domestic violence nor the act of domestic violence has been proved. Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 The application is more in the nature of claiming right in property and the whole dispute, prima facie, appears to be a property dispute between the parties which the court is not competent to decide under the Act. Accordingly, the learned Judicial Magistrate Ist Class, Begusarai vide order 16.04.2013 dismissed the application of the petitioner, being Complaint Case No. 12P of 2012 filed under Section 12 of the Act.

OP No.2 preferred Cr. Appeal No. 46 of 2013 against the order dated 16.04.2013 passed by the learned JM, 1st Class, Begusarai on the ground that there is no dispute that the appellant/OP No.2 was in domestic relationship with the respondent-petitioner and that she was subjected to domestic violence by him. The learned Sessions judge, Begusarai vide judgment dated 09.04.2014 allowed the appeal while coming to the conclusion that appellant/ OP No.2 succeeded in proving her case under the provision of the Act and therefore, she

is entitled to protection order under the Act. Accordingly, the order of learned Magistrate dated 16.04.2013 was set aside. The appellant OP No.2 was allowed to live in the house in question directing the respondent/ petitioner to provide right of residence to the appellant and to remove himself from the shared household. Hence, the present revision against the appellate judgment.

It is submitted by learned Senior Counsel for the petitioner that Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 O.P. No. 2 got initiated the present proceeding by filing an application under

Section 12 of the Act, only after being unsuccessful in getting the possession of the property in question, through a proceeding initiated before the Women Commission, since the order passed by the Women Commission in favour of the O.P. No. 2, was set aside by this Court in exercise of writ jurisdiction. There is nothing on record to suggest that O.P. No. 2 ever resided in the house in question. The property was purchased by the joint family income and since the husband of O.P. No. 2 was the eldest son he got the sale deed registered in the name of O.P. No.2. The telephone connection, voter I. card, voter list of the family, ration card, electric bill and government and public correspondences, incorporates the petitioner's address at the property in question. There is nothing on record to suggest that the O.P. No. 2 ever resided in the alleged house with the petitioner or had been in domestic relation with the petitioner. Hence, the learned Magistrate rightly held that O.P. No. 2 failed to prove that she had been in domestic relation in the shared household and that the petitioner had in any manner committed domestic violence.

It is submitted by learned counsel for the O.P. No. 2 that the petitioner and O.P. No. 2 had been in domestic relationship which gets proved from the fact that the petitioner is the brother-in-law Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 (Devar) of O.P. No. 2. The petitioner used to reside in one of the rooms of the alleged house with O.P. No. 2 and the same has also been stated by the two own brothers of the petitioner namely, Arvind and Nalini Ranjan, (the husband of O.P. No. 2). They have also suggested about the physical mental torture and economic loss caused to O.P. No. 2. It is not in dispute that in the sale deed the O.P. No. 2 has been described as purchaser and in the Municipal right of records her name is recorded. More over, she has been paying rent to the municipal corporation till date. The report of the Protection Officer also suggests that the house in question is recorded in the name of O.P. No. 2 and the Protection Officer while recording the statement of the petitioner has recorded that the petitioner is not willing to allow the informant to reside in the said house. Hence, the District and Sessions Judge has rightly held that O.P. No. 2 was in domestic relationship with the petitioner, who inflicted domestic violence upon O.P. No. 2.

From the records, it appears that I.A. No. 1029 of 2014 was filed with a prayer for staying of the operation of the order dated 9.4.2014 passed by the learned District and Sessions Judge in Cr. Appeal No. 46 of 2013. The said I.A. was filed on 7.5.2014 but on behalf of O.P. No. 2 an affidavit was filed on 12.5.2014 to the effect that the learned Judicial Magistrate Ist Class, Begusarai, in pursuance Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 to the Appellate order, intimated the Protection Officer, Mahila Help Line, Begusarai and with a copy of the same to the Superintendent of Police and the District Magistrate,

Begusarai for complying the directions of the Appellate Court passed in Cr. Appeal No. 46 of 2013 and to submit compliance report to the court. Consequently, the S.D.O. Begusarai, Circle Officer Begusarai, Inspector Sadar Begusarai and Officer Incharge of Mahila Police Station, Begusarai went to the house of the petitioner with a request to vacate the premises. Consequently, the petitioner gave in writing on 18.4.2014 to the aforesaid authorities, with signature of other family members, that in pursuance to the order dated 9.4.2014 passed in Cr. Appeal No. 46 of 2013 he will vacate the house in question by 6 P.M. on 19.4.2014 and allow the O.P. No. 2 and her family to reside in the said house. The petitioner vacated the house and consequently, O.P. No. 2 informed the learned court below that the house has been vacated by the petitioner voluntarily and she is peacefully living in the said house. The Protection Officer, Begusarai, also submitted a report vide Memo no. 123 dated 2.5.2014 before the learned Judicial Magistrate, Begusarai that the petitioner voluntarily vacated the house on 19.4.2014 and the O.P. No. 2 is residing in the house peacefully. O.P. No. 2 filed an application before the Begusarai Municipal Commissioner for a permission to demolish the house Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 since it is in dilapidated condition. An application was also filed by O.P. No. 2 before the Executive Engineer, Electric Supply Officer for disconnecting the electric connection since the house required to be demolished.

It appears from the order dated 14.5.2014 of a co- ordinate bench of this Court that in view of the fact that the order passed by the appellate court has taken its effect, I.A. No. 1029 of 2014 was not pressed nor an interim order was passed. The order dated 14.5.2014 reads as follows:

A counter affidavit has been filed. Let it be kept on record.

Mr. Akhileshwar Prasad Singh learned Senior counsel has submitted that an incorrect statement has been made in the counter affidavit regarding non service of copy of the petition when the same has been admittedly served on the counsel for the opposite parties.

It is not in dispute that the order impugned has taken its effect and the matter is required to be considered on merits.

Call for the Lower Court Records in connection with Complaint Case No. 12P of 2012 from the Court of Judicial Magistrate, 1st Class, Begusarai together with the records of Cr. Appeal No. 46 of 2013 and put up immediately thereafter under the heading For Admission-I'. Considering the rival submissions of the parties, for the Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 purpose of clarity, it would be relevant to examine the Statement of Objects and Reasons of the Protection of Women from Domestic Violence Act, 2005. The first three paragraphs of the Statement of Objects and Reasons, under which Bill No. 116 of 2005 was placed before the Parliament for passing the Act, are extracted, (Published in the Gazette of India Extra Ordinary Part-II Seriatim 2 page 22 dated 22nd August, 2005), which are as under:-

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women(CEDAW) in its General Recommendation No.

XII(1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a women is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 Keeping these objects and reasons in mind and to provide for more effective protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind, occurring within the family and for matters connected therewith or incidental thereto, the Bill was presented before the Parliament, which has become an Act after passing of the same by the Parliament. Thus, one cannot loose sight of the fact that the Act has been passed keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Thus, basically the Act has been passed to provide the civil remedy against domestic violence to women.

