The Protection of Women from Domestic Violence Act, 2005

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

A LITIGATION GUIDE AND COMPILATION OF JUDGMENTS

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SWAYAM
Ending Violence Against Women

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About *Swayam*

Swayam is a feminist organisation committed to advancing women's rights and ending discrimination and violence against women and their children. We envision a violence free world where all human beings enjoy equitable rights and opportunities irrespective of their sex, gender, sexual orientation, age, class, caste, ethnicity, religion, nationality, language, and mental and physical abilities.

Swayam literally means oneself. Our name articulates our commitment to supporting women to challenge inequality, violence and threats of violence both within and outside their homes. Violence not only limits choices and opportunities, but also deprives women control of their physical, mental, and emotional security—and in too many instances, even their lives. At *Swayam*, our work is both curative and preventative. Accordingly, *Swayam* takes a multi-pronged approach to ending violence against women. Guided by a belief in the inherent potential of every woman to change her own life and make meaningful contributions to society, we support women facing violence to take control of their lives, build self confidence and become economically independent. Simultaneously, we confront norms that entrench gender-based violence and break the silence that shrouds violence against women. *Swayam* influences public opinion and action through education and awareness; produces and shares information and expertise; networks and advocates for socio-legal and policy level changes; and mobilises women, men and youth in rural and urban communities to create a society where violence against women is unacceptable.

Swayam was actively involved in the advocacy pertaining to the passage of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) at the state and national levels. The Act was passed in August 2005 and became operational on October 26th 2006. Since then, *Swayam* has been committed to ensuring implementation of the law in its true spirit. Our initiatives include judicial training workshops, advocacy meetings with the National and West Bengal Commissions for Women, and the Ministries of Law, Women and Child Development and Social Welfare. We participate in efforts to monitor implementation of PWDVA nationally, and initiate implementation at the West Bengal state level. We raise awareness about PWDVA among key stakeholders, including women, lawyers, judges, police, activists and NGOs working on domestic violence, and society at large. We also disseminate legal education materials in English, Bengali, Hindi and Urdu, launch media campaigns in rural and urban areas and use creative mediums such as information fairs, signature collection drives, film, theatre, and music performances to raise awareness about the law and violence against women.

Preface

Domestic Violence in India

Domestic violence is a global problem, reaching across national boundaries as well as socio-economic, cultural, racial and class distinctions. According to United Nations estimates, around 2/3 of all married women in India face domestic violence.[1] India's National Family Health Survey 2005-2006 estimates that 33.5% of all women above age 15 have experienced domestic violence.[2] Dowry related deaths also persist at an alarming rate and sexual violence within marriage, child marriage, incest and child abuse remain rampant. Instead of feeling safe and secure in their homes, many women feel extremely vulnerable. Widespread and deeply engrained, domestic violence causes not only physical injury, but also seriously undermines the social, economic, psychological, spiritual and emotional health and well-being of women and their children. Domestic violence violates women's human rights and represents one of the greatest obstacles to their accessing and realising their fundamental rights as citizens—namely their rights to dignity, equality, freedom, security, bodily integrity, education, livelihood and life.

Swayam's experience of working with women facing domestic violence has shown the significant barriers women face in leaving violent situations. Women are held responsible for preserving the family and family honour at all costs—even at the expense of their own physical, mental, sexual and emotional well-being. This message is reinforced by tradition, family, community, police and judicial officers.

Often, when a woman experiencing domestic violence in her matrimonial home approaches her parents for help, they ask her to adjust and compromise, because exposing domestic violence and abuse will bring shame, disrepute and dishonour to her and her family. Further, her dependence on the abuser, responsibility towards her children, lack of social support and social stigma all prevent her from leaving. Even in cases where parents may understand her situation and are supportive of her returning home, a woman may still choose not to do so, since she has internalized the message that it is her responsibility to preserve the family.

Women also frequently choose not to take legal action against their abusers due to the intimate nature of domestic relationships. Women who do seek legal relief from violence in their homes face obstacles at every stage of accessing the criminal justice system. Women report

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1 Report by United Nations Population Fund 2005, available at http://www.expressindia.com/fullstory.php ?newsid 56501.

2 Government of India, Ministry of Health and Family Welfare, *National Family Health Survey (NFHS-3),* Volume I, p. 498.

that when they go to police stations to seek protection, they are blamed and made to feel ashamed of making their private lives public. If they do successfully file charges, their battle in the courts has just begun. They are often unable to afford skilled lawyers and frequently face hostile, male-dominated court environments and patriarchal mindsets of lawyers, court officials and judges. Court proceedings are frequently drawn out and even when women get relief, they must fight yet another battle for the implementation of these orders Against these odds, women who stand up for their right to live in a violence free home and seek relief from domestic violence through the courts—in the very act of filing for relief—stake a challenge to the patriarchal norms that still govern society and institutions across India.

Before PWDVA was passed, laws that could be used to address domestic violence included Sections 304B and 498A of the Indian Penal Code, dealing with dowry deaths and cruelty to wives. 498A provided for punishing the husband and his relatives in cases of cruelty. However, 498A did not provide married women facing violence in their homes any relief to address their immediate and ongoing needs—including ensuring that the violence would stop and that they would have a roof over their heads and finances to take care of their needs and those of their children. Section 125 of the Code of Criminal Procedure provided a distinct mechanism for women to secure maintenance but it was limited in scope. PWDVA sought to streamline women's access to relief, address their material needs and fill critical gaps in protection.

Protection of Women from Domestic Violence Act, 2005 (PWDVA)

PWDVA, which came into force on October 26, 2006, is a secular, quasi-civil law that recognizes the right of women in domestic relationships to live free from violence within their households and provides legal remedies when this right is violated. PWDVA provides both a comprehensive definition of domestic violence, and easier access to the justice system through Magistrate Courts. The Act is applicable to women, girls and male children under the age of 18 of all religions, castes and classes. Using the term "shared household" instead of "matrimonial home," PWDVA protects not only married women, but also women living in relationships in the nature of marriage as well as any single, unmarried, divorced, separated or widowed, women within a family. Sisters, daughters, mothers, aunts and other female relatives are thus protected from domestic violence under the Act.

PWDVA expands the definition of domestic violence to include all forms of abuse: physical, sexual, mental, emotional, verbal and psychological as well as threats of abuse and demands for dowry. It provides relief by way of protection from violence, right to residence, monetary relief, temporary child custody and compensation. In order to authorize immediate action from the court in domestic violence cases, PWDVA provides interim relief and designates a short time frame to pass final orders. Women can initiate proceedings under PWDVA as well as seek relief under this Act in existing proceedings. Not only are some of these remedies new to family law, but the Act also allows these reliefs to be claimed under one statute. This relieves women from

having to approach different courts for remedies and aims to avoid the time, expense and stress related to multiple proceedings.

PWDVA also provides mechanisms to help women in accessing justice in cases of violence. It introduces Protection Officers charged with assisting women to get relief and coordinating a multi-agency response to domestic violence between Service Providers, police, legal aid services and medical and shelter facilities. Protection Officers and police are also tasked with providing immediate assistance in implementing court orders. Finally, PWDVA places responsibility on the State to publicise the law, provide gender sensitization training to police and members of the judiciary, coordinate services between concerned Ministries and Departments and monitor implementation of PWDVA.[3]

According to the UN Secretary General, non-implementation or ineffective implementation of existing domestic violence laws across the world is the single most important reason for perpetrators, particularly in intimate relationships, to continue to subject women to domestic violence with impunity.[4] As an organization working with women facing domestic violence to access their rights under PWDVA, we have recognized a need to bring together key judicial precedents, good practices and strategies that can be used by lawyers and social workers to facilitate women's access to justice. Almost a decade after the passage of PWDVA, we hope that this volume will contribute to securing women's rights to violence free homes as protected under this landmark legislation.

Anuradha Kapoor
DIRECTOR | SWAYAM

3 PWDVA, Chapter 3, Section 11(a)-(d).

4 In-depth study on all forms of violence against women –Report of the Secretary General, July 2006, UN General Assembly Document A/61/122/Add.1, www.un.org/womenwatch/daw/vaw/SGstudyvaw.htm.

About this compilation

The Protection of Women from Domestic Violence Act (PWDVA), 2005 aims to protect a woman's right to live in a home that is free from violence and provide legal remedies in case this right is violated. In order to achieve these legislative objectives, women must be able to secure their rights under the Act. The aim of this compilation is to equip lawyers with key judicial precedents under PWDVA that they can use to defend women's right under the law. In particular, this resource was developed to provide relevant rulings in one compilation for easy reference. It is our hope that this volume will contribute to providing effective legal responses to domestic violence under PWDVA by equipping lawyers and social workers with information and strategies to help women access their rights under the law.

Using this compilation

This volume is divided into three parts. Part I is an essay discussing significant trends in how the Supreme Court and High Courts have applied PWDVA. Persistent challenges, positive practices and litigation strategies are highlighted to assist both lawyers and those without legal training to guide women through legal proceedings. Part I concludes with a bulleted check-list of key learning highlighting significant points and strategies for accessing justice under PWDVA.

Part II contains the full text of each judgment cited in the opening essay to facilitate easy reference. It brings together over 100 judgments by the Supreme Court and High Courts across India that apply PWDVA. These judgments have been selected from more than 500 rulings by India's higher judiciary applying PWDVA since the Act came into force. Part III, Appendices, includes the text of PWDVA, PWDVR and Sections 125, 126, 127 and 128 of the Code of Criminal Procedure.

Most of the judgments in this compilation apply PWDVA to protect women subjected to domestic violence. However, the compilation also includes judgments that protect the family unit and private property ownership at the expense of the rights of survivors, revealing entrenched patriarchal mindsets and acceptance of domestic violence. While such judgments do not provide leverage to protect the rights of women to live in violence free homes, they do provide perspectives on how entrenched gender-based constructs influence the judicial process. These perspectives are instructive in preparing lawyers to confront such mindsets as well as for women's rights organizations and researchers engaged in developing gender-sensitization trainings for judges, lawyers, police officers and other key stakeholders. Whenever possible, we have included judgments that counter such perspectives.

Acknowledgements

This manual was researched and written by Shikha Silliman Bhattacharjee, Esq. during her Fulbright-Nehru Fellowship at *Swayam* and with the support of a University of Pennsylvania Center for the Advanced Study of India (CASI) research grant. It has been edited by Abhijit Datta, Advocate, and Anuradha Kapoor, Founder and Director of *Swayam*. Abhijit Datta selected the judgments included in this compilation. The analysis of jurisprudence under PWDVA and strategies highlighted in this compilation are based in large part upon his experience representing women in PWDVA cases. Identification of issues that commonly arise for survivors of domestic violence is based upon *Swayam's* twenty years of experience providing comprehensive support to women facing domestic violence.

A special mention must be made of Gargee Guha, Direct Support Services Coordinator, *Swayam,* for her insights and *Swayam* interns Sandra Gresl, Shreya Swaika, Ishita Jalan and Madhulina Sarkar for their assistance in research.

This compilation has drawn upon the existing literature and experience of survivors and lawyers with PWDVA. In particular, the *Handbook on Law of Domestic Violence* prepared by the Lawyers Collective and edited by Indira Jaising; the *Guide to The Protection of Women from Domestic Violence Act* developed by the Multiple Action Research Group (MARG) and edited by Vrinda Grover; and *Defending Women Against Domestic Violence: A Ready Referencer of Case Law*, prepared by *Majlis* and edited by Flavia Agnes, have laid the groundwork for our analysis of how the legal principles set forth in these careful studies have been applied by India's higher judiciary.

List of abbreviations

A.I.R.	All India Reporter
Bom. C.R.	Bombay Criminal Review
Cr.L.J.	Criminal Law Journal
Crl.Rev.	Criminal Revision
Cr. P.C.	The Code of Criminal Procedure, 1973
DIR	Domestic Incident Report
DLT	Delhi Law Times
DMC	Divorce and Matrimonial Cases
GLR	Gujarat Law Reporter
ILR	Indian Law Reporter
IPC	Indian Penal Code
MhLj	Maharashtra Law Journal
PO	Protection Officer
PP	Public Prosecutor
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
RLW	Rajasthan Law Weekly
W.P.	Writ Petition

CHAPTER 1

Litigation Guide to Protection of Women from Domestic Violence Act, 2005

OVERVIEW

This litigation guide highlights key features of the Protection of Women from Domestic Violence Act, 2005 in the context of how these features have been interpreted and applied by India's higher judiciary. Divided into eleven main sections, the first ten sections cover definitions, mechanisms to assist women to access their rights under PWDVA, Domestic Incident Reports (DIRs), court jurisdiction, procedure for obtaining relief under PWDVA, reliefs under the Act, evidence and burden of proof, alteration of orders, appeals and petitions to quash proceedings. In each these sections, this litigation guide to PWDVA reviews the relevant provisions under the Act and then considers how the higher judiciary has applied these provisions in the context of particular facts and circumstances. Where the higher judiciary has taken distinct approaches or applied divergent interpretations, this essay describes the range of analysis. The final section summarizes key precedents and strategies for accessing justice under PWDVA.