For claiming the remedies under Sections 17 to 22 of the Act, the application has to be filed under Section 12 incorporated under Chapter IV of the Act. The application under Section 12 of the Act can be filed by an aggrieved person. The aggrieved person is defined under Section 2(a) of the Act which reads as follows:

2(a) aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent; Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 The above definition suggests that any woman who is, or has been, in a domestic relationship with the respondent, alleges to have been subjected by the respondent to any act of domestic violence. To understand the actual purport or the meaning of the aggrieved person, the meaning of domestic relationship' has to be understood. The word domestic relationship' has been defined under Section 2(f) of the Act which reads as follows:

2(f) domestic relationship 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; Meaning thereby, domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, being in relation by way of consanguinity, marriage, or through a relationship in the nature of marriage, adoption or as a family member living together as a joint family. To understand the meaning of domestic relationship, the meaning of shared

household' has to be understood which has been defined under Section 2(s) of the Act which reads as follows:

2(s) shared household means a household Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. Meaning thereby, a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent which includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

The word respondent' has also been defined under Section Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 2(q) of the Act which reads as follows:

2(q) respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act:

Provided that the aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner; Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act, provided that the aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner.

The term domestic violence' has been defined under Section 3 of the Act which reads as follows:

3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limp or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 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.

Explanation I- For the purposes of this section,-

(i) physical abuse means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) verbal and emotional abuse includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) economic abuse includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence under this section, the overall facts and circumstances of the case shall be taken into consideration. The definition of domestic violence' suggests that it includes any act or conduct of the respondent, which causes harm, injury or endangers the health, safety, life, limb or to the wellbeing, whether mental or

physical, of the aggrieved person, or even if the act or conduct of the respondent tends to do so and the definition further stipulates that such act or conduct includes causing physical, sexual, verbal, emotional or economic abuse. The definition also brings within its ambit, any conduct which harasses, harms, injures or endangers the aggrieved person, in order to coerce her or any other Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 person related to her to meet any unlawful demand for any dowry or other property or valuable security. Even the act of threatening by any such conduct detailed above also gets covered by the definition of domestic violence.

In the present case, it is not in dispute that the petitioner and the husband of O.P. No. 2 are own brothers. It is also undisputed that the land on which the house in question is situated was purchased in the name of O.P. No. 2. The O.P. No. 2 is paying rent to the municipal corporation. The two brothers of the petitioner, namely, the husband of O.P. No. 2- Nalini Ranjan Singh and Arvind Singh in their respective statements have supported the fact that the O.P. No. 2 was inflicted with mental and physical torture and O.P. No. 2 was residing in the major portion of the house in question whereas the petitioner was also occupying a room in the aforesaid shared household. The Protection Officer's report dated 30.8.2012 also suggests that even the petitioner admitted that the land was purchased in the name of O.P. No. 2. The petitioner made objection with regard to residing of O.P. No. 2 in the said house and no document was produced with regard to partition, as the petitioner claims the said household being allocated to his share. Hence, in view of the own admission of the petitioner before the Protection Officer, the act of the petitioner comes within the ambit of domestic Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 violence as defined under Section 3, Explanation 1(iv)(c) of the Act, which includes the act of prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Hence, if the O.P. No. 2 was subjected to an act of domestic violence, then O.P. No. 2 definitely comes within the purview of aggrieved person', which also gets substantiated in view of the fact that the two brothers of the petitioner, as well as the O.P. No. 2 have stated that the petitioner and O.P. No. 2 lived together in the said shared household and petitioner and O.P. No. 2 are members of joint family. Hence, even as per own admission of the petitioner, there is no doubt that the O.P. No. 2 had been in domestic relationship with the petitioner. Hence, if the petitioner had been in domestic relationship with O.P. No. 2 then he definitely comes within the purview of respondent' as defined under Section 2(q) of the Act. The specific case of the petitioner is that the house in question was purchased by joint family income. Even such admission of the petitioner, that the house in question was purchased by joint family income, also helps in reaching to the conclusion that the said house comes within the purview of shared household'.

At this stage, the different reliefs and rights of an Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 aggrieved person/woman contemplated under the Act, requires to be examined. The Act envisages civil relief/reliefs to the aggrieved person on an application being filed under Section 12 of the Act. The Magistrate, on an application filed under Section 12 of the Act, can grant one or more reliefs under Sections 17 to 22 of the Act which are:

Right to reside in shared house hold under Section 17, Protection Order under Section 18, Residence Order under Section 19, Order granting monetary relief Order under Section 20, Interim Custody Order under Section 21 and Compensation Order under Section 22 of the Act.

Rule 6(5) of The Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as Rules) envisages the processing of application under Section 12 of the Act in the same manner as laid down under Section 125 of the Code of Criminal Procedure, meaning thereby an application under Section 12 of the Act has to be dealt with as a summary proceeding. Rule 6(5) of the Rules reads as follows:

6. Applications to the Magistrate.-- (1)....(2)..... (3)..... (4).....

(5) The applications under Section 12 shall be dealt with and the orders enforced in the same manner laid down Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974). The above discussion clarifies that immediate civil reliefs are being granted to the victim under Code of Criminal Procedure framework as Section 28 of the Act prescribes that all proceedings under Sections 12,18,19,20,21,22 and 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure but Sub-Section (2) of Section 28 of the Act provides that nothing in Sub-Section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under sub-Section (2) of Section 23, meaning thereby that the application under Section 12 of the Act has to be dealt with like a summary proceeding, for providing civil relief to the aggrieved person/woman and for the same, wide discretion has been provided to the Magistrate under Section 28(2) of the Act by allowing the Court to lay down its own procedure for disposal of application under Section 12 of the Act.

In view of this Court, the provision of the Act cannot be resorted to for redressal of purely a civil dispute, like, deciding title, possession or adverse possession, factum of partition or the question of stridhan etc. which can be decided by resorting to a civil proceeding, before a court of competent jurisdiction. There is no Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 doubt that O.P. No. 2 filed applications before the Women Commission on 27.8.2009 and 11.4.2011 with a prayer for recovery of possession of the house in question and consequently the Women Commission vide its order dated 22.6.2011 passed in Case No. 1166 of 2009 directed the petitioner to vacate the house belonging to O.P. No. 2, but the said order was challenged in C.W.J.C. No. 12694 of 2011, when a co-ordinate bench of this Court vide order dated 28.3.2012 set aside the order of the Women Commission and held that the order of the Women Commission was without jurisdiction as the Commission has the power to look only into such matters which deprive a woman of her rights and for ensuring the implementation of laws in all such matters which have been defined under Sub-clause (f) of Sub-Section (1) of Section 10 of the Bihar Women's Commission Act, 1999. Thereafter, O.P. No. 2 filed application by way of complaint under Section 12 of the Act before the learned Judicial Magistrate, Begusarai.

The Act does not debar a person, who has previously claimed title or possession against some one with regard to some property, from filing an application under Section 12 of the

Act. For maintaining an application under Section 12 of the Act, the only pre-condition is that the person should come within the ambit of definition of aggrieved person', it should be proved that she had been in domestic relation Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 with the person concerned, the act of the respondent comes within the definition of domestic violence as incorporated under Section 3 of the Act and the house in question should come within the ambit of shared household.