Section 1, Definitions, covers the definitions of domestic violence, domestic relationship, shared household, aggrieved person and respondent under the Act. The definition of domestic violence considers physical, sexual, verbal or emotional and economic abuse. Where possible, these sections review the types of conduct that have been considered abuse by India's higher judiciary and the evidence used to substantiate these claims.

Definitions of domestic relationship and shared household under PWDVA are integral to defining the scope of who qualifies as an aggrieved person and who can be named as a respondent. This section begins with an explanation of these terms as applied by the higher judiciary. The discussion of respondents covers both female respondents and the parameters of relationships qualifying women for protection under PWDVA—including, relationships

in the nature of marriage and live in relationships, second wives, divorced women, divorced Muslim women, widows, consanguinity, family members living in a joint family and children.

Section 2, Mechanisms to assist women to access to reliefs under PWDVA, explains the role of Protection Officers, police, Service Providers, Magistrates, medical facilities and shelter homes. Section 3, Domestic Incident Reports (DIRs), focuses on the significance of DIRs prepared by Protection Officers, Service Providers or medical facilities notified under the Act, on the basis of a complaint of domestic violence received from an aggrieved person.

Section 4, Court jurisdiction, highlights judicial precedents upholding a woman's right to file for relief under PWDVA from a temporary residence or the place where she has sought refuge from abuse. It also considers interactions between PWDVA and other Family Court or Civil proceedings, including seeking relief during pending proceedings in a Family or Civil Court, transfer of applications from Magistrates Courts to other courts and judicial precedents authorizing maintenance under PWDVA as well as the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Section 5, Procedure for obtaining relief under PWDVA, outlines application to a Magistrate, service of notice, procedure under PWDVA Section 28—including procedural guidelines introduced by the judiciary under Section 28(2)—and key precedents validating the retrospective effect of PWDVA.

Section 6, Reliefs under PWDVA, covers protection orders, residence orders, monetary relief, temporary custody orders and compensation. The sub-section on residence orders reviews how shared households have been defined in relationship to private property ownership, beginning with the 2007 Supreme Court judgment in *S.R. Batra v. Taruna Batra*. This section provides an in depth discussion of a range of strategies for securing the right to residence and enforcing residence orders. It also includes analysis of the nature of shared residence, including duration and context required by the higher judiciary to establish a right of residence.

The sub-section on monetary relief begins with judicial interpretations of the requirement under Section 20(2) of PWDVA that monetary relief be "adequate, fair and reasonable and consistent with the living to which the aggrieved person is accustomed." It also includes orders that provide for enforcement of maintenance orders by issuing accompanying protection orders against economic violence. The sub-section on custody orders reviews how the higher judiciary has considered love, affection, emotion, care and maintenance in granting temporary custody of children to aggrieved women. Finally, the sub-section on compensation presents judgments in which aggrieved women have been awarded compensation for torture and emotional distress and loss of earnings. The comparative brevity of these sub-sections reflects the lack of judgments on these issues by the higher judiciary.

Section 7, Evidence, burden of proof and statutory interpretation, reviews the degree of proof required for distinct claims for relief under PWDVA. This section covers the manner in which evidence must be produced in PWDVA cases, including procedures introduced by the

judiciary, under the authority granted in Section 28(2) of the Act, that have been designed to reduce the duration of proceedings.

Section 8 covers alteration of orders, Section 9 covers appeals under Section 29 and Section 10 considers a range of judgments on whether Section 482 Cr.P.C. can be used to quash proceedings under PWDVA. The judgments presented here provide insight into the range of approaches the higher judiciary has taken in determining whether the criminal jurisdiction of the High Court under 482 Cr.P.C. is valid to quash proceedings under PWDVA.

The chapter concludes with a summary of key strategies and precedents discussed in the first ten sections.

1. DEFINITIONS

DOMESTIC VIOLENCE

PWDVA provides a comprehensive definition of domestic violence that includes physical, mental, emotional, economic and sexual abuse. Section 3 defines "domestic violence" as follows:

For the purpose of this Act, any act, omission or commission or any 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 physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harrasses, 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) threatens the aggrieved person or any person related to her by any conduct mentioned in clauses (a) and (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

This definition of domestic violence encompasses actual violence as well as the threat of violence. The final provision of the definition expands the definition to incorporate any other behavior that injures or causes harm to the aggrieved person, whether or not it is expressly mentioned in the earlier provisions.

PHYSICAL ABUSE

PWDVA defines "physical abuse" as 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.[1]

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1 PWDVA, Chapter II, Section 3, Explanation I.

In addition to the more commonly recognized forms of physical abuse, in *Ishpal Singh Kahai v. Ramanjeet Kahai*, a case heard by the Bombay High Court, the aggrieved woman established domestic violence, and secured a mandatory order directing her husband to remove himself from the flat where they lived with their children, on the grounds that his alcoholism leads to uncontrolled aggression that makes it impossible for her and her children to reside safely in the matrimonial home. The aggrieved woman substantiated the claim that her husband was a consummate alcoholic with the following evidence:

- **Hospital records** indicating that at the time of hospitalization the husband was alcohol dependent and suffering withdrawal;
- **Evidence of a particular incident** in which the husband left the cooking gas on in his alcoholic stupor and then collapsed, requiring the neighbor to call in the fire brigade to break down the door and extinguish the fire;
- **Several complaints lodged at the police station** corroborating individual instances of violence.[2]

SEXUAL ABUSE

PWDVA Explanation I(ii) defines sexual abuse to include "any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of a woman." This is not an exhaustive definition, thereby allowing the court to recognize sexual abuse in any form it takes. Examples of sexual abuse may include:

- Forced sexual intercourse;
- Being compelled to watch or participate in pornography or other obscene material; or
- Unwelcome sexual conduct, such as demands for oral sex.[3]

VERBAL AND EMOTIONAL ABUSE

Under PWDVA, verbal and emotional abuse includes insults, ridicule, humiliation, name-calling and insults or ridicule particular to not having a child or a male child. It also includes repeated threats to cause physical pain to any person to whom the aggrieved person may be related or in whom they may have interest.[4] Since Explanation I(iii) specifies that these examples are illustrative and not exclusive, courts may recognize verbal or emotional abuse in any form it takes.

Additional examples of verbal or emotional abuse may include:

- Character assassination;
- Demeaning a woman for not having given birth to a male child;

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2 Writ Petition No.576 of 2011 (Bombay H.C.)(23.03.2011), paras. 3, 5, 7, 8, 37. See page 77 of this compilation for full text of judgment.

3 This list is drawn from Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p. 15.

4 PWDVA, Chapter II, Section 3(d)(iii).

- Threatening to desert or harm a woman;
- Insults regarding child bearing or gender preference;
- Taunts concerning appearance or culinary skills;
- Unwanted commentary regarding not bringing dowry;
- Preventing the woman from leaving home with or without child;
- Preventing the woman from meeting other people;
- Forcing the woman to marry against her will or interfering with the woman's plans to marry a person of her own choosing;
- Threatening to commit suicide as a method of coercion;
- Ostracism.[5]

ECONOMIC ABUSE

PWDVA Explanation 1(iv) defines economic abuse as:

(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.[6]

This explanation provides a non-exhaustive list of types of economic abuse that constitute domestic violence.

Other examples of economic abuse are as follows:

- Failing or refusing to provide money for maintaining a woman and/or children;
- Not providing food, clothes, medicines, or other necessities for the woman or for the children;
- Interfering with the woman's ability to be gainfully employed;

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5 This list is drawn from Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p. 16.

6 PWDVA, Chapter II, Section 3(d)(iv).

- Forcing a woman to leave her job;
- Taking the woman's income, salary, wages, or assets;
- Prohibiting the woman from using her money the way she wishes;
- Expelling the woman from the household;
- Interfering with the woman's use of any part of the home;
- Forbidding the use of clothes or general household articles;
- Failing to pay rent (if living in rented accommodations).[7]

India's higher judiciary has applied these principles in a number of cases. For instance, in *Rakesh Sachdeva v. Neelam Sachdeva,* the Jharkhand High Court considered threats to alienate assets and ongoing deprivation of financial resources and access to the shared household to constitute economic abuse that amounts to domestic violence. [8]

In *Preetam Singh v. State of Uttar Pradesh.,* the Allahabad High Court emphasized the Section 3 Explanation that economic abuse includes deprivation of financial resources to which an aggrieved woman is entitled "under any law or custom whether payable under an order of a court or otherwise or which she requires out of necessity."[9]

According to the Calcutta High Court in *Vidyawati v. Kishen*, withholding maintenance constitutes economic violence which is sufficient to establish a legitimate claim under PWDVA.[10]

In *Harish Bairani v. Meena Bairani*, the Rajasthan High Court granted monetary relief to an aggrieved woman to cover medical expenses on the grounds that failing to pay for medical treatment amounts to economic abuse.[11]

In *Jovita Olga Ignesia Mascarehas e Coutinho. v. Rajan Maria Countinho*, the Bombay High Court clarified that it is not necessary to establish any further abuse beyond economic abuse in order to substantiate domestic violence under PWDVA. In this case, the aggrieved woman was allegedly living without monetary support, had no means to support herself, and the respondent had deliberately kept her passbook and FDR in his custody in order to cause further hardship.[12] The Andhra Pradesh High Court, in *Sikakollu Chandramohan v. Sikakollu*

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7 This list is drawn from Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p. 16.

8 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 6. See page 87 of this compilation for full text of judgment.

9 2013 Cr.L.J. 22 (Allahabad H.C.) (31.07.2012), para. 12. See page 93 of this compilation for full text of judgment.

10 2013 Cr.L.J. 4469 (Calcutta H.C.) (08.02.2013), para. 12. See page 97 of this compilation for full text of judgment.

11 RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011), paras. 7-8. See page 101 for full text of judgment.

12 2011 Cr.L.J. 754, I (2011) DMC 257 (Bombay H.C. (Goa Bench))(24.08.2010), para. 7. See page 104 of this compilation for full text of judgment.

Saraswathi Devi, has also held that economic abuse is sufficient to establish domestic violence under PWDVA.[13]

As explained by the Rajasthan High Court in *Om Prakash v. State of Rajasthan*, disability and poverty are not defenses to ongoing economic abuse. Although in this case the husband argued in his defense that since he is handicapped he is unable to pay maintenance, the Rajasthan High Court held that "[t]he Act recognizes the right of a woman to be maintained even from a physically challenged husband." The court also held that under PWDVA, poverty is not a valid defense for violating a woman's right to maintenance.[14]

DOMESTIC RELATIONSHIPS

The definition of domestic relationship informs both who can be considered an aggrieved person under the Act, and who can be named as a respondent.

Section 2(f) defines "domestic relationship" as a relationship with two components. The aggrieved woman and the respondent must:

- live or have lived together in a shared household; and
- be related by consanguinity, marriage, adoption, through a relationship in the nature of marriage or between family members living together in a joint family.

According to the Supreme Court in *Indra Sarma v. V.K.V. Sarma*, only five categories of relationships can satisfy the second prong of the definition of relationship in the nature of marriage: consanguity, marriage, a relationship in the nature of marriage, adoption and family members living together as a joint family.[15]

SHARED HOUSEHOLD

In order to establish a domestic relationship, an aggrieved woman must establish that at some point in time, she resided in a shared household with the respondent. Section 2(s) defines shared household as a household where the aggrieved person and the respondent live or at any point lived together in a domestic relationship, regardless of the ownership of the household.

AGGRIEVED PERSON

Section 2(a) of PWDVA defines "aggrieved person" as "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." All women are included in this definition, regardless of their age.

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13 Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010), para. 6. See page 108 of this compilation for full text of judgment.

14 S.B. Criminal Revision Petition No.1220/2010 (Rajasthan H.C)(29.04.2011), para. 10. See page 112 of this compilation for full text of judgment.

15 AIR 2014 SC 309, III (2013) DMC 830 (Supeme Court) (26.11.2013), paras. 33-34. See page 116 of this compilation for full text of judgment.

"Child" includes "any person below the age of eighteen years and includes any adopted, step or foster child." By this definition, a child can be either female or male.

PWDVA protects wives, mothers, sisters, daughters, daughters-in-law and live in partners from domestic violence—whether they are legally married, widowed, divorced, separated, deserted or single.

Section 12 of PWDVA authorizes an "aggrieved person" to bring an application for relief from domestic violence for herself and her children. As PWDVA was enacted to provide special protection to women, men are not entitled to relief under the Act. This gender-specific provision is sanctioned under Article 15(3) of India's Constitution that allows positive discrimination in favor of women. The constitutionality of the gender-specific construction of the Act was upheld when challenged before the Madhras High Court in India's *Dennison Paulraj v. Union of India*.[16]

RESPONDENTS

Section 2(q) of PWDVA defines a respondent as "any adult male who is in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act."