The court while dealing with an application under Section 12 of the Act has to keep in mind that it is a summary proceeding and the court can only grant one or more reliefs as incorporated under Sections 17 to 22 of the Act and those reliefs can be altered under the changed circumstances as incorporated under Section 25 of the Act which reads as follows:

"25.Duration and alteration of orders.--(1) A protection order made under Section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate. In the present case, in view of the claim of O.P. No. 2 as well as the two own brothers of the petitioner and even the admission of the petitioner himself, it is evident that O.P. No. 2 had been in domestic relationship with the petitioner and the act of the petitioner, Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 in view of the admission of the respective parties as well as the report of the Protection Officer, comes within the definition of domestic violence. Hence, the learned Magistrate erred in rejecting the application of O.P. No. 2 by holding that the O.P. No. 2 has not mentioned any specific date, manner or any overt act of domestic violence, particularly when the proceedings are required to be dealt with, in a summary manner. More over, the learned Magistrate also erred in holding that in the absence of any overt act of domestic violence being proved, the relief as claimed, cannot be granted. In view of this court, the specific date, manner and specific overt act need not be proved for constituting an act of domestic violence. The Magistrate has failed to appreciate that the reliefs provided under Sections 17 to 22 of the Act, are not the reliefs with respect to a criminal act. They are civil nature of reliefs. For constituting an act of domestic violence, specific overt act has not to be proved nor the date or manner of the act has to be proved. What has to be proved, is, that the aggrieved person was or had been in domestic relationship with the respondent and any harm or injury or danger to life or well being whether mental or physical was done to the aggrieved person or tends to be done and includes causing physical, sexual, verbal, emotional or economic abuse or has the effect of threatening the aggrieved person or any person related to her by any of the above Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 mentioned conduct. Mental torture may not be inflicted with specific overt act. Depriving O.P. no. 2 to reside in the joint family house in question, itself amounts to an act of domestic violence.

The Courts, under the Act can give relief with regard to residence in shared household, as stipulated under Section 17 of the Act, which reads as follows:

"17. Right to reside in a shared household.- (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. The relief under Section 17 of the Act can be passed in favour of the victim or woman, who had been in domestic relationship with respondent and shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Section 17 further stipulates that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent, except in accordance with the Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 procedure established by law. The two own brothers of the petitioner have stated that the O.P. No. 2 was evicted from the shared household. The report of the Protection Officer reflects that the petitioner stated before him that he will not allow O.P. No. 2 to reside in the house.

Section 19 of the Act stipulates the eventualities and the nature of various kinds of residence orders which can be passed. Section 19 reads as follows:

"19. Residence order- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required:

Provided that no order under clause (b) shall be passed against any person who is a women.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to. Section 19(1)(a) clearly stipulates that the respondent can be restrained from dispossession or disturbing the possession of aggrieved person from the shared household, whether or not the aggrieved person has any legal interest in the shared household.

Section 18 of the Act stipulates the nature of protection and prohibition order which may be passed against the respondent and in favour of aggrieved person which reads as under:

"18. Protection orders.--The Magistrate may, after giving the aggrieved person and the respondent an Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from---

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence

(g) committing any other act as specified in the protection order. It appears that none of such protection orders have been passed Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 by the learned Sessions Judge. The learned Sessions Judge has directed the petitioner to allow O.P. No. 2 to live in her house and provide her right to residence' and to remove

himself from the shared household. This court is of the view that while dealing with the application under Section 12 of the Act, the Courts are not supposed to decide the title and possession. The operative portion of the order of learned Sessions judge reads as -

The entire relevant documents shows that the property belongs to the appellant and the documents are sufficient to establish that the house in question exclusively belongs to the appellant and she was living with the respondent in the same house and the respondent has domestic relation with her and he has physically and mentally tortured her and he has debarred her from utilizing her own property by ousting her from house and therefore, all the acts of the respondent come in the purview of document violence. Therefore, from the fact and circumstances mentioned above, I find that the court below should have passed protection order U/s 19 of the D.V. Act. Accordingly, the appeal is allowed and the order passed by the learned trial court dated 16.4.2013 is set aside with modification that the appellant has succeeded in proving her case under the provision of D.V. Act and therefore, she is entitled for protection Order 18 and right of residence U/s 18 of D.V. Act and therefore, the appellant is allowed to live in her house aforesaid directing the respondent to provide right of residence to the appellant and to remove himself from Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 the shared household. The above findings suggest that the learned Sessions judge has held that the house in question is of O.P. No. 2. Hence, any observation with regard to title or possession either in the order and judgment of learned courts below or of this Court shall not be treated as finding of the courts with regard to title or possession of either party concerning to shared household or any property. Though the petitioner has vacated the house in question and the same has been brought on record through affidavit filed by O.P. No. 2, but this court is of the view that the learned Sessions Judge ought not to have directed the petitioner to remove himself from the share household, since, by doing so the learned Sessions Judge has allowed the relief of O.P. No. 2 claiming possession of the entire house in question. Under the provisions of the Act, the Court is not empowered to decide the possession or title of the shared household or indirectly allow the relief of delivery of possession.

No doubt, under Section 19(1)(b), the Magistrate can direct the respondent to remove himself from shared household or under Section 19(8), the Magistrate may direct the respondent to return the possession of stridhan to the aggrieved person, or any other property or valuable security to which she is entitled to. But in view of this Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 Court, in the present case, the O.P. No. 2 was only entitled to reside in the shared household, since it is her own admission that the petitioner was residing in one portion of the shared household. So far as delivery of possession of the shared household in question is concerned, the same cannot be given to O.P. No. 2 in exercise of jurisdiction under Section 19(8) of the Act, since it is disputed as to whether the land on which the shared household is situated, was purchased from stridhan of O.P. No. 2 or from the joint family fund and the said dispute can only be resolved in a proper civil proceeding and not under Section 19 of the Act.

Hence, the order of learned Sessions Judge to the extent of directing petitioner to remove himself from the shared household amounts to declaring and giving the possession of entire premises to the O.P. No. 2. Though the petitioner has vacated the house in question, but

for doing complete justice, the order, to the extent of directing the petitioner to remove himself from the shared household cannot be held to be justified. Hence, the order of learned Sessions Judge only to the extent of petitioner being directed to remove himself from the said household, is set aside.

It is once again clarified that any observation with regard to the title and possession either by learned courts below or by this Court will have no effect while considering the question of title or Patna High Court CR. REV. No.388 of 2014 dt 15-10-2015 possession by any court in any proceeding between the parties.

Accordingly, this application is partly allowed to the extent indicated above. The I.A. No. 1029 of 2014 also stands disposed of.

(Dinesh Kumar Singh, J)

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RAJESH KUMAR CHAUDHARI
VERSUS
STATE OF U.P. & ANOTHER

Bench : Hon'ble Mr. Justice OM PRAKASH-VII

HIGH COURT OF JUDICATURE AT ALLAHABAD

Decided on 19 December, 2016

CRIMINAL REVISION No. - 4076 of 2016

Rajesh Kumar Chaudhari ... Revisionist
Versus
State Of U.P. & Another ... Opposite Party

Counsel for Revisionist :- Ashok Nath Tripathi,Rakesh Nath Tripathi

Counsel for Opposite Party :- G.A.

HON'BLE OM PRAKASH-VII, J.

Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

Order dated 24.10.2016 passed by Additional Sessions Judge / Special Judge (Anti Corruption) First, Varanasi in Criminal Appeal No.111 of 2016 (Rajesh Kumar Chaudhari Versus State of U.P. & another) and Order dated 10.8.2016 passed by Additional Chief Judicial Magistrate, Court No.8, Varanasi in Case No.2558 of 2012 (Sarita Versus Rajesh Chaudhari & others) under Sections 12/16/19 of Protection of Women from Domestic Violence Act, 2005 are under challenge in this revision, by which Objection of the revisionist in regard to limitation has been rejected by the courts below.