This definition is accompanied by a proviso establishing that "an 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 male partner." Accordingly, male and female relatives of the husband or live-in partner can also be added as parties to the proceedings.

In order for a family member to be included as a respondent, however, the aggrieved woman must establish that she lived with the person named as a respondent in a shared household at some point. This reasoning was set forth by the Delhi High Court in *Harbans Lal Malik v. Payal Malik*, wherein the Court held that an aggrieved woman who had been living with her husband abroad did not share a house with her in-laws living in India and therefore could not name her father in-law as a respondent in proceedings under PWDVA.[17]

The Delhi High Court also applied this reasoning in *Razia Begum v. State*,[18] *Nandan Singh Manral v. State,*[19] and *Hima Chugh v. Pritam Ashok Sadaphule*,[20] in each case preventing the aggrieved woman from seeking relief from family members with whom she never resided.

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16 II(2009) DMC 252 (Madras H.C.) (03.04.2009). See page 141 of this compilation for full text of judgment.

17 II (2010) DMC 202 (Delhi H.C.) (29.07.2010), para. 15. See page 145 of this compilation for full text of judgment.

18 172 (2010) DLT 619 (Delhi H.C.) (4.10.2010), para. 8. See page 156 of this compilation for full text of judgment.

19 2011 (2) RCR (Criminal) 271 (24.09.2010), para. 4. See page 159 of this compilation for full text of judgment.

20 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013) paras. 10. See page 160 of this compilation for full text of judgment.

Similarly, in *K. Narasimhan v. Rohini Devanathan*, the Kerala High Court quashed proceedings brought by an aggrieved woman against her brother in-law on the grounds that there was no proof that the aggrieved woman and the brother in-law lived together or were living together at any point of time.[21]

While not conclusively reasoning that respondents should be limited to family members, in *Ashish Dixit v. State of Uttar Pradesh*, the Supreme Court directed that the petition filed by the aggrieved woman should be confined to her husband and parents in law, and should not include other residents of the building. [22]

FEMALE RESPONDENTS

Resolving conflicting judgments by India's higher judiciary on whether or not female relatives of the husband or live-in partner can be named as respondents in cases under PWDVA, in *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, the Supreme Court held that female relatives of the husband or live-in partner can be added as parties to the proceedings and included as additional respondents under PWDVA. In this case, the mother-in-law and sister-in-law of the aggrieved woman were named as respondents. Considering the definition of respondent under the Act, the Supreme Court explained:

> *although Section 2(q) defines a Respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.*

The proviso, widening the range of potential respondents to include family members of the husband or live-in partner, creates a window for naming female respondents. According to the Supreme Court, while the word "female" has not been explicitly used in the proviso, "if the Legislature intended to exclude females from the ambit of the complaint, . . . females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner." Instead, the Court noted, "[n]o restrictive meaning has been given to the expression 'relative,' nor has the said expression been specifically defined in the [Act] to make it specific to males only." [23]

Subsequent to this judgment by the Supreme Court, both the Delhi and Kerala High Courts have ruled that a daughter-in-law can be included as a respondent. In *Kusum Lata Sharma v. State*, the Delhi High Court concluded that the daughter-in-law could be named as

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21 2010 Cr.L.J. 2173 (Karnataka H.C.) (24.11.2009), para. 10. See page 169 of this compilation for full text of judgment.

22 2013 Cr.L.J. 1178 (Supreme Court) (7.01.2013) paras. 4-5. See page 170 of this compilation for full text of judgment.

23 (2011) 3 SCC 650, 2011 Cr.L.J. 1687, II (2011) DMC 811(SC) (Supreme Court) (31.01.2011), paras. 12-13. See page 171 of this compilation for full text of judgment.

a respondent by the aggrieved mother-in-law. The objective of PWDVA is to address domestic violence in all its forms, and not just domestic violence victimizing a wife or daughter-in-law, the Delhi High Court reasoned. Accordingly, PWDVA entitles sisters, widows, mothers, and single women to protection. Therefore, the Delhi High Court concluded, since PWDVA entitles a widowed mother or mother-in-law to relief, it is possible that the aggrieved person may be maltreated or harassed by a daughter-in-law. In such cases, a daughter-in-law can be named as a respondent.[24]

In *Bismi Sainudheen v. P.K. Nabeesa Beevi*, the Kerala High Court ruled that a daughter-in-law could be included as a respondent by her aggrieved mother-in-law who was allegedly harassed, humiliated, and driven out of her marital home by her son and daughter-in-law acting in collusion. Citing and extending the reasoning of the Delhi High Court in *Kusum Lata Sharma v. State*, the Kerala High Court explained that unless the daughter-in-law was named as a respondent, an order passed under PWDVA Section 19(1)(c), restraining the respondents from entering any portion of the shared household in which the aggrieved person resides, the daughter-in-law could frustrate the purpose of the order by continuing to subject the aggrieved mother-in-law to harassment.[25]

It is significant to note that in both of these cases, daughters-in-law were included as respondents in allegations where the son and daughter in law were seen to be acting in collusion. These precedents, therefore, can be distinguished from instances in which the mother-in law, acting in concert with her son, alleges that domestic violence has been committed by the daughter-in-law.

RELATIONSHIPS QUALIFYING WOMEN FOR PROTECTION UNDER PWDVA

By including relationships between two people whether they are related by marriage, or through "a relationship in the nature of marriage," PWDVA extends protection to women in instances where there is no formal marriage or when a marriage may be void or invalid in the eyes of the law, but for all practical purposes constitutes a marriage. This scope includes second wives, common law marriages and live-in relationships where the shared household requirement has been established.

Marriage

It is not uncommon for the validity of a marriage to be subject to contestation in proceedings under PWDVA and 125 Cr.P.C. For instance, in *Chanmuniya v. Virendra Kumar Singh Kushwaha*, the Supreme Court again considered whether a man and woman living together for an extended period of time, without a valid marriage, would raise a presumption of marriage entitling a woman to maintenance under Section 125 Cr.P.C. The Supreme Court also considered whether strict proof of marriage is essential for a claim of maintenance under

24 III (2011) DMC 1 (Delhi H.C.) (2.09.2011), para. 9. See page 175 of this compilation for full text of judgment.

25 I (2014) DMC 770 (Ker), 2014 Cr.LJ 904 (Kerala H.C.) (07.08.2013), para. 18. See page 180 of this compilation for full text of judgment.

section 125 Cr.P.C. having regard to the provisions of PWDVA. In this case, the aggrieved woman was married to her husband's brother after her first husband's death in accordance with local customs. In response to allegations by the aggrieved woman that she was subsequently harassed, tortured and refused maintenance and other obligations of marriage by her second husband, the trial court directed the respondent alleged husband to resume his marital duties. The respondent alleged husband appealed this decision to the Allahabad High Court that held that since the aggrieved woman and respondent had not had a valid Hindu marriage under the Hindu Marriage Act, there was insufficient evidence on record to substantiate the marriage. Taking a broad and expansive interpretation of the term "wife," including cases where a man and woman have been living together as husband and wife for a reasonably long period of time, the Supreme Court held that proof of marriage should not be a condition for maintenance. [26]

In *Deoki Panjhiyara v. Shashi Bhusan Narayan Azad*, the Supreme Court considered a case in which the respondent sought a recall of interim maintenance granted by the trial court. The respondent produced a certificate of marriage between the aggrieved woman and another man and argued that his marriage with the aggrieved woman was void on the basis that at the time of the said marriage, she had already been married to another man. The aggrieved woman denied the allegation of the earlier marriage and argued that even assuming the marriage was void, she had lived with the respondent in a relationship in the nature of marriage that entitled her to claim and receive maintenance under PWDVA. The Court reasoned:

> *We would also like to emphasis that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance.*

The Supreme Court held that although alleging a previous marriage, the respondent had not obtained the necessary declaration from a competent court to annul his marriage with the aggrieved woman. Without this legal decree, the Supreme Court proceeded on the basis that the aggrieved woman is the wife of the respondent and is therefore entitled to claim all benefits and protection under PWDVA.[27]

In *Ayushman Panday v. State of Jharkhand*, the alleged husband called for proceedings under PWDVA to be quashed on the grounds that marriage with the aggrieved woman was not solemnized according to customary rights or consummated at any point since he had deserted

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26 2011 Cr.L.J. 96 (Supreme Court)(7.10.2010), paras. 41-43. See page 191 of this compilation for full text of judgment.

27 I (2013) DMC 18 (SC), AIR 2013 SC 346, 2013 Cr.L.J 684 (Supreme Court)(12.12.2012), para. 19. See page 198 of this compilation for full text of judgment.

the aggrieved woman soon after the registration of the marriage. Distinguishing between the fact of marriage and the legal validity of the marriage, the Jharkhand High Court held that the marriage between the parties was not disputed although the legal validity of the marriage was challenged under the Special Marriage Act. The application of the aggrieved woman, the court concluded, was maintainable.[28]

In *Thanseel v. Sini,* the Kerala High Court held that the validity of the marriage need not be considered as a preliminary issue that must be resolved in order to determine whether the petition of an aggrieved woman should be heard.[29]

Relationships in the nature of marriage and live in relationships

The Supreme Court first considered the meaning of "relationship in the nature of marriage" under PWDVA in *Velusamy v. Patchaiammal*. According to the Supreme Court, a "relationship in the nature of marriage is akin to a common law marriage." As defined in *Velusamy v. Patchaiammal,* a common law marriage has four requirements:

1. the couple must hold themselves out to society as being akin to spouses;
2. they must be of legal age to marry;
3. they must be otherwise qualified to enter into a legal marriage, including being unmarried; and
4. they must have voluntarily cohabited and held themselves out to the work as being akin to spouses for a significant period of time.

According to the Supreme Court, this interpretation of domestic relationships excludes merely spending weekends together, one night stands and sexual relationships or other services in return for financial remuneration.[30]

In *Indra Sarma v. V.K.V. Sarma*, the Supreme Court returned to the question of when a live-in relationship amounts to a "relationship in the nature of marriage." The Court laid out guidelines for testing the circumstances in which a live-in-relationship would fall within the expression "relationship in the nature of marriage," outlining eight factors to consider in determining whether a live-in relationship amounts to a relationship in the nature of marriage:

1. **Duration of the relationship:** 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:** as defined by PWDVA Section 2(s);
3. **Pooling resources and shared financial arrangements:** including supporting one another financially, sharing bank accounts, acquiring immovable properties in joint

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28 III (2011) DMC 618 (Jharkand H.C.)(28.03.2011), paras. 5, 7. See page 205 of this compilation for full text of judgment.

29 WP(C) No. 7450 of 2007 (J) (Kerala H.C.)(06.03.2007), para. 3. See page 208 of this compilation for full text of judgment.

30 II (2010) DMC 677 (SC), 2011 Cr.L.J. 320, AIR 2011 SC 479 (Supreme Court) (21.10.2010), paras. 33-34. See page 209 of this compilation for full text of judgment.

names or in the name of the woman, long term investments in business and shares in separate and joint names;

4. **Domestic arrangements:** entrusting the responsibility, especially on the woman, to run the household, clean, cook and maintain the house;
5. **Sexual relationship:** sexual relations, not just for pleasure, but emotional and intimate, for procreation of children and to give emotional support, companionship, material affection and caring;
6. **Children:** children are strong indication of a relationship in the nature of marriage, suggesting that parties intend to have a long standing relationship that includes sharing the responsibility for bringing up and supporting children;
7. **Public socialization:** holding out to the public and socializing with friends, relations and others, as if they are husband and wife;
8. **Intention and conduct:** common intention as to what the relationship is to be and how it is to evolve, including respective roles and responsibilities.

These guidelines, the Court explained, are not exhaustive, but will definitely give some insight into such relationships.

Applying these guidelines in *Indra Sarma v. V.K.V. Sarma*, the Supreme Court held that since the aggrieved woman entered into a live in relationship with the respondent knowing that he was married with two children, the relationship between the aggrieved woman and the respondent was not a relationship in the nature of marriage. Instead, the court held that the status of the aggrieved woman was that of a "concubine." "A concubine," the court explained, cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character."

According to the Supreme Court, while continuous cohabitation of a man and woman as husband and wife raises a presumption of marriage, this is a rebuttable presumption. In particular, this presumption is weakened by polygamy, the practice of having more than one wife or husband at a time; bigamy, marrying someone that is already married to another; and adultery, maintaining voluntary sexual intercourse with a married person.

While acknowledging that a woman in a longstanding relationship as a "concubine" or "mistress" may deserve protection, the Supreme Court concluded that these relationships are not included within the ambit of Section 2(f) as framed at the time of writing. The court did, however, leave open the possibility that the definition of Section 2(f) of PWDVA—currently restrictive and exhaustive—may require amendment. "Such relationship[s]," the Supreme Court noted, "may endure for a long time and can result [in a] pattern of dependency and vulnerability, and an increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship." The Court concluded by calling upon parliament to "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[s] might not be a relationship in the nature of marriage."[31]

In *Manda R. Thaore v. Ramaji Ghanshyam Thaore*, the Bombay High Court held that formal marriage rituals are not necessary to establish a relationship in the nature of marriage. In this case, the aggrieved woman was washing utensils in the home of the respondent, physical relations were established between them resulting in the birth of a son, and the aggrieved woman lived with the respondent, by his admission, like his wife. Although the respondent was legally married to another woman during his relations with the aggrieved woman in this case, and there is no evidence to show that the aggrieved woman and the respondent ever underwent any marriage rituals, the Bombay High Court concluded that the aggrieved woman was entitled to recourse under PWDVA.[32]

Second wives

In *Pratibha v. Bapusaheb s/o Bhimrao Andhare*, the Bombay High Court upheld the protection order and maintenance order granted to an aggrieved woman who was the second wife of the respondent. Although the alleged husband denied the relationship and denied any cohabitation with the aggrieved woman, the Bombay High Court found that there was sufficient evidence to establish a relationship in the nature of marriage under Section 2(f).

In this case, the following evidence was submitted by the aggrieved woman to substantiate a relationship in the nature of marriage:

- **Deposition of the aggrieved woman**: testimony that she was married to the respondent, cohabited with the alleged husband and first wife for six years in the same house and was mistreated during the last two years of cohabitation.
- **Examination of the priest of marriage:** testimony that all rites and ceremonies were performed.
- **Examination of a disinterested witness**: testimony of a resident of the alleged husband's village that the aggrieved woman and alleged husband were married and cohabitated.
- **Examination of the aggrieved woman's father:** testimony that the aggrieved woman was married to the alleged husband because he had no issue from his first wife, the first wife consented to the second marriage and all rights, customs and ceremonies were performed at the time of marriage.
- **Examination of a gynaecologist:** testimony that the alleged-husband had taken the aggrieved woman for a medical check-up in context of the inability of the first wife

31 AIR 2014 SC 309, III (2013) DMC 830 (Supreme Court) (26.11.2013), paras. 55(1)-(7), 56, 57, 61, 62. See page 116 of this compilation for full text of judgment.

32 Criminal Revision Application No. 317/2006 (Bombay H.C.) (20.04.2010), paras. 4-5. See page 216 of this compilation for full text of judgment.

> to conceive. The gynaecologist also supplied records of treatment for the aggrieved woman.[33]

Through this evidence, the aggrieved woman substantiated that she formally married and cohabitated with the husband. Though this second marriage is invalid in the eyes of the law, the Bombay High Court held that it constitutes a relationship in the nature of marriage under PWDVA.

Divorced women

At the time of writing, while some benches of India's Higher Judiciary have repeatedly confirmed that divorced women are entitled to relief, there have been conflicting judgments on whether PWDVA applies to divorced women. The Andhra Pradesh, Bombay, Madhya Pradesh, Orissa, and Rajasthan High Courts have extended relief to divorced women under PWDVA. The Delhi High Court, however, has issued conflicting judgments on whether PWDVA applies to divorced women.

In *Sunil Kumar v. Sumitra Panda*, the Orissa High Court considered whether a divorced wife is entitled to relief under PWDVA. In its determination, the High Court cited Section 2(f) of PWDVA. The expression, "who live or have, at any point of time, lived together in a shared household" the Orissa High Court explains, shows that a current domestic relationship between the aggrieved person and the respondent is not necessary to seek relief under Section 12 of PWDVA.[34]

This decision by the Orissa High Court is consistent with the conclusion reached by the Bombay High Court in *Bharti Naik v. Ravi Ramnath Halarnkar*. In this case, the Bombay High Court reasoned:

> *the relationship by consanguinity, marriage, etc. would be applicable to both the existing relationship as well as the past relationship and cannot be restricted to only the existing relationship as otherwise the very intent and purpose of enacting the said Act would be lost as it then would protect only an aggrieved person who is having an existing relationship by consanguinity, marriage, etc. [An] interpretation [that] would have the effect of reading in to the said provisions the existence of the present status as a wife . . . is impermissible looking to the purport and intent of the said Act.*

Referencing the definitions of "aggrieved person" under PWDVA—namely, a woman who is, or "has been" in a domestic relationship with the respondent—the Bombay High Court concluded that a divorced wife is entitled to invoke the provisions of PWDVA.[35]

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33 I (2013) DMC 530 (Bombay H.C.) (2.11.2012), paras. 7-11. See page 219 of this compilation for full text of judgment.

34 2014 Cr.L.J. 1293 (Orissa H.C.) (06.01.2014), para. 14. See page 225 of this compilation for full text of judgment.

35 2011 Cr.L.J. 3572, III (2011) DMC 747 (Bombay H.C.) (17.02.2010), para. 9. See page 230 of this compilation for full text of judgment.

Similarly, in *A. Ashok Vardhan Reddy v. P. Savitha*, the Andhra High Court upheld the right of a woman to pursue relief under PWDVA although she had been granted a divorce by a foreign court.[36] To this conclusion, the Court cited a prior decision by the Andhra High Court in *Mohit Yadam v. State of Andhra Pradesh*,[37] in which the Court held that a legal relationship between a man and wife (between the aggrieved person and the respondent) at the date of filing, is not necessary in order to file under PWDVA.[38] The court explained, "[t]he words, 'at any point of time', 'lived together' cannot be understood in [a] narrow sense . . . In its sweep, shared household between two persons by relationship as defined by Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family."[39]

Resolving two contradictory views by the Rajasthan High Court, in *Sabana @ Chand Bai v. Mohd. Talib Ali,* a two-judge bench of the Rajasthan High Court concluded that "subsistence of marriage or the domestic relationship . . . is not a condition precedent for invoking the remedial measures under the provisions of Section 12 of the Act."[40]

By contrast, in *Harbans Lal Malik v. Payal Malik*, the Delhi High Court held that a divorced wife cannot claim maintenance under Section 12 of PWDVA. The Delhi High Court reasoned that while the definition of domestic relationship under Section 2(f) of the Act "speaks of living together at any point of time . . . it does not speak of having relation at any point of time."[41] Accordingly, the Court reasoned, "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."[42]

The perspective on whether divorced women are entitled to relief under PWDVA that is articulated by the Delhi High Court in *Harbans Lal Malik v. Payal Malik*, however, does not represent a consensus within the Delhi High Court. For instance, in *Syed Md. Nadeem @ Mohsin v. State,* the Delhi High Court conclusively states that Section 2(a) and 2(f) of

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36 2012 Cr.L.J. 3462 (Andhra H.C.) (29.02.2012), para. 29. See page 236 of this compilation for full text of judgment.

37 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (Andhra H.C.)(13.11.2009), para. 14. See page 251 of this compilation for full text of judgment.

38 2012 Cr.L.J. 3462 (Andhra H.C.) (29.02.2012), para. 29. See page 236 of this compilation for full text of judgment.

39 (Andhra H.C.) 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (13.11.2009), para. 25. See page 251 of this compilation for full text of judgment.

40 2014 Cr.L.J. 866 (Rajasthan H.C.) (30.10.2013), para. 45. See page 266 of this compilation for full text of judgment.

41 PWDVA, Chapter I, Section 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 cosanguity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family."

42 II (2010) DMC 202 (Delhi H.C.) (29.07.2010), para. 12. See page 145 of this compilation for full text of judgment.

PWDVA "are wide enough to cover even divorced couples," acknowledging that this conclusion is at odds with the conclusions reached by the Delhi High Court in *Harbans Lal Malik v. Payal Malik* and other cases.[43]

The fundamental distinction between these perspectives on whether divorced women are entitled to relief under PWDVA stems from the interpretation applied to the phrase "at any point of time" in the definition of domestic relationship under Section 2(f). The definition of domestic relationship in Section 2(f) of the Act has two components: first, "a relationship between two people who live or have, at any point of time, lived together in a shared household;" and second, "when they are related to each other by consanguity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family."

In the second condition, the words "when they are related" explain and qualify the nature of the relationship during the time the aggrieved person and the respondent cohabited in a shared household, but does not refer to a particular time period. For instance, a divorcee and her husband may have lived together in a shared household while married, and at that time, they were related by marriage. They fulfill the first criteria because at some point in time they lived together in a shared household, and they meet the second criteria because "when" they were living together in a shared household, they were related by marriage.

Until distinct interpretations among the Higher Judiciary on whether divorced women are entitled to relief under PWDVA are conclusively resolved, an advocate should clearly establish that the aggrieved divorced woman meets both dimensions of the definition of domestic relationship under the act by showing:

- "a relationship between two people who live or have, at any point of time, lived together in a shared household";
- "when they are related to each other by consanguinity, marriage, or through a relationship in the nature of marriage, adoption, or are family members living together as a joint family."

In order to establish that a woman has a valid relationship to her former husband under the Act, both while married and after divorce, it can be argued that the divorced woman was related to her former husband as a spouse, and is now related to him as a former spouse.[44]

Divorced Muslim women

In *Syed Md. Nadeem @ Mohsin v. State*, the Delhi High Court explicitly held that the Muslim Women (Protection of Rights on Divorce) Act, 1986 (hereinafter, "Muslim Women Act) does

43 W.P. (Crl.) 887/2011 and Crl. M.A. No. 7238/2011 (for stay) (Delhi H.C.) (15.06.2011), para. 3. See page 291 of this compilation for full text of judgment.

44 Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p. 29.

not undermine a divorced Muslim woman's entitlement to seek relief under PWDVA. The Delhi High Court explained:

> *Prima facie it also appears that [the] Muslim Women Act would not come in the way of applicability of the provisions of the Domestic Violence Act to Mohammedans; if it were to be so held, owing to the Hindu Marriage Act, 1955 also containing provisions qua maintenance, Domestic Violence Act would not apply to Hindus also, making the same otiose [serving no practical purpose or result].*[45]

Entitlement to relief under PWDVA is also implicitly extended to divorced Muslim women by the Madhya Pradesh High Court in *Razzak Khan v. Shahnaz Khan*[46] and the a two-judge bench of the Rajasthan High Court in *Sabana @ Chand Bai v. Mohd. Talib Ali*.[47]

Widows

The Orissa High Court, Calcutta High Court and the Delhi High Court have expressly recognized the rights of widowed women under PWDVA. In *Gangadhar Pradhan v. Rashimbala Pradhan,* the Orissa High Court cited the PWDVA statements of object and reasons in upholding a widowed woman's entitlement to be given monthly maintenance by her father in law until she gets her share in the ancestral joint family properties.[48] Similarly, in *Ashish Bhowmik v. Tapasi Bhowmik*, the Calcutta High Court upheld the orders of the Magistrate Judge, confirming that the widowed woman should be accommodated by her in-laws. In this case, the woman was granted monetary compensation in order to secure the same level of alternate accommodation.[49]

In *Eveneet Singh v. Prashant Chaudhri*, the court was engaged in adjudicating the rights of a daughter-in-law within the shared household who was not a widow. However, the Delhi High Court used the plight of a widow living with her mother-in-law to explain the parliamentary intention to secure the rights of aggrieved women in shared households. Here, the Court reasoned:

> *For instance, a widow living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship"; even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection*

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45 W.P. (Crl.) 887/2011 and Crl. M.A. No. 7238/2011 (for stay) (Delhi H.C.) (15.06.2011), para. 5. See page 291 of this compilation for full text of judgment.

46 2008 (4) MPHT 413 (Madhya Pradesh H.C.)(25.03.2008), para. 13. See page 292 of this compilation for full text of judgment.

47 2014 Cr.L.J. 866 (Rajasthan H.C.) (30.10.2013), para. 45. See page 266 of this compilation for full text of judgment.

48 W.P.(Crl) No.519 of 2011 (Orissa H.C.) (18.05.2012), paras. 6, 22-24. See page 296 of this compilation for full text of judgment.

49 C.R. R. No. 10 of 2009 (Calcutta H.C.) (30.06.2010), para. 3. See page 303 of this compilation for full text of judgment.

from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity. [50]

This explanation is useful for explanatory purposes.

Consanguinity and family members living in a joint family

Referring to a shared household rather than a matrimonial home as a prerequisite for accessing entitlements under PWDVA, the Act widens the scope of protection to protect daughters against their parents and mothers against their sons. While there is not much case law on this issue, India's Higher Judiciary has granted relief to both daughters and mothers under PWDVA.