Submission of the learned counsel for the revisionist is that objection raised at initial stage on behalf of the revisionist before the Magistrate concerned was illegally rejected. Cognizance in the proceedings under section 12 of the Protection of Women from Domestic Violence Act, 2005 (In Short the 'Act') could only be taken within a year, as has been provided under section 468 Cr.P.C. Order passed on the application moved by the revisionist before the Magistrate concerned was also challenged before the concerned Sessions Judge in the Appeal, which was also dismissed on insufficient ground. At this juncture, learned counsel for the revisionist has referred to the law laid down by the Hon'ble Supreme Court in the following cases :

1. Inderjit Singh Grewal Versus State of Punjab and Another, (2011) 12 Supreme Court Cases 588

2. Japani Sahoo Versus Chandra Sekhar Mohanty, (2007) 7 Supreme Court Cases 394

3. Sarah Mathew Versus Institute of Cardio Vascular Diseases, (2014) 2 Supreme Court Cases 62 In rebuttal, learned A.G.A. opposed the prayer made on behalf of the revisionist and submitted that objection raised by the revisionist ?respondent? was legally rejected, as the provisions of section 468 Cr.P.C. would be applicable when a breach is committed in complying the protection order passed on the application under section 12 of the Act, as has been defined under sections 31 & 32 of the Act. Thus, there is no illegality or impropriety in the orders passed by the courts below.

I have carefully gone through the entire record including the case laws relied upon by the learned counsel for the revisionist.

In the instant case, as is clear from the record, application under section 12 of the Act is still pending. Objection was raised on behalf of the revisionist ?respondent? on the ground that ?aggrieved party? could only file the complaint upto the month of February, 2006. Thus, the complaint filed on 20.3.2007 was beyond the limitation period and on that complaint, cognizance could not be taken in view of the provisions under section 468 Cr.P.C. The learned Magistrate concerned, while passing the order on the objection raised by the revisionist ?respondent? was of the view that provisions of section 468 Cr.P.C. come into force when any breach is caused against the order passed under section 12 of the Act and that is defined as offence under section 31 of the Act. Provision of cognizance is defined under section 32 of the Act. The appellate court was also of the same view.

Hon'ble Supreme Court in the case of Inderjit Singh Grewal (supra), considering the law laid down in the cases of Japani Sahoo (supra) and Sarah Mathew (supra), in paragraphs no.32 & 33 has held as under.

?32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Section 28 and 32 of the Act 2005 read with Rule 15 (6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida & Ors., (2011) 6 SCC 508.

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.?

Learned counsel appearing for the revisionist, emphasizing on the law laid down in the case of Inderjit Singh Grewal (supra), has argued that period for taking cognizance in the proceedings under section 12 of the Act is only one year.

Hon'ble Supreme Court in the case of Saraswathy Versus Babu, (2014) 3 Supreme Court Cases 712 has held as under in paragraph no.24 regarding the continuing nature of the violence committed under the Act.

?24. We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the DVA Act, 2005, which defines ?domestic violence? in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the trial court and the appellate court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection order and residence order under Section 18 and 19 of the DVA Act, 2005 along with the maintenance as allowed by the trial court under Section 20 (1) (d) of the DVA Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant-wife.?

Similar situation has arisen before the Hon'ble Supreme Court in the case of Krishna Bhattacharjee Versus Sarathi Choudhury & Another, (2016) 2 Supreme Court Cases 705. In this case, Hon'ble Supreme Court, while discussing the law laid down in the case of Inderjit Singh Grewal (supra), has held in paragraph 32 as under.

?32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of ?aggrieved person? clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. ?Economic abuse? as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the

custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of ?continuing offence? gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.?

Offence committed under the Act is defined under section 31 of the Act, which is as under.

31. Penalty for breach of protection order by respondent.?

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

Provisions of cognizance is under section 32 of the Act, which is as under.

32. Cognizance and proof.?

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

If the above quoted provisions of the Act are analyzed, it is clear that offence would be deemed to be committed when the revisionist - ?respondent? commits breach in complying the orders passed in the proceedings of D.V. Act and in that case provision of section 468 Cr.P.C. would be applicable. As regards the applicability of provisions of section 468 Cr.P.C. in the proceedings under section 12 of the Act is concerned, Hon'ble Supreme Court in Krishna Bhattacharjee (supra) case has clearly held in paragraph 32, as quoted above, that provisions of section 12 of the Act provide procedure for obtaining the orders of reliefs and the provisions of section 468 Cr.P.C. apply to the cases under the Act, 2005 as envisaged under sections 28 and 32 of the said Act.

Thus, in view of the law laid down by the Hon'ble Supreme Court in the case of Krishna Bhattacharjee (supra) and also in Saraswathy (supra) case, this Court is of the view that observation recorded by the courts below in the impugned orders cannot

be termed to be illegal. Revisionist - "respondent" does not get any help with the law laid down in the case of Indrajeet Singh Grewal (supra) because in that case divorce decree between the parties was subsisting on the day of filing of application under section 12 of the D.V. Act. Thus, Hon'ble Supreme Court rendered the decision in that perspective. Provision of section 468 Cr.P.C. comes into picture only when any breach is committed by the ?respondent? of orders passed under the proceedings of section 12 of the Act.

In view of the aforesaid observations and on a careful perusal of the material brought on record, I do not find any illegality or infirmity in the orders impugned passed by the courts below. No ground is made out to interfere in the revision. The revision, being devoid of merits, is not liable to be admitted and allowed.

The revision lacks merit and is accordingly dismissed at this stage itself. Order Date:- 19.12.2016 ss

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VARUN MALIK VERSUS PAYAL MALIK

Bench : Hon'ble Mr. Justice SHIV NARAYAN DHINGRA

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on 29 July, 2010

Varun Malik
versus
Payal Malik

+ Crl. Rev. P. No. 253/2010
Date of Reserve: 6th July, 2010
Date of Order: 29th July, 2010

Harbans Lal Malik ... Petitioner Through: Mr. Dharam Raj, Advocate
Versus Payal Malik ... Respondents

Through: Mr. R.Jain, Mr. Deepak Aggarwal & Mr. D.Jain, Advocates
+ Crl. Rev. P. No. 252/2010
% 29.07.2010
Varun Malik ... Petitioner
Through: Mr. Dharam Raj, Advocate Versus
Payal Malik ... Respondents
Through: Mr. R.Jain, Mr. Deepak Aggarwal & Mr. D.Jain, Advocates
+ Crl. Rev. P. No. 338/2010
% 29.07.2010
Nagesh Malik ... Petitioner
Through: Mr. Dharam Raj, Advocate Versus
Payal Malik ... Respondents
Through: Mr. R.Jain, Mr. Deepak Aggarwal & Mr. D.Jain, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.

2. To be referred to the reporter or not? Yes.

3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

1. These petitions arise out of order passed by the learned Additional Sessions Judge on 7th May, 2010 while disposing of two appeals against the order dated 27th July, 2009 passed by the learned MM.