In *Badri Lal Gurjar v. Yogesh Kumari*, the Rajasthan High Court upheld the right of a widowed daughter to claim interim maintenance from her father under PWDVA after she was allegedly thrown out of her matrimonial home. Despite claims by the father that he is unable to pay the interim maintenance of ₹ 2000 per month, the court held that it was the fathers moral and legal duty to look after his widowed daughter. [51]

In *Sikakollu Chandramohan v. Sikakollu Saraswathi Devi*, the Andhra Pradesh High Court extended protection under PWDVA to a widowed mother who, after her husband's death, was defrauded of her shares in the family business, deprived of immovable property, cash deposits and jewellery, ill-treated, and ultimately dispossessed from her home by her three sons. At the time of filing, the 76-year old mother was living with one of her daughters. In this case, the Andhra Pradesh High Court awarded the mother maintenance of ₹ 75, 000 per month to be paid in equal shares of ₹ 25, 000 from each son as well as compensation of ₹ 50, 000 from each son.[52]

Children and foster children

When filing for relief under PWDVA, a mother can bring an application on behalf of herself and her children. In *Razzak Khan v. Shahnaz Khan*, the Madhya Pradesh High Court extended entitlement to relief under PWDVA to foster children. In this case, the mother claimed maintenance on behalf of both her biological son and her foster son. An order for maintenance, granted on behalf of both her biological and foster son by the Appellate Court, was upheld by the High Court. [53]

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50 I (2011) DMC 239, 2012 Cr.L.J. 4106 (Delhi H.C.) (20.12.2010), para. 11. See page 305 of this compilation for full text of judgment.

51 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009), para. 5. See page 319 of this compilation for full text of judgment.

52 Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010), paras. 5-6. See page 108 of this compilation for full text of judgment.

53 2008 (4) MPHT 413 (Madhya Pradesh H.C.)(25.03.2008), para. 10. See page 292 of this compilation for full text of judgment.

2. MECHANISMS TO ASSIST WOMEN TO ACCESS RELIEF UNDER PWDVA

PROTECTION OFFICERS

PWDVA requires states to appoint Protection Officers charged with enforcing the Act by facilitating a woman's access to court remedies and other support services, and assisting the court in its adjudication role.[54] Responsibilities assigned to Protection Officers include filing domestic incident reports (DIRs) with the Magistrate; filing applications for protection and other court orders with the Magistrate; ensuring enforcement of monetary relief; and assisting women to access counselling, legal aid, a safe shelter home and medical attention.[55]

Protection Officers, while taking action or purporting to take action under PWDVA, are deemed to be public servants.[56] Recognizing that women who face domestic violence may have difficulty initiating legal action, PWDVA authorizes anyone to provide information on domestic violence to a Protection Officer.[57]

JURISDICTION OF PROTECTION OFFICERS

The clarification that the Protection Officer's role is not to verify claims has implications for whether a DIR can be filed with a Protection Officer in a different jurisdiction from where the alleged incident of violence took place. In *Neeraj Goswami v. State of Uttar Pradesh,* the Allahabad High Court explained that since the Protection Officer is not to act as an investigating agency and is instead tasked with facilitating access to justice under PWDVA, an aggrieved woman can approach a Protection Officer and file a DIR from a temporary residence in cases where alleged incidents of violence have taken place elsewhere. [58]

PROTECTION OFFICERS ARE NOT RESPONSIBLE FOR INVESTIGATING CLAIMS

While one of the roles of a Protection Officer is to assist women in filing DIRs with the Magistrate, this does not create a responsibility to investigate claims. In *Neeraj Goswami v. State of Uttar Pradesh*, the Allahabad High Court explained the role of Protection Officers and Service Providers under PWDVA: Protection Officers and Service Providers are supposed to serve as "the instrument to set the law in motion for justice to [be conferred upon an] aggrieved person." This authority is different from an investigating authority: "Thus, the Protection Officer as well as the Service Provider both have been empowered to assist the aggrieved person, but they cannot be termed as investigating agency in the matter." [59]

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54 PWDVA, Chapter 3, Sections 8(1) and 9(1).

55 PWDVA, Chapter 3, Section 9.

56 PWDVA, Chapter 5, Section 30.

57 PWDVA, Chapter 3, Section 4(1).

58 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013).

59 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013). See page 320 of this compilation for full text of judgment.

POLICE OFFICERS, SERVICE PROVIDERS AND MAGISTRATES

Under PWDVA, police officers, Service Providers and Magistrates can all receive complaints of domestic violence. If any of these parties receives a complaint of domestic violence or is otherwise present at an incident of domestic violence, these parties are responsible for informing the aggrieved woman of her rights. In particular, an aggrieved woman should be informed of the following:

1. her right to make an application for obtaining relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
2. the availability of services of Service Providers;
3. the availability of services of Protection Officers;
4. her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
5. her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant.

Nothing in PWDVA, however, relieves a police officer from their duty to proceed in accordance with law upon receiving information on commission of a cognizable offence.[60]

SERVICE PROVIDERS

Under PWDVA, Service Provider refers to any registered association or company with the objective of protecting the rights and interests of women by providing legal aid, medical, financial or other assistance. Like Protection Officers, Service Providers, while acting or purporting to take action under PWDVA, are deemed to be public servants.[61]

PWDVA makes provisions for Service Providers to register with State governments.[62] Provisions governing eligibility and registration of Service Providers under PWDVA are contained in Section 11 of the Act. State Governments are responsible for providing a list of registered Service Providers in the various localities to the concerned Protection Officers and also for publishing this list in newspapers or on its website.[63]

A registered Service Provider has the authority to record the domestic incident report, arrange for the aggrieved person to be medically examined and ensure that the aggrieved woman is provided shelter in a shelter home.[64] At any stage of proceedings under PWDVA, a Magistrate may also direct either the respondent or the aggrieved person to undergo counseling with a

60 PWDVA, Chapter 3, Section 5.

61 PWDVA, Chapter 5, Section 30.

62 PWDVA, Chapter 3, Section 10(1).

63 PWDVA, Chapter 3, Section 11(3).

64 PWDVA, Chapter 3, Section 10(2).

qualified Service Provider.[65] PWDVA protects Service Providers who, in good faith, discharge these functions under the act in order to prevent the commission of domestic violence, from prosecution or other legal proceedings.[66]

MEDICAL FACILITIES AND SHELTER HOMES

PWDVA contains provisions for State Governments to notify or designate medical facilities and shelter homes charged with providing services to aggrieved women. Upon the request of an aggrieved person, Protection Officer or Service Provider, designated medical facilities and shelter homes are required to provide medical aid and shelter, respectively.[67]

3. DOMESTIC INCIDENT REPORTS (DIRs)

A DIR is a report prepared by the Protection Officer, Service Provider or medical facility notified under the Act based on a complaint of domestic violence received from an aggrieved person. A DIR is presented in the format prescribed in Form I and governed by PWDV Rules 5(1), 5(2), and 17(3).

> PWDV Rule 5. Domestic incident reports-(1): Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form 1 and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the Service Providers in that area. (2) Upon a request of any aggrieved person, a Service Provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.
>
> PWDV Rule 17(3). If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in form I and forward the same to the local Protection Officer.

Domestic Incident Report Key Points[68]

1. The aggrieved person should as far as possible furnish all the details of violence while registering the DIR.
2. A woman may file a DIR for each individual act of domestic violence.
3. A DIR can be recorded wherever the incident of domestic violence occurred, or where the aggrieved person resides/works.

65 PWDVA, Chapter 4, Section 14.

66 PWDVA, Chapter 3, Section 10(3).

67 PWDVA, Chapter 3, Sections 7-8 and PWDVR, Rules 16 and 17.

68 These tips are drawn from Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p. 97.

4. A woman need not go to court because she has recorded a DIR.
5. Authenticated copies of prior DIRs may be valuable evidence in subsequent cases.
6. A woman must disclose all previous litigation between the parties when filing a DIR. Failure to do so can have serious consequences including denial of relief on the ground that she has not approached the court with clean hands.
7. An aggrieved person should request a copy of the DIR.

DIRs NOT MANDATORY TO INITIATE PROCEEDINGS OR RECEIVE RELIEF

As outlined in Section 12 of the Act, It is not necessary for a woman to file a DIR with a Protection Officer in order to initiate proceedings or receive relief under PWDVA.

Moreover, the higher judiciary has also held that an aggrieved woman does not require a DIR to initiate proceedings or receive an interim order.

- The ability to initiate proceedings without a DIR was upheld by the Kerala High Court in *Aboobacker Master v. Jaseena K*;[69] the Jharkand High Court in *Rakesh Sachdeva v. Neelam Sachdeva*;[70] the Uttar Pradesh High Court in *Milan Kumar Singh v. State of Uttar Pradesh;*[71] and the Himachal Pradesh High Court in *Rahul Soorma v. State of Himachal Pradesh*.[72]
- The authority of the Magistrate to pass an interim order prior to receiving a DIR from a Protection Officers was upheld by the Bombay High Court in *Nandkishor Vinchurkar v. Kavita Vinchurkar*.[73]

SIGNIFICANCE OF DIRs

While a DIR is not mandatory to initiate proceedings under PWDVA, when a DIR is filed with a Magistrate, it should be considered significant. In *Nayankumar v. State of Karnataka*,[74] the Karnataka High Court explained that if the Magistrate receives a DIR, either from a Protection Officers, or a Service Provider, the Magistrate is obliged to consider the DIR prior to passing an order on the application.

According to the Punjab and Haryana High Court in *Yadvinder Singh v. Manjeet Kaur*, the DIR submitted by a Protection Officers is a particularly important to consider because it

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69 Crl.MC.No.3960 of 2009 (Kerala H.C.) (8.12.2009), para. 4. See page 335 of this compilation for full text of judgment.

70 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 12. See page 87 of this compilation for full text of judgment.

71 2007 Cr.LJ 4742 (Allahabad H.C.) (18.7.2007), para. 4. See page 336 of this compilation for full text of judgment.

72 2012 Cr.L.J. 2742 (Himachal Pradesh H.C.) (01.05.2011), para. 13-15. See page 340 of this compilation for full text of judgment.

73 2009 (3) Bom. C.R. (Cri.) 280 (Bombay H.C.) (5.8.2009), para. 14 See page 344 of this compilation for full text of judgment.

74 Crl.Pet. No. 2004 of 2009 (Karnataka H.C.) (12.08.2009), paras. 11-12. See page 348 of this compilation for full text of judgment.

is unbiased.[75] While a DIR must be considered prior to passing final orders, according to the Madhya Pradesh High Court in *Ajay Kant v. Alka Sharma*, it need not be considered prior to issuing notice to either party.[76]

4. COURT JURISDICTION

Jurisdiction refers to whether a particular court has the authority to adjudicate an application. Under Section 27 of PWDVA, Magistrate Courts have jurisdiction in the following instances:

- Where the woman seeking protection permanently or temporarily resides, carries on business, or is employed within the local limits of the court;
- Where the respondent resides, carries on business or is employed within the local limits of the court; or
- Where the cause of action (or domestic violence) has arisen within the local limits of the court.

In *Manish Tandon v. State*, the Allahabad High Court explained, "the legislature has provided women covered under the Act with such wide options to institute a case against unscrupulous persons who harass or abuse her . . . with an intent that women may opt for the place best suit[ing] their convenience, comfort and accessibility."[77]

FILING FROM A TEMPORARY RESIDENCE

Notably, PWDVA is the first Act where temporary residence of an aggrieved person is sufficient to invoke the jurisdiction of the court. In *Sharad Kumar Panday v. Mamta Pandey*, the Delhi High Court defined temporary residence:

> *A temporary residence . . . must be a temporary dwelling place of the person who has for the time being decided to make the place as [her] home. Although [s]he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be a place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.*

Clarifying the principle that an aggrieved woman can file for relief under PWDVA from a temporary residence in a different locale from where the acts of violence take place, the Delhi High Court held that in instances where a woman establishes temporary residence due to the

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75 Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.) (26.11.2010), para. 5. See page 352 of this compilation for full text of judgment.

76 2008 Cr.L.J. 264, I (2008) DMC 1 (Madhya Pradesh H.C. (Gwalior Bench)) (19.06.2007), para. 3. See page 353 of this compilation for full text of judgment.

77 I (2010) DMC 242 (Allahabad H.C.) (12.10.2009), para. 17. See page 359 of this compilation for full text of judgment.

presence of family, a friend, a business or a job, a Magistrate Court in that locale would have jurisdiction.

However, the same judgment by the Delhi High Court also limited the definition of temporary residence, holding: "This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case." According to the Delhi High Court, a temporary residence must be a continuous residence during the time of proceedings.[78]

FILING FROM A PLACE WHERE A WOMAN HAS SOUGHT REFUGE FROM ABUSE

In *Neeraj Goswami v. State of Uttar Pradesh*, the Allahabad High Court considered whether an aggrieved woman could properly file for relief from Lucknow, Uttar Pradesh, where she sought refuge with her parents, when the alleged incidents of domestic violence took place in Gurgaon, Haryana. In determining whether the Magistrate in Lucknow had jurisdiction over the case, the Allahabad High Court held that while the alleged incidents took place in Gurgaon, it was due to these incidents that the woman seeking relief was compelled to reside in her parents' home. The persistent harassment and general circumstances compelling her to live with her parents, the court explained, constitutes a continuing offence. Accordingly, since the offence continues in Lucknow, it may be tried by the court with jurisdiction over Lucknow.[79]

The higher judiciary has also upheld the jurisdiction of Indian courts in cases where domestic violence took place overseas and the aggrieved woman returned to India and sought relief under PWDVA. In *Hima Chugh v. Pritam Ashok Sadaphule*, the Delhi High Court held that the Delhi Metropolitan Magistrate had jurisdiction even though the alleged domestic violence took place in the UK. Although Hima Chugh and her husband resided in the UK with only intermittent visits to Delhi and Mumbai, and she had received a non-molestation order from a UK court, when Hima Chugh returned to Delhi to live with her parents due to conflicts in her marriage, the Delhi Metropolitan Magistrate had jurisdiction to grant relief under PWDVA.[80]

Similarly, in *Sukrit Verma v. State of Rajasthan*, the Jaipur Bench of the Rajasthan High Court upheld a judgment by the Jaipur Magistrate Court awarding $2000 a month to Sukrit Verma after she refused to return to the United States with her husband due to being subjected to domestic violence while living with him in the United States.[81]

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78 II (2010) DMC 600 (Delhi H.C.) (01.09.2010), para. 9. See page 364 of this compilation for full text of judgment.

79 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013). See page 320 of this compilation for full text of judgment.

80 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013), para. 8. See page 160 of this compilation for full text of judgment.

81 III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011), para. 16. See page 369 of this compilation for full text of judgment.

RELIEF UNDER PWDVA IN CONTEXT OF OTHER SUITS AND LEGAL PROCEEDINGS

Under Sections 26, applications seeking relief under PWDVA may be filed independently or sought in any pending civil, criminal or family court proceeding. This provision is designed to avoid multiple proceedings and facilitate access to relief for women facing domestic violence.

RELIEF UNDER PWDVA WITHIN PENDING PROCEEDINGS IN FAMILY OR CIVIL COURT

Under PWDVA Section 12, applications for relief can only be filed before a Magistrate. If, however, there are proceedings pending in either a Family Court or Civil Court, PWDVA Section 26 allows relief under Sections 18, 19, 20, 21 and 22 to be sought in these proceedings as well. This principle has been applied by the Chattisgarh High Court in *Neetu Singh v. SuniI Singh*[82] and the Madras High Court in *M.J. John v. Elizabeth John*.[83]

SEEKING RELIEF UNDER PWDVA IN DISTINCT PROCEEDINGS ALONGSIDE PENDING PROCEEDINGS IN A FAMILY OR CIVIL COURT

As early as 2007, in *A.V. Rojer v. Janet Sudha,* the Madras High Court upheld proceedings under PWDVA while child custody and maintenance proceedings were pending. The court explained, "the legislators in their wisdom thought fit that aggrieved women should be given more option[s] in getting speedy remedy as trying to get remedy as per the general law is a time consuming one." [84]

In *Bimal Mitra v. Ashalata Mitra*, the Gauhati High Court explained that the only precondition to claiming reliefs under PWDVA in addition to reliefs claimed in distinct pending civil or family proceedings is that any pending proceedings must be mentioned in the initial PWDVA filing and the outcome of relevant proceedings should be communicated to the court.[85]

In a similar line of reasoning, in *Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder)*, the Calcutta High Court recognized that pursuant to Section 26(2), any relief named under Section 26(1) may be sought in addition to and along with any other relief that the aggrieved woman may seek in other legal proceedings before a Civil or Criminal Court. According to the Calcutta High Court, "a safeguard has been made against abuse by such process of law in Sub-Section 3 of Section 26 of the Act" - namely, that "in case any relief has been obtained by

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82 AIR 2008 Chattisgarh 1 (Chattisgarh H.C.)(28.09.2007), para. 9. See page 378 of this compilation for full text of judgment.

83 Civil Revision Petition (PD) No. 3396 of 2009 and M.P. Nos. 1 and 2 of 2009 (Madras H.C.) (28.03.2011), para. 12. See page 382 of this compilation for full text of judgment.

84 Crl. O.P. (MD). No. 2496 of 2007 and M.P (MD) Nos. 1 and 2 of 2007 (Madras H.C.) (12.04.2007), para. 8. See page 385 of this compilation for full text of judgment.

85 2013 Cr.L.J. 4110 (Gauhati H.C.) (23.07.2013), para. 90. See page 388 of this compilation for full text of judgment.

the aggrieved person in any proceedings other than a proceeding under the Act of 2005, she shall be bound to inform the Magistrate of the grant of such relief." [86]

CLAIMING MAINTENANCE UNDER PWDVA AND 125 CR.P.C.

In *Renu Mittal v. Anil Mittal*, the Delhi High Court held that an application for maintenance under PWDVA should not be entertained when a petition for maintenance had already been filed under Section 125 Cr.P.C. and maintenance has been awarded. This decision was based upon the conclusion by the Delhi High Court that "the same matter" was being adjudicated.[87]

The decision by the Delhi High Court in *Renu Mittal v. Anil Mittal* however, contradicts the earlier 2007 Madras High Court judgment in *A. V. Rojer v. Janet Sudha*[88] and conflicts with analysis by the Chattisgarh High Court in *Rajesh Kurre v. Safurabai* that clearly distinguishes the burden of proof required under PWDVA and Section 125 Cr.P.C.

As explained by the Chattisgarh High Court in *Rajesh Kurre v. Safurabai*, although Rule 6(5) specifies that applications under Section 12 are governed by Section 125 Cr.P.C., the burden of proof required to claim maintenance under PWDVA is distinct from the burden of proof required to claim maintenance under 125 Cr.P.C. In order to secure maintenance under Section 125 Cr.P.C., the aggrieved party is required to prove that they are unable to maintain themselves, have sufficient cause for separate living, and that the person from whom maintenance is claimed has sufficient means to maintain the aggrieved person. According to the Chattisgarh High Court, however, under PWDVA Section 20, the court can grant maintenance without meeting these conditions under Section 125 Cr.P.C.[89]

While there is no consensus among the higher judiciary on the issue of whether an aggrieved woman can claim maintenance under PWDVA and 125 Cr.P.C., an advocate can counter the Delhi High Court judgment in *Renu Mittal v. Anil Mittal* by arguing that due to the distinct burdens of proof under PWDVA and Section 125 Cr.P.C, proceedings for maintenance under PWDVA and 125 Cr.P.C. cannot be considered identical because the Magistrate court adjudicating the matter under PWDVA is concerned with a distinct evidentiary standard.

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86 C.R.R. 1835 of 2010 (Calcutta H.C.)(06.10.2010), para. 6. See page 390 of this compilation for full text of judgment.

87 II (2010) DMC 775 (Delhi H.C.) (27.09.2010), para 5. See page 394 of this compilation for full text of judgment.

88 Crl. O.P. (MD). No. 2496 of 2007 and M.P (MD) Nos. 1 and 2 of 2007 (12.04.2007) (Madras H.C.), para. 8. See page 385 of this compilation for full text of judgment.

89 AIR 2009 (NOC) 813 (CHH) (Chattisgarh H.C.)(11.11.2008), para. 9. See page 396 of this compilation for full text of judgment.

CLAIMING MAINTENANCE UNDER PWDVA AND THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

In *Anwar v. Shamim Bano*, the Rajasthan High Court considered whether a divorced Muslim woman who seeks relief under the Muslim Women (Protection of Rights on Divorce) Act, 1986 can also claim relief under PWDVA. The Court concluded that even if an aggrieved woman has given *talaq* to the respondent, "this talaqnama is still to be proved by the petitioner in the appropriate court of law as per Muslim Law" and, accordingly, there is nothing illegal in granting her interim maintenance under PWDVA. [90]

TRANSFER OF APPLICATIONS FROM MAGISTRATE'S COURTS TO OTHER COURTS

In *MA Mony v. MP Leelamma,* the Kerala High Court held that since PWDVA was enacted to meet the needs of women in emergency situations, transferring cases to another court where similar reliefs are pending would undermine the purpose of the act by causing a delay in awarding orders. [91]

5. PROCEDURE FOR OBTAINING RELIEF UNDER PWDVA

APPLICATION TO MAGISTRATE

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.[92] In order to initiate court proceedings under PWDVA, a woman has the following options:

- Approach the Magistrate directly;[93]
- File a DIR with a Protection Officers or Service Provider[94] and work with them to approach the court; or
- Authorize a lawyer to file the application on her behalf.[95]

As explained by, the Karnataka High Court in *Nayankumar v. State of Karnataka*[96] and the Bombay High Court in *Sabah Sami Khan v. Adnan Sami Khan,*[97] it is left to the choice of the

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90 2012 Cr.L.J. 2552 (Rajasthan H.C.) (13.04.2012), para. 8. See page 401 of this compilation for full text of judgment.

91 2007 Cr.L.J. 2604 (Kerala H.C.)(29.03.2007), paras. 8,10. See page 407 of this compilation for full text of judgment.

92 PWDVA, Chapter 4, Section 12(1).

93 Crl.Pet. No. 2004 of 2009 (Karnataka H.C.) (12.08.2009), para. 12. See page 348 of this compilation for full text of judgment.

94 PWDVA, Chapter 3, Section 9(1)(b), 10(2)(a) and PWDVR 5.

95 PWDVA, Chapter 4, Section 12(1).

96 Crl.Pet. No. 2004 of 2009 (Karnataka H.C.)(12.08.2009), para. 12. See page 348 of this compilation for full text of judgment.

97 2011 (1) MhLj 427 (Bombay H.C.) (21.10.2010), para. 8. See page 413 of this compilation for full text of judgment.

aggrieved woman to either go to a Service Provider or Protection Officer, or to approach the Magistrate directly.

Under PWDVA, the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of application by the Court. The Magistrate shall endeavor to dispose every application within a period of sixty days from the date of its first hearing.[98] If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, a Magistrate may conduct proceedings under PWDVA in camera (in private).[99]

FORM OF THE APPLICATION

An application under PWDVA can be made using Forms II and III as outlined in Rule 6 of the PWDV Rules. Alternately, an application can be made without using these formats.

Using Form II and Form III

Rule 6 of the PWDV Rules governs the form of applications to the Magistrate. According to Rule 6, filing Form II and Form III initiates court proceedings.

- **Form II**: an application under Section 12 of the Act;
- **Form III**: an affidavit and application for interim reliefs under Section 23(2).

While PWDVA and the PWDV Rules refer to the initial application to the Magistrate as a "complaint," the Kerala High Court in *Sunitha v. State of Kerala*[100] clarified that the expression "complaint" found in the Act and Rules has been used in a generic sense and are not to be understood in the context of a complaint as defined under the Code of Criminal Procedure" (Section 2(d)).[101] Therefore, a Form II application is sufficient to initiate proceedings under PWDVA.

The Bombay High Court in *Vishal Damodar Patil v. Vishakha Vishal Patil*[102] and the Kerala High Court in *P. Chandrasekhra Pillai v. Valsala Chandran*[103] clarified that if particular reliefs are requested on Form II or otherwise, and accompanied by Form III or an independent

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98 PWDVA, Chapter 4, Section 12(4)(5).

99 PWDVA, Chapter 4, Section 16.

100 ILR 2011 (1) Kerala 152 (Kerala H.C.) (10.12.2010), para. 5. See page 422 of this compilation for full text of judgment.

101 Under Section 2(d) in The Code Of Criminal Procedure, 1973, "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation. - A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

102 2009 Cr.L.J. 107 (Bombay H.C.) (20.08.2008), para. 6. See page 427 of this compilation for full text of judgment.

103 2007 Cr.L.J. 2328, I (2008) DMC 83 (Kerala H.C.)(27.02.2007), para. 11. See page 431 of this compilation for full text of judgment.

affidavit, a woman does not need to file a separate application to the court in order to be granted interim relief.

Filing without using Form II and Form III

While procedures for filing are detailed in Rule 6, in *Milan Kumar Singh v. State of Uttar Pradesh,*[104] the Allahabad High Court explained that the purpose of these formats is to facilitate filing by providing a form that includes all necessary information. According to the Allahabad High Court, since PWDVA is social legislation, an initial application for relief that contains all necessary information cannot be rejected on the grounds that it has not been filed using Forms II and III.

While the form of the initial application for relief is flexible, according to the Sikkim High Court in *Samten Tshering Bhutia v. Passang Bhutia*,[105] an application must explicitly request particular reliefs in order for those reliefs to be granted.

SERVICE OF NOTICE

Under Section 13 of PWDVA, notice of the date of a hearing fixed under Section 12 is to be given by the Magistrate to the Protection Officer. The Protection Officer is responsible to have notice served to the respondent and any other person in the manner specified by the Magistrate, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed, as the case may be. The notice shall be delivered to any person in charge of such place and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises. Such notice shall be delivered within two days, unless the Magistrate allows further time.

The Madras High Court in *Amar Kumar Mahadevan v. Kathiyayini* has also used Section 28(2) to allow notice to be served privately.[106]

Protection of Women from Domestic Violence Rule (PWDVR) 12

(12)(2)(c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.

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104 2007 Cr.L.J. (Allahabad H.C.) 4742 (18.07.2007), para. 5. See page 336 of this compilation for full text of judgment.

105 2014 Cr.L.J. 149 (Sikkim H.C.) (13.09.2013), paras. 8-9. See page 436 of this compilation for full text of judgment.