2. The undisputed facts are that Ms. Payal Malik used to live with her parents before marriage at Hissar. Her marriage took place with Mr. Nagesh Malik whose parents used to live at Panipat. Marriage of the parties was solemnized at Panipat on 30th

August, 2001. Nagesh Malik was already working in USA and after marriage both of them went to USA on 20th September, 2001 where they settled their matrimonial home and lived together. On 24th October, 2002 a female child was born to the couple at USA, who was named as Vanishka. The parties continued living together in USA till 2008. It seems deep differences arose between the parties and they could not pull on together. There are allegations and counter allegations made by wife and husband which are not relevant for the purpose of deciding this petition. However, husband alleged that on 6th August, 2008 due to these differences, parties executed a post-nuptial agreement and decided to obtain divorce from each other, sticking to the agreement. Wife refutes having signed the agreement voluntarily and alleges that she was turned out from USA by her husband on 22nd August, 2008. Whereas the husbands contention is that she of her own left USA without joining the husband for obtaining divorce through a Court in USA. The husband filed a divorce petition before Superior Court of New Jersey Chancery Division Family Court USA on 27th August, 2008. The notice of divorce suit was duly served on her. The Court of New Jersey allowed the divorce petition and a decree of divorce was granted on 4th December, 2008.

3. On 13th January, 2009 wife filed a complaint before CAW Cell Hissar against husband and in-laws. Ms. Sushila, Inspector of CAW Cell Hissar, vide her report dated 20th January, 2009, observed that the allegations in the complaint were not true and it was useless to keep the complaint pending further. Thereafter, wife filed a complaint in the Court of MM at Delhi making her husband (Nagesh Malik), father-in-law (Harbans Lal Malik), mother-in-law (Neelam Malik) and brother-in-law (Varun Malik) as parties under Section 12 of Protection of Women from Domestic Violence Act, 2005 [in short - Domestic Violence Act] with a prayer that Court should pass a protection order under Section 18, residence order under Section 19, monetary relief order under Section 20, compensation order under Section 22 and interim orders under Section 23 of the Act. She made allegations of mal-treatment at the hands of respondents from day one of the marriage till she left USA and came to India. She stated, after coming back from USA she went to her in-laws house at Panipat but found the house locked as her parents-in-law had gone to USA. She also stated that her husband had sent a complaint to SP Panipat leveling certain scandalous allegations against her. She graduated from Delhi University in 1998 and had done interior designing course from South Delhi Polytechnic. She alleged that her in-laws had three houses and an industrial unit in Panipat. They had properties in Delhi as well and respondent no.1 (her husband) had share in properties of her in- laws. She submitted that her complaint at CAW Cell Hissar could not be pursued by her as her in-laws had tried to mislead Haryana police and also because of a tragedy in her family. She left her parents house and came to Delhi to pursue her career prospects. She was presently residing at Malviya Nagar, Delhi. Till the time she was not given back her matrimonial home (at Panipat), she would live in Delhi, so the Court of MM at Delhi had jurisdiction. She prayed that custody of child Vanshika should be given to her. She should be given shares in properties at Panipat and Delhi as well as a house in New Jersey, USA. She should be given Rs.20,000/- per month for her maintenance and education as she intended to pursue further study

and Court should direct for return of her dowry articles. Along with main application under the Domestic Violence Act, applications for interim reliefs were made. She in the application under Section 23 of the Act prayed for a residence or in lieu thereof a sum of Rs.20,000/- per month and Rs.50,000/- as onetime payment to meet education expenses, a car or Rs.8,000/- per month in lieu of the car and Rs.20,000/- per month for her day-to-day expenses and Rs.50,000/- as onetime payment to repay her debts.

4. The learned MM, by her order dated 27th July, 2009 directed that an amount of Rs.50,000/- per month be paid to wife as interim maintenance jointly or severally by respondents no. 1,2 & 4. She dropped respondent no.3 from the array of respondents on the ground that petition against a female respondent was not maintainable.

5. It was pleaded before the learned MM by the petitioner that there was a decree of divorce granted by a Competent Court of New Jersey, Chancery Division after following due procedure as laid down in USA. After grant of divorce there was no domestic relationship of Ms. Payal Malik with any of the respondents. (It is noted in the order of MM that the decree of divorce passed by the Court of US was placed on record.) Reliance was also placed by the petitioner on post nuptial agreement as entered into between husband and wife. The learned trial Court did not think it proper to deal with the issue whether an application under Section 12 of Domestic Violence Act could be entertained at all in respect of a divorced wife and whether the decree of divorce granted by the foreign Court where the parties had lived together for more than seven years, had some value or not.

6. The trial Court after discussing the objects and aims of The Protection of Women Against Domestic Violence Act, 2005 and after reproducing a quote from novelist Joseph Conrad "being a woman is a terribly difficult task, since it consists principally in dealing with men" [as if men, though given birth by women, are ferocious animals and not human beings, but cannibals] passed an order for grant of maintenance.

7. In appeal before the learned Sessions Judge, an argument was pressed that the judgment given by New Jersey Court was conclusive evidence of status of the parties and in view of Section 14 of Code of Civil Procedure and Section 4 of The Indian Evidence Act, unless the judgment was set aside the trial Court should not have entertained the petition under Section 12 of The Protection of Women Against Domestic Violence Act. It was pleaded that only an application under Section 125 Cr.P.C. (which is applicable to divorced wife) could have been entertained by a Court, if moved. It was argued by wife that decree of divorce was obtained by fraud and was hit by Section 13 CPC and therefore could not stand in the way of entertaining an application under Section 12 of Domestic Violence Act.

8. The learned Sessions Judge while deciding appeal observed that the provisions of Domestic Violence Act are to be interpreted taking help of Section 125 Cr.P.C. and the explanation given under Section 125 Cr.P.C. of "Wife" is to be read in Domestic Violence Act also. He further observed that the Court has to take pragmatic approach and unless the dissolution of marriage was proved by evidence, the Court has not to act on the decree. He therefore dismissed the appeal filed by husband and other

respondents observing that there was no illegality in the order of learned trial Court in granting maintenance. He allowed an appeal filed by wife in respect of execution of the order of of MM and directed that Ministry of External Affairs be sent a request to execute the order dated 27th July, 2009 as per law.

9. The first issue arising in this case is whether an application under Section 12 of Domestic Violence Act made by the respondent could have been entertained against all the respondents (petitioners herein) as arrayed in her application and whether the Court without discussing the domestic and legal relationship of different respondents with the petitioner, could have passed an order against the petitioners making them jointly and severally liable to pay maintenance of Rs.50,000/-.

10. Under Section 12, an aggrieved person can file an application to Magistrate against the respondents. The respondent has been defined under Section 2 (q). The definition reads as under:

"respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

11. It is apparent that in order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under Section 2 (f) of the Act and is as under:

"domestic relationship" 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;

12. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and 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. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under Domestic Violence Act is filed and if this relationship is not alive on the date when complaint is filed, the domestic relationship cannot be said to be there. The first respondent made by the wife in her

complaint before the learned MM in this case was husband with whom the wife had lived under the same roof in a shared household till 22nd August, 2008 in USA. She had not lived for last 7 ½ years with respondent no.1 in India. Respondent No.4 is Varun Malik who is brother of the husband. Under no circumstances it can be said that brother of husband, who was a major and independent, living separately from this husband and wife, had any kind of domestic relationship or moral or legal responsibility/obligations towards his brothers wife. He had not lived in domestic relationship with Payal Malik at any point of time. Merely because a person is brother of the husband he cannot be arrayed as a respondent, nor does an MM gets authority over each and every relative of the husband, without going into the fact whether a domestic relationship or shared household was there between the aggrieved person and the respondent.

13. The other respondent made in this case is Harbans Lal, father of Nagesh Malik. Nagesh Malik was living in USA he came to India to solemnize his marriage with an appropriate person. After marriage was solemnized he left India and went to USA. He lived all along with his wife in USA, birth of the child had taken place in USA. In all such cases where boy lives abroad and is settled abroad but comes to India for marriage, it is known to the girl as well as to the parents of the girl that they are choosing a groom who is not living with his parents but settled abroad. His links with the parents are only as with any other relative. He is not dependent on parents may be parents, if poor, take financial help from him.

14. The girl and the parents of the girl knew it very well that they had selected a person for marriage with whom the girl was going to live abroad and the matrimonial home and the shared household was going to be outside India. This act of marrying a person settled abroad is a voluntary act of the girl. If she had not intended to enjoy the fat salary which boys working abroad get and the material facilities available abroad, she could have refused to marry him and settled for a boy having moderate salary within India. After having chosen a person living abroad, putting the responsibility, after failure of marriage, on the shoulders on his parents and making them criminals in the eyes of law because matrimonial ties between the two could not last for long, does not sound either legally correct or morally correct. How can the parents of a boy who is working abroad, living abroad, an adult, free to take his own decisions, be arrayed as criminals or respondents if the marriage between him and his wife failed due to any reason whatsoever after few years of marriage. If the sin committed by such parents of boy is that they facilitated the marriage, then this sin is equally committed by parents of the girl. If such marriage fails then parents of both bride and groom would have to share equal responsibility. The responsibility of parents of the groom cannot be more. Shelter of Indian culture and joint family cannot be taken to book only relatives of boy. A womans shared household in India in such cases is also her parents house where she lived before marriage and not her in-laws house where she did not live after marriage.

15. When the shared household of husband and wife had not been in India for the last 08 years at any point of time, it is strange that the learned MM did not even think it proper to discuss as to how the father or the brother of the boy could be made respondents

in proceedings of domestic violence, after husband and wife had not been able to pull on together. In the present case, Mr. Harbans Lal Malik petitioner could not be said to have shared household with the respondent since the respondent had not lived in his house as a family member, in a joint family of which Harbans Lal Malik was the head.

16. It is important to consider as to what "family" is and what "joint family" is. As per Blacks Law Dictionary (VI Edition) "family" means a collective body of persons who live in one house under one head or management. Dictionary states that the meaning of word "family" necessarily depends on field of law in which word is used, but this is the most common meaning. "Family" also means a group of blood relatives and all the relations who descend from a common ancestor or who spring from a common root. However, for the purpose of domestic violence act where the object is to protect a woman from domestic violence, "family" has to be defined as a collective body of persons who live in one house under one head or management. In Chambers Dictionary (1994-95) again the "family" is defined as all those who live in one house i.e. parents, children servants; parents and their children. In Shorter Oxford English Dictionary (1993 ed.) "family" is defined as a group of persons living in one household including parents and their children, boarders, servants and such a group is a organizational unit of society.

17. A Hindu Joint Family or Hindu Undivided Family (HUF) or a Joint Family is an extended family arrangement prevalent among Hindus of the Indian subcontinent, consisting of many generations living under the same roof. All the male members are blood relatives and all the women are either mothers, wives, unmarried daughters or widowed relatives, all bound by the common sapinda relationship. The joint family status being the result of birth, possession of joint cord that knits the members of the family together is not property but the relationship. The family is headed by a patriarch, usually the oldest male, who makes decisions on economic and social matters on behalf of the entire family. The patriarchs wife generally exerts control over the kitchen, child rearing and minor religious practices. All money goes to the common pool and all property is held jointly. The essential features of a joint family are:

Head of the family takes all decisions All members live under one roof Share the same kitchen Three generations living together (though often two or more brothers live together or father and son live together or all the descendants of male live together) Income and expenditure in a common pool - property held together.

A common place of worship All decisions are made by the male head of the family - patrilineal, patriarchal.

18. Thus, in order to constitute a family and domestic relationship it is necessary that the persons who constitute domestic relationship must be living together in the same house under one head. If they are living separate then they are not a family but they are relatives related by blood or consanguinity to each other. Where parents live separate from their son like any other relative, the family of son cannot include his parents. The parents can be included in the family of son only when they are dependent upon the son and/or are living along with the son in the same house. But when they are not dependent upon the son and they are living separate, the parents shall constitute

a separate family and son, his wife and children shall constitute a separate family. There can be no domestic relationship of the wife of son with the parents when the parents are not living along with the son and there can be no domestic relationship of a wife with the parents of her husband when son along with the wife is living abroad, maintaining a family there and children are born abroad. I, therefore consider that Harbans Lal Malik could not have been made as a respondent in a petition under Domestic Violence Act as he had no domestic relationship with aggrieved person even if this marriage between her and her husband was subsisting.

19. I, also consider that the definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denial of these rights do not amount to domestic violence. Domestic Violence is not perceived in this manner. The definition of "Domestic Violence" as given in Section 3 of The Protection of Women from Domestic Violence Act, 2005 and is under:

3. Definition of domestic violence .-

For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it -

(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.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

20. This definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce.

21. The next question which arises is whether the learned Court of MM could have ignored the decree granted by the Court of New Jersey, USA. Section 14 of CPC reads as under:

14. Presumption as to foreign judgments. - The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

22. It is evident from the reading of this provision that the Court has to presume, if a certified copy of foreign judgment is produced that such judgment was pronounced by a Court of competent jurisdiction unless the contrary appears on record or is proved. Obtaining of divorce by husband from New Jersey Court is not denied in this case. Prima facie New Jersey, USA Court had jurisdiction is evident from the fact that husband and wife lived together in New Jersey for 7 ½ years. The laws of New Jersey

provided that the jurisdiction in a matrimonial matter can be assumed by the Court if the parties have ordinarily lived there for one year. In the present case admittedly the parties lived there for 7 ½ years thus prima facie there was no issue whether the Court of New Jersey had jurisdiction or not.

23. Section 13 of CPC provides as under:

13. When foreign judgment not conclusive. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of 1[India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in 1[India].

24. It is evident that a foreign judgment has to be on the face of it considered to be final. The explanations as mentioned in Section 13 are to be proved by a person who alleges that the foreign judgment was not to be relied on and should not be considered. A foreign judgment can be set aside by a competent Court, only when the person aggrieved from foreign judgment asks for a declaration that the judgment should not be acted upon. So long as the foreign judgment is not set aside and the issue regarding foreign judgment is not adjudicated by a competent Court, the judgment cannot be ignored and a Court cannot brush aside a foreign judgment as a non- consequential. Section 13 & 14 of CPC provide how a foreign judgment is to be dealt with. A Court in India has to presume that the judgment delivered by a foreign Court where the parties had lived for 7 ½ years and given birth to a girl, is a judgment given by a competent court and if anyone wants that this judgment be disregarded, he has to prove the same before the Court. So long as he does not prove it, the judgment is considered as a valid judgment and has to be given effect to.