106 Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Madras H.C.) (28.11.2007), para. 12. See page 439 of this compilation for full text of judgment.

PROCEDURE UNDER PWDVA SECTION 28

PWDVA Section 28 lays out the procedure to be followed in proceedings under the following sections:

- **Section 12**, governing application to the Magistrate
- **Section 18**, empowering the Magistrate to pass a protection order that prohibits a respondent from committing any act of domestic violence
- **Section 19,** empowering a Magistrate to pass a residence order
- **Section 20**, empowering the Magistrate to pass an order requiring payment of monetary relief to meet expenses and losses
- **Section 21**, empowering the Magistrate to grant temporary custody
- **Section 22**, empowering the Magistrate to grant compensation
- **Section 23**, empowering the Magistrate to grant interim and *ex parte* orders
- **Section 31**, penalizing the breach of a protection order

According to Section 28(1) of PWDVA, the Code of Criminal Procedure governs proceedings under the Act. Rule 6(5) of the PWDV Rules clarifies that "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."[107]

Procedure under Section 125 of Cr.P.C.—providing for maintenance of wives, children, and parents—is given in Section 126 of Cr.P.C.

Legal provisions regarding Procedure for Maintenance (Section 126 Cr.P.C.)

(1) An application for maintenance under Section 125 of the Code may be filed in the court of first class Magistrate in any district where he is or where he or his wife resides, or where he last resides with his wife with the evidence that the applicant is unable to maintain himself or herself, in addition to the facts that the person against whom the demand for maintenance has been made has sufficient means to maintain the applicant and that he has neglected or refused to maintain the applicant. No period of limitation has been prescribed for filing an application for maintenance.

(2) All evidence in such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed for summons-case. However, if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is willfully avoiding service, or willfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made

107 PWDV Rules 6(5).

within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper. Here the period of limitation of three months begins from the date of the knowledge of the *ex parte* order to the aggrieved party and not from the date of the passing of the order.

(3) The Court in dealing with applications under Section 125 shall have power to make such order as to costs as may be just.

PROCEDURAL GUIDELINES INTRODUCED BY THE JUDICIARY

Section 28(2) of PWDVA authorizes the Court to lay down its own procedure for disposal of an application under Section 12 or Section 23(2). As explained by the Gujarat High Court in *Jaydisinh Prabhatsinh Jhala v. State of Gujarat*, in adjudicating cases under PWDVA, a Magistrate has authority to deviate from the Code of Criminal Procedure in the interests of justice. The Gujarat High Court explained:

> *In view of the nature of the proceedings before the Magistrate and in view of the procedural flexibility provided by the legislature to the Magistrate in deciding the applications under Section 12(1) of the Act, it cannot be stated that the Magistrate is bound by the straight-jacket formula or procedure laid down under the Code of Criminal Procedure. In a given case, it would be open for the Magistrate to make deviation therefrom as may be found necessary in the interest of justice.*[108]

In order to expedite PWDVA proceedings in keeping with the objectives of the Act and provide immediate reliefs in cases of violence, the following procedures and guidelines have been introduced by the India's higher judiciary in adjudicating cases under PWDVA:

- **Service of notice may be issued privately:** when expedient, service of notice can be issued privately rather than through the Protection Officer who then serves the respondent as specified by PWDVA Section 13. Madras High Court, *Amar Kumar Mahadevan v. Karthiyayini*[109]
- **Framing the issues in terms of reliefs:** after a reply is filed by the respondent, Magistrates should determine from the applicant what reliefs she is seeking under PWDVA and frame issues on the basis of the reliefs sought. Bombay High Court, *Jovita Olga Ignesia Mascarehas e Coutinho. v. Mr. Rajan Maria Countinho*[110]

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108 2010 Cr. LJ 2462, (2010) 51 GLR 635 (Gujarat H.C.)(22.12.2009), para. 23. See page 444 of this compilation for full text of judgment.

109 Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Madras H.C.) (28.11.2007), para. 12. See page 439 of this compilation for full text of judgment.

110 2011 Cr.L.J. 754, I (2011) DMC 257 (Bombay H.C. (Goa Bench)) (24.08.2010), para. 12. See page 104 of this compilation for full text of judgment.

- **Chief examination of witnesses can be furnished by affidavit:** in order to reduce the time required for proceedings, the Court may allow chief examination of witnesses by affidavit. Madras High Court, *Lakshmanan v. Sangeetha*[111]
- **Magistrate may allow amendment of the initial application:** the Magistrate may allow for amendment of the petition in order to incorporate additional reliefs and correct misrepresentations by lawyers. Kerala High Court, *Saramma v. Shyju Varghese*[112]
- **Magistrate may allow amendment of pending proceedings to incorporate reliefs under PWDVA even when technical amendment requirements are not met:** a court may allow a woman to amend proceedings to include relief under PWDVA despite technical deficiencies in the amendment process because technicalities should not be allowed to hinder justice. Delhi High Court, *Sarbjyot Kaur Saluja v. Rajender Singh Saluja*[113]

RETROSPECTIVE EFFECT OF PWDVA

In *V.D. Bhanot v. Savita Bhanot*, the Supreme Court held that conduct that took place prior to PWDVA coming into force can be considered in proceedings under PWDVA.[114] Citing this judgment, on November 25, 2013, in *Saraswathy v. Babu*, the Supreme Court of India conclusively held that applications under PWDVA can be made based upon conduct that amounts to continued domestic violence that began prior to when PWDVA came into force in October 26, 2006, even when the wife no longer lives in the shared household.[115]

6. RELIEF UNDER PWDVA

Briefly stated, the legal remedies available to women in domestic relationships under PWDVA include:

- **Protection order**: a "stop violence" order that prevents the respondent from committing any act of domestic violence against the aggrieved woman.[116]
- **Residence order**: an order to prevent the respondent from displacing the aggrieved women from the shared household or disrupting her peaceful occupation of the shared household; or alternately, an order to provide another residence.[117]

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111 Crl. R.C. No. 576 of 2009 (Madras H.C.) (12.10.2009) para.11. See page 458 of this compilation for full text of judgment.

112 III (2011) DMC 390 (Kerala H.C. (Ernakulam))(28.06.2011), para. 5. See page 461 of this compilation for full text of judgment.

113 148 (2008) DLT 650 (Delhi High Court) (20.11.2007), para. 20. See page 464 of this compilation for full text of judgment.

114 AIR 2012 SC 965, I (2012) DMC 482 SC (07.02.2012), para. 8. See page 470 of this compilation for full text of judgment.

115 2014 Cr.L.J. 1000 (SC), A 2014 SC 857, I (2014) DMC 3 (SC) (25.11.2013), para. 14. See page 474 of this compilation for full text of judgment.

116 PWDVA, Chapter 4, Section 18(a)-(g).

117 PWDVA, Chapter 4, Section 19.

- **Monetary relief**: an order to the defendant to cover expenses incurred as a result of domestic violence, including medical expenses, lost earnings, loss of property and maintenance for the woman and her children.[118]
- **Temporary custody order**: an order granting temporary custody of any child or children to the aggrieved woman, or visitation rights to the respondent if necessary.[119]
- **Compensation order**: in addition to monetary relief, a monetary compensation order that covers damages for physical injury and emotional distress.[120]

In order to prevent immediate threats, these reliefs can be granted as interim orders or *ex parte* orders.

- **Interim orders:** under Section 23(1) of PWDVA, since a final order in a case may take a long time, the court can pass an interim order under Sections 18, 19, 20, 21 and 22 of PWDVA while proceedings are pending to prevent further violence and provide immediate relief to the affected woman.
- ***Ex parte* relief:** An *ex parte* order is one that is passed in the absence of the other party to the dispute, without prior notice to the opposing party. In the normal course of proceedings, once a petition is lodged with the court, the court will serve notice to the other party so that both sides can be heard before an order is given. Section 23(2) of PWDVA makes an exception to this rule under limited circumstances. To facilitate quick judicial action in situations where the aggrieved person reasonably fears danger to her physical or mental wellbeing, an *ex parte* order may be passed if the court decides, based upon the aggrieved person's application, that the respondent has committed or will commit domestic violence.

As explained by the Calcutta High Court in *Swapan Kr. Das v. Aditi Das*, a prayer for setting aside an *ex parte* order can be made by filing an appropriate application within trial court proceedings. [121]

PROTECTION ORDERS

A protection order is a mechanism that can be used by the court to prohibit a respondent from committing any further acts of violence. Under PWDVA, a protection order may be against a person who has been in a domestic relationship with the aggrieved woman and has committed domestic violence or is likely to commit domestic violence against her. Under Section 18 of PWDVA, the Magistrate can pass orders to stop an offender from aiding or committing

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118 PWDVA, Chapter 4, Section 20(1)(a)-(d).

119 PWDVA, Chapter 4, Section 21.

120 PWDVA, Chapter 4, Section 22.

121 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011), para. 5. See page 481 of this compilation for full text of judgment.

violence within and outside the home, communicating with the woman, taking away her assets, or intimidating her family or anyone else who is assisting her against violence.

Section 18 specifies that protection orders can be issued to prohibit a respondent from the following actions:

- committing domestic violence;
- aiding or abetting in commission of domestic violence;
- entering premises, including the place of employment, school, or any other place frequented by the aggrieved person;
- attempting to communicate including personal, oral, written, electronic, or telephonic contact;
- alienating assets, including operating bank lockers or bank accounts and alienating stridhan or any other property, whether it is held by both parties jointly or singly by the respondent; or
- causing violence to family members or dependants of the aggrieved woman.

Section 18 also allows the court the discretion to prohibit any other act by so specifying in a protection order. Utilizing this discretion, in some cases, the higher judiciary has issued protection orders alongside residence and maintenance orders to ensure that breach of these orders are a punishable offence under the Act. These judgments are discussed further in the subsequent sections of this essay discussing strategies for enforcing residence and maintenance orders.

PENALTY FOR BREACH OF PROTECTION ORDERS

Section 31(1) provides a penalty for a breach of protection orders by the respondent:

> *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.*[122]

While a breach of a protection order or an interim protection order passed under Section 18 is an offence under Section 31 of the Act, as explained by the Kerala High Court in *Kanaka Raj v. State of Kerala*, failure to comply with other orders under PWDVA will not amount to an offence under Section 31.[123] Accordingly, protection orders are uniquely powerful because they provide the court with a mechanism for enforcement.

Section 31 also specifies that as far as possible, a breach of a protection order or of an interim protection order should be tried by the Magistrate who has passed the order.[124] While framing

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122 PWDVA, Chapter 5, Section 31(1).

123 ILR 2009 4 (Ker) 255 (Kerala H.C)(24.06.2009), para. 6. See page 483 of this compilation for full text of judgment.

124 PWDVA, Chapter 5, Section 31(2).

charges for a breach of a protection order under Section 31(1), a Magistrate is also empowered to frame charges under section 498A or any other section of the Indian Penal Code, or of the Dowry Prohibition Act, 1961, if the facts substantiate an offence under those provisions. [125]

In *Pramodini Vijay Fernandes v. Vijay Fernandes,* the Bombay High Court explained that if a protection order under Section 31(1) is passed not by a Magistrate, but in a civil, criminal, or family court, the court that passed the order is both entitled and obliged to try the offence if the order is breached.[126]

RESIDENCE ORDERS

PWDVA Section 17 and Section 19 protect a woman's right to reside in her matrimonial home, whether or not she has ownership rights in the property. Residence orders can be used to prevent further domestic violence by providing the aggrieved woman with a safe place to live, either within or separate from the shared household and to dictate living arrangements for an aggrieved woman. The right to reside in the "shared household" does not, however, entitle the woman to ownership over the premises.

Under Section 19, a Magistrate can issue orders to

- protect a woman from being turned out of the shared household;
- direct the respondent to remove himself from the shared household if required;
- restrain the respondent (alleged abuser) or any of his relatives from entering any portion of the shared household where the victim lives;
- restrain the respondent from renouncing his rights in the shared household;
- direct the respondent to provide alternate accommodation of the same level enjoyed in the shared household.

The first four options protect a woman's right to remain within the shared household. If, however, the woman does not want to return to the shared household, under the last option the court can order the respondent to provide alternative accommodations.

DEFINING SHARED HOUSEHOLDS

Section 2(s) of PWDVA defines shared household as a household where the aggrieved person and the respondent live or at any point lived together in a domestic relationship, regardless of the ownership of the household. The definition in 2(s) covers:

- properties that are owned or tenanted by the aggrieved person or respondent—either jointly or singly;

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125 PWDVA, Chapter 5, Section 31(3).

126 I (2010) DMC 425 (Bombay H.C.) (17.02.2010), paras. 12-13. See page 486 of this compilation for full text of judgment.

- properties where the aggrieved person, respondent or both—either jointly or singly—have any right, title, interest or equity;
- properties which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or aggrieved person have any right, title or interest in the shared household.[127]

The higher judiciary has considered the relevance of both property ownership and prior residence in determining whether a property constitutes a shared household under PWDVA.