25. It was argued by the respondent Counsel that the respondent did not participate in proceedings before the Court of New Jersey, USA. Participating or not participating before the Court is not a ground for setting aside its judgment. The grounds for setting aside a foreign judgment are given in Section 13 CPC and this is not one of the grounds.

26. The question of jurisdiction was considered by the Court of New Jersey, USA that awarded decree of divorce and it is not shown by the Counsel for respondent how Court of New Jersey had no jurisdiction when the two parties lived there for 7 ½ years and gave birth to a US citizen within the jurisdiction of that Court. Learned Counsel for the respondent relied upon Y. Narasimha Rao v. Venkata Lakshmi (1991) 3 SCC

451 to press the point that a decree of divorce granted by a foreign Court should not be relied upon since the parties were married in India and they were governed by Hindu Marriage Act. A bare perusal of the judgment of New Jersey Court would show that the divorce was granted on the ground of cruelty which is one of the grounds available under Hindu Marriage Act.

27. In Y. Narasimha Raos case (supra), decree of divorce was obtained by husband from the Circuit Court of St. Louis Country Missouri, USA by creating a jurisdiction of that Court as the condition for invoking jurisdiction of that Court was 90 days residence. Supreme Court observed that the residence does not mean a "temporary residence" for the purpose of obtaining divorce but it must be "habitual residence "which is intended to be a permanent residence for future as well, since it was not the case, the decree was found to be null and void. It is not the position in this case. The parties had made New Jersey as their home for 7 ½ years thus the Court of New Jersey could not be said to have assumed jurisdiction only on the basis of temporary residence of husband. I also consider that issue of assuming jurisdiction on the basis of temporary residence may have no force today when statutory provisions in India allow assumption of jurisdiction on the basis of a temporary residence [Section 27(1)(a) of Protection of Women from Domestic Violence Act, 2005].

28. I am surprised that the Courts below did not give weight to the judgment of New Jersey where parties lived for 7 ½ years but assumed jurisdiction under Domestic Violence Act because of the pure temporary residence (as pleaded by her) of wife in Delhi who is otherwise resident of Hissar. The Court of ASJ wanted that the order of the Court of MM should be honoured by the US while the Court here would not honour a decree of Court of USA where the husband and wife lived for 7 ½ years.

29. I consider that the decree of divorce granted by the Court of New Jersey, USA where husband and wife lived together for 7 ½ years and gave birth to a child could not be ignored and it could not be said that domestic relationship of the wife continued with her husband in New Jersey or her in-laws living at Panipat.

30. The learned MM and learned ASJ committed jurisdictional error by assuming jurisdiction under Domestic Violence Act, in view of admitted fact that the wife had all along, before filing the petition under Domestic Violence Act, lived with her husband in USA. Her shared household had been in USA, her husband was still living in USA the child was born in USA. The courts below also committed grave error by making brother or father of the husband and father of the husband jointly responsible for payment of Rs.50,000/- to the wife. There was no justification for directing brother of the husband to pay this amount. Once a son grows and he starts earning, marries, makes his separate home, and sires children the burden of his wife cannot be put on the shoulders of his father or brother on an estrangement between husband and wife. This burden has to be borne by the husband alone and not by the parents or bothers or sister of the husband, unless and until the husband had been contributing to the joint family as a member of HUF and has a right of deriving benefits from the joint family. If the husband had not been contributing or deriving benefits from the joint family, had

not been member of the joint family and the parents had been treated like any other relative, how can the parents be burdened with the responsibility of his wife.

31. In view of my above discussion, order dated 27th July, 2009 passed by learned MM and order dated 7th May, 2010 passed by learned ASJ, directing payment of Rs.50,000/- jointly and severally, ignoring the decree of divorce and without devolving upon the domestic relationship are illegal and not tenable. The orders are set aside. No order as to costs.

SHIV NARAYAN DHINGRA, J.

July 29, 2010

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SAGAR SUDHAKAR SHENDGE
VERSUS
MRS. NAINA SAGAR SHENDGE & ORS

Bench: Hon'ble Mr. Justice R. S. DALVI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY CRIMINAL APPELLATE JURISDICTION

Decided on 4 April, 2013

CRIMINAL WRIT PETITION NO.236 OF 2013

Sagar Sudhakar Shendge ...Petitioner
Versus
Mrs. Naina Sagar Shendge & Ors. ...Respondents

Mr. E.B. Dixit, Adv. a/w. Mr. P.R. Yadav, Adv. for the Petitioner.

Ms. Flavia Agnes, Amicus Curiae.

Sushma Singh, Adv. for the Respondent No.1. Mrs. A.A. Mane, APP for the Respondent No.2.

MRS. ROSHAN DALVI, J.

Date of Reserving the Order : 22nd March, 2013 Date of Pronouncing the Order ig : 4 th April, 2013. P.C. :

1. The Petitioner is the husband against whom maintenance order has been passed U/s.20 of the Protection of Woman from Domestic Violence Act (DV Act). The Petitioner has challenged the order of maintenance in the Sessions Court in which the Petitioner has not obtained any stay of the order ordering maintenance U/s.20 of the DV Act. The husband breached the order of maintenance.

Consequently, wife applied for execution of the order of maintenance. Hence the wife filed an application for issue of warrant for recovery of the maintenance amount. Consequent, NBW has been issued. The Petitioner has challenged the order of issuing NBW.

2. In his application the learned Judge observed that an appeal was preferred, but no stay was granted and that the husband (petitioner herein) was given ample opportunity to deposit interim maintenance but he was only binding time. Hence learned Magistrate granted the application of the wife and issued the NBW. He also directed that if the Respondent paid off the arrears of maintenance which was Rs.56,000/- he will be released at the time of the execution of the NBW. The amount of maintenance payable under the same order is now much more.

3. Counsel on behalf of the Petitioner has contended that the learned Magistrate has no powers to issue NBW under the DV Act.

4. The learned Special Public Prosecutor (Spl PP) has drawn my attention to Rule 6 of the DV Rules which relates to applications U/s.12 of the DV Act.

Section 12 of the DV Act runs thus :

(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:

5. The wife in this case applied for reliefs under Sections 17 to 23 of the DV Act. The learned Magistrate granted order U/s.20. That is an order of maintenance. The relevant part of Rule 6 (5) runs thus :

6. Application to the Magistrate. -

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

6. Consequently under Rule 6(5) the order passed U/s.20 upon an application made U/s.12 would have to be enforced in the manner laid down in the Section 125 of the CrPC.

7. Further the Magistrate would have to follow the procedure U/s.28 (1) of the DV Act to which my attention has been drawn by the learned Spl PP. Section 28(1) of the DV Act runs thus :

28. Procedure. -

(1) Save as otherwise provided in this Act, all proceedings jsn 3 Cr W P No. 236_2013 under Sections 12,18,19,20,21,22 & 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

8. The provisions in the CrPC lay down that the Section 125 is to be r/w. along with Form 19 followed by Form 18.

The relevant part of Section 125 (3) runs thus :

125. Order for maintenance of wives, children and parents. -

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

9. Under sub section 3 upon failure to pay maintenance and committing breach of the order of maintenance the Magistrate will be entitled to issue an warrant. The warrant would be for levying the amount as a fine.

10. Counsel on behalf of the Petitioner drew my attention to Section 421 of the CrPC which deals with the warrant for levying of fine.

The relevant part of Section 421 runs thus:

421. Warrant for levy of fine. -

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may ---

(a) issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

11. It is argued on behalf of the Petitioner husband that in this case the Magistrate would follow u/s.421 (1) (a). He would issue a warrant for attachment and sale of the property of the husband. The form of issuing such a warrant is under Form 19 of the CrPC. The form is issued upon Police Officer to attach moveable property and sale up to the extent of the unpaid amount of maintenance.

12. If even after such warrant is issued for attachment and sale and the property is attached and sold but yet the maintenance amount remains unpaid, the Magistrate, under the latter part of Section 125(3) would sentence the husband for such amount upto for one month.

13. It is further argued on behalf of the Petitioner that the issue of that warrant would be as per Form 18 of the CrPC which is the warrant for imprisonment for failure to pay maintenance U/s.125 of the CrPC which is different from the form for NBW issued by the learned Magistrate.

14. It may be stated that the proof of sufficient means of the husband to maintain the wife would have already been seen in the order of maintenance. The inability to pay maintenance to her would also have been seen. The order would have been duly made for payment of maintenance to the wife and / or child for the specific amount. The first recital is in that behalf. The failure of the husband would seen upon non payment as also non execution of warrant of attachment and sale. The Magistrate would be entitled to pass an order adjudging the husband to undergo imprisonment in the jail for the period allowed U/s.125 (3) which is up to one month.

15. A reading of Section 125(3) shows that after execution of the warrant for levying an amount of maintenance due as levying a fine is executed the Magistrate may sentence the husband.

16. It is contended on behalf of the husband that the Magistrate has yet not sentenced the husband. There is no order to undergo imprisonment. Consequently, Form 18 which requires to show the order directing imprisonment cannot be made applicable before Form 19 which requires attachment and sale of his moveable property.

17. In this case the learned Magistrate has issued NBW against the husband. It is contended by counsel on behalf of the Petitioner husband that the learned Magistrate has not followed procedure under CrPC which is required to be followed U/s. 28 (1) of the DV Act. It is contended by the counsel on behalf of the husband that for application under Section 12 in which relief U/s.20 is granted, Section 125 (3) under Rule 6 of the DV Rules becomes applicable.

18. My attention has been drawn by counsel on behalf of the Petitioner husband to the Judgment of the learned Single Judge of the Kerela High Court in the case Shanavas, S/o. Abdulsalam Vs. Raseena, D/o. Shihabudeen and Anr., Cri M C No.4843 of 2010. In that an interim protection order passed U/s.23(1) of the DV Act was breached. The Court held that the penalty for the breach is provided only in Section 31 of the DV Act and the Court held that NBW cannot be issued for the breach of a protection order and arrest cannot be directed by issuing NBW before the Magistrate takes cognizance of the offence U/s.31(1) of the CrPC. That was also the case of failure to pay maintenance. It was held that the Magistrate could not issue NBW as was done in that case.

19. Hence it is contended that at present the simplicitor issue of order of NBW is not in accordance with the complete procedure laid down under the DV Act r/w. 125 (3) of the CrPC.

20. The Court appointed Ms. Flavia Agnes, to assist the Court as amicus curiae. She has drawn my attention to Section 28 (2) of the DV Act which runs thus:

Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

21. Thus the aforesaid argument becomes academic. The provisions of the CrPC relating to maintenance as also the DV Act which are beneficial legislations for protection of women such as the Respondent wife in this case are required to be construed such as to benefit those persons for whom they are enacted.

22. The Magistrate issuing NBW, therefore, seems to have followed the Special Procedure for the arrest of the husband for non payment of the maintenance ordered to be paid. Such procedure and such procedural order is within the framework of Section 28(2) of the DV Act and hence cannot be faulted as it is not seen to be illegal.

23. Hence the NBW is confirmed. The Writ Petition is dismissed.

The NBW shall be executed unless the husband pays off the entire arrears now due and payable.

24. The Court is grateful to the learned amicus curiae for her guidance.

25. Writ Petition is disposed off accordingly.

(ROSHAN DALVI, J.)

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KUNJATHIRI AND ANOTHER
VERSUS
STATE OF KERALA AND ANOTHER

Bench : Hon'ble Mr. Justice R. BASANT

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Decided on 4 November, 2008

Crl.MC.No. 4171 of 2008()

Kunjathiri and another ...Petitioner
Versus
State of Kerala and another ...Respondent

For Petitioner : SRI.RAJIT

For Respondent : No Appearance

ORDER

R.BASANT, J

Petitioners are respondents in a petition filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the `D.V.A'). The 1st petitioner is the mother in law and the 2nd petitioner is the sister in law of the 2nd respondent herein, ie. the complainant/petitioner in the petition before the learned Magistrate. In that application, an interim application was filed under Section 23 of the D.V.A and exparte interim directions were issued. That order was passed on 02.05.2007. The petitioners did not then want to take any objections against that order passed. But the manner in which that order is now being exploited by the 2nd respondent herein obliges the petitioners to challenge that order.

2. The impugned order is an appealable order under Section 29 of the D.V.A. It has been held clearly in Chandrasekhara Pillai v. Valsala Chandran [2007 (2) KLT 36] that an exparte order passed under Section 23 of the D.V.A is appealable. In these circumstances, I am not persuaded to agree that the challenge raised against the impugned order, which is an appealable order, deserves to be considered by this Court by invoking the powers under Section 482 Cr.P.C, whatever be the nature of the challenge raised.

3. The learned counsel for the petitioners submits that the petitioners are at a disadvantageous situation now. They have not challenged the order in time and in these circumstances their appeal may not be considered by the appellate court.

4. The petitioners can certainly show to the appellate court the reasons which prompted them not to prefer an appeal earlier and the circumstances which oblige them to file an appeal now. Their application for condonation of delay must certainly be considered by the appellate court on merits, in accordance with law and expeditiously.

5. The learned counsel for the petitioners further submits that the petitioners apprehend prosecution under Sections 31 and 32 of the D.V.A. Surprisingly the counsel submits that the petitioners apprehend, in view of the provisions of Section 32(2) of the D.V.A that without giving them an opportunity to be heard, acting solely on the testimony of the aggrieved person, they may be found guilty convicted and sentenced by the learned Magistrate. To say the least, I reckon the said apprehension as preposterous and puerile. The law does not contemplate a procedure whereby the indictee can be found guilty, convicted and sentenced on the sole testimony of the aggrieved person without giving the indictee an opportunity to defend himself and disprove the allegations raised against him. I have no reason to assume that any Magistrate would embark on that pernicious course.

6. This Crl.M.C is, in these circumstances, dismissed with the above observations.

(R.BASANT, JUDGE)

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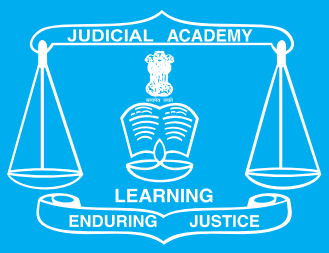

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