RELEVANCE OF PROPERTY OWNERSHIP IN DETERMINING SHARED HOUSEHOLDS

In 2007, the Indian Supreme Court narrowly interpreted the scope of the definition of "shared household" in *S.R. Batra v. Taruna Batra*. In this case, a husband and wife had previously lived together on the second floor of a house owned by the husband's mother. The husband filed for divorce and moved out of the house. The aggrieved-wife shifted in with her parents due to a dispute with her husband. When she tried to reenter the household, her mother-in-law locked her out of the household. The aggrieved woman applied for an injunction to prevent being displaced from the marital home. The Supreme Court, however, held that section 17(1) of the Act entitles the wife to claim a right to reside in the shared household only when the house is joint family property. In this case, the property did not belong to the husband, the husband did not pay rent and the house was not joint family property. Accordingly, the court allowed the in-laws of the aggrieved woman to prevent her from reentering the home. [128]

In *Nidhi Kumar Gandhi v. The State*, the Delhi High Court did not contest the validity of the *Batra* judgment, but held that at the stage of passing interim orders, before sufficient evidence is presented to establish ownership of a property in question, it is premature to exclude an aggrieved woman from the household. Accordingly, in this case, the Delhi High Court ordered that the aggrieved woman be restored to the part of the household she previously occupied, including a kitchen and the adjoining passage; given duplicate keys of the main gate as well as the main entrance leading to the first floor which would be restored to her possession; and provided with electricity and water. In this case, without directly challenging the reasoning in the *Batra* judgment, the Delhi High Court circumscribed the applicability of the Supreme Court's restricted interpretation of the term "shared household" by holding that it is not appropriate to consider questions of ownership addressed in *Batra* while determining urgent interim relief.[129]

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127 PWDVA, Chapter I, Section 2(s).

128 2007 (2) ALD 66 (SC), A 2007 SC 1118 (Supreme Court)(15.12.2006), para. 22. See page 490 of this compilation for full text of judgment.

129 2010 Cr.L.J. (NOC) 79, 157 (2009) DLT 472, II (2009) DMC 647 (Delhi H.C.)(16.01.2009), para. 13. See page 495 of this compilation for full text of judgment.

In *Shumita Didi Sandhu v. Sanjay Singh Sandhu*, the Delhi High Court applied the reasoning in *S.R. Batra v. Taruna Batra* but still made financial provisions for the aggrieved woman's residence. In this case, the Delhi High Court distinguished between the right to reside in a particular "shared household," and a right of residence which can be made through giving a sum of money or property in lieu thereof, or by providing money for residence and other necessary expenditure for the duration of an aggrieved woman's life. "There is no doubt," the Delhi High Court concluded, "that the [aggrieved woman] has a right of residence whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But that right of residence does not translate into a right to reside in a particular house." [130]

In *Umesh Sharma v. State,* the Delhi High Court deferred to the decision in *Batra* to determine whether the household in question could be considered a "shared household" under PWDVA, but upon concluding that it was not a shared household did not order the aggrieved woman to vacate the house. Instead, based upon the conclusion that the property in question belonged to the aggrieved woman's in-laws, the Delhi High Court determined that no restraining orders could be passed against the in-laws with respect to the flat. With regard to securing the right of residence of the aggrieved woman, the Court held that if the aggrieved woman vacates the father-in-laws flat, her husband is required to pay ₹ 7, 000 per month. Under these orders, the aggrieved woman could not be directed to vacate the flat and the only consequence of her not vacating the premises was that she would not be able to claim the ₹ 7, 000 monthly payment granted in lieu of residence. This ruling applied *Batra* with regard to determining whether the household could be deemed a shared household but simultaneously confirmed the aggrieved woman's right to reside in the property in question whether or not it met the definition of shared household.[131]

In *Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey*, the Bombay High Court followed the direction of the Supreme Court in *Batra* that ownership of the household must be determined in adjudicating whether the property is a shared household. Recognizing, however, that title can be transferred to frustrate residence of an aggrieved wife, the Court challenged the sale deed presented by the husband and mother-in-law:

> *Insufficiently stamped and unregistered sketchy sale deed, without relevant recitals, leads me to draw an inference that the said deed is a bogus document of sale brought into existence just to defeat the right of the present respondent-wife and to get over the impugned order passed by the Family Court.*

Accordingly, the alleged sale deed was inadmissible in evidence. In this case, the Court found that the petitioner's son is a legal heir with interest in the flat by virtue of inheritance. Accordingly,

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130 II (2010) DMC 882 (Dehi H.C.) (26.10.2010), para. 48. See page 500 of this compilation for full text of judgment.

131 I (2010) DMC 556 (Delhi H.C.) (25.01.2010), paras. 7-9. See page 521 of this compilation for full text of judgment.

the Court treated the flat as a shared household in which the aggrieved wife is entitled to reside. The Bombay High Court concluded this judgment by explicitly distinguishing the facts at hand from the ruling in *Batra*: "So far as the case in hand is concerned, the petitioner-husband has undivided interest in the house after death of his father. His father died intestate. Consequently, the flat was inherited by the petitioner-husband along with other heirs."[132]

Similarly, in *P. Babu Venkatesh v. Rani*, the Madras High Court explicitly recognized that the Supreme Court decision in *Batra* can be used to frustrate residence of an aggrieved wife if the husband transfers title of the property to a family member:

> *If the contention of the [husband] is accepted, every husband will simply alienate his property in favour of somebody else after the dispute has arisen and would take a stand that the house where they last resided is not a shared household and therefore the wife is not entitled to seek for residence in the shared household.*

According to this reasoning, the Court upheld the order by the Magistrate court, restoring the aggrieved wife to the house from which she had been driven away in the middle of the night.[133]

Unlike the previous line of judgments adhering to the reasoning in *Batra* but frequently arriving at distinct conclusions from the *Batra* bench, in *Eveneet Singh v. Prashant Chaudhri,* the Delhi High Court explicitly held that "there is no reason to conclude that the definition [of shared household] does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of 'respondent' under Section 2(q)."

While recognizing that Supreme Court judgments are authoritative, the Delhi High Court in *Eveneet Singh v. Prashant Chaudhri* explained that the precedential value of a ruling emerges from not only what it says, but also the contextual setting and the interpretation of statutory provisions. "For this reason," the Court explained, "it has been ruled by the Supreme Court, in several judgments, that a judgment is not to be read as a statute, since the factual matrix is also important." The Delhi High Court distinguished the case in *Eveneet Singh v. Prashant Chaudri* in three ways: first, in *Batra* the dispute did not emanate from PWDVA; second, the wife in *Batra* was not an occupant of the property at the time of filing; and finally, the court did not directly consider the definition of "respondent" or "domestic relationship;" and, moreover, failed to explore the link between these two concepts and the definition of "shared household." According to the Delhi High Court, each of these three distinctions establish that whether the aggrieved woman or the husband has any right, title or interest in the property is not relevant to determining the shared household.[134]

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132 2008 (6) Bom CR 831, AIR 2009 (NOC) 1013 (Bombay H.C.) (26.08.2008), paras. 14,18. See page 524 of this compilation for full text of judgment.

133 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), para. 3. See page 529 of this compilation for full text of judgment.

134 I (2011) DMC 239 (Delhi H.C.) (20.12.2010), paras. 16-17. See page 305 of this compilation for full text of judgment.

Similarly, in *S. Prabhakaran v. State of Kerala*, the Kerala High Court upheld an aggrieved wife's right to reside in a shared household, despite claims by the father-in-law that he held absolute right, title and interest over the residential building in question. Distinguishing this case from the Supreme Court ruling in *Batra* on the grounds that the aggrieved wife had been living with her husband in the property, the Kerala High Court upheld orders from the Magistrate restraining the husband from disturbing the aggrieved wife's possession and enjoyment of the property or inflicting any type of mental and physical torture. Further, he directed the local police station to protect the wife and assist her in implementing the residence order.[135]

The facts in *Batra* were also distinguished by the Uttar Pradesh High Court in *Nishant Sharma v. State of Uttar Pradesh*. In this case, the Uttar Pradesh High Court upheld the rights of the aggrieved woman and her young child to reside in a house owned by her father-in-law. The house was not held in the name of the aggrieved woman's husband, the husband lived separately in a rented household and the aggrieved woman and her child had not lived continuously in the household in question. Although initially upon marriage and during festivals, the aggrieved woman had lived in the house belonging to the father-in-law, she subsequently lived separately with her husband in a rented property, and returned to her natal home with her child due to difficulties in her marriage. Despite the fact that she was not residing in the household belonging to the father-in-law at the time of filing, the Uttar Pradesh High Court considered the house belonging to the father in-law to be a shared household, confirmed the aggrieved woman's right to residence and ordered the concerned police station to ensure that the aggrieved woman and her minor son were able to gain entry and reside in the house. [136]

Applying the reasoning of the Delhi High Court judgment in *Eveneet Singh v. Prashant Chaudhri*, in *Preeti Satija v. Smt. Raj Kumari*, the Delhi High Court upheld the right of a daughter-in-law to reside in a shared household held by her mother-in-law—a female respondent. In this case, the Delhi High Court was called upon to adjudicate whether a mother-in-law could lawfully evict her daughter-in-law from the back portion of the property where her son and daughter-in-law resided on the grounds that the mother in law claimed to be the sole inheritor of the property. The Delhi High Court cited the Supreme Court holding in *Sandhya Wankhade v. Manoj Wankhade*, conclusively affirming that women can be named as respondents under PWDVA. The rights of an aggrieved woman under PWDVA, accordingly, extend to rights against female respondents, regardless of whether a respondent has any right

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135 AIR 2009 (NOC) 1017 (Kerala H.C.) (6.6.2008), paras. 19-20, 25. See page 534 of this compilation for full text of judgment.

136 2012 Cr.L.J. 4423 (Uttar Pradesh H.C.) (4.05.2012). See page 540 of this compilation for full text of judgment.

or interest in the property. "The right," the Court explained, "is not dependent upon title, but the mere factum of residence."[137]

RELEVANCE OF PRIOR RESIDENCE IN DETERMINING SHARED HOUSEHOLDS

The higher judiciary has taken a range of approaches in deciding the relevance of prior residence to determining a shared household under PWDVA. In *Kavita Dass v. NCT of Delhi*, the Delhi High Court upheld the aggrieved woman's right of residence in her husband's rented flat even though she had never resided with him in the flat in question. In this case, the aggrieved woman had been abandoned by her husband in the rental flat they had shared, subsequently evicted by the landlord, and forced to take shelter at the home of her brother-in-law. Although the husband pursued a divorce, the aggrieved woman, with the help of a Protection Officer gained entrance to the flat rented independently by the husband. In this case, the Delhi High Court held that the right of residence included "any household owned or tenanted by either of the parties in respect of which either the aggrieved person/wife or the respondent or both jointly or singly have any right." [138]

In *Adil v. State*, however, the Delhi High Court provided a distinct and very specific interpretation of the nature of residence that must be established in order to claim the right to reside in a shared household. In considering the definition of domestic relationship under Section 2(f) of PWDVA, the Court held:

> *I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property.*

According to this line of reasoning, the Court explained, when a family member leaves the shared household to establish their own household, and actually establishes their own household, they can no longer claim the existence of a domestic relationship in the previously shared household. Practically speaking, the "[d]omestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband." Therefore, according to the Delhi High Court in *Adil v. State*, whether a domestic relationship entitles an aggrieved woman to claim residence in a particular shared household is a finding of fact that requires that evidence be recorded.[139]

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137 RFA (OS) 24/2012, C.M. APPL.4236/2012, 4237/2012 & 5451/2013 (Delhi H.C.) (15.01.2014), para. 20. See page 543 of this compilation for full text of judgment.

138 CRL.M.C. 4282/2011 and Crl. M.A. No. 19670/2011 (Delhi H.C.) (17.04.2012), paras. 4-6, 10, 32-33. See page 557 of this compilation for full text of judgment.

139 II (2010) DMC 861 (Delhi H.C.) (20.09.2010), paras. 6, 11. See page 564 of this compilation for full text of judgment.

Consistent with this reasoning, in *Bindiya A. Chawla v. Ajay Lajpatraj Chawla*, the Delhi High Court held that not only must the shared household be the residence shared by an aggrieved woman and a respondent, but also, that the right to reside is limited by the Act to one household—and for an aggrieved married woman, this amounts to the matrimonial home. From this line of reasoning, the Court concluded: "The fact that she has been given the statutory right only of residence in such household, implicitly shows that she can have such right in only one such household." If the aggrieved woman and her husband lived in multiple residences, the Court specified, "the wife would not have the right in more than one such residence" and "it would essentially be the last residence which the parties shared." Here, the right to reside in the matrimonial household is retained until an aggrieved wife is given a permanent right to reside in another property or alimony.[140]

RESPECTFUL RESIDENTIAL ARRANGEMENTS FOR AGGRIEVED WOMEN

In *Sabah Sami Khan v. Adnan Sami Khan*, the Bombay High Court was called upon to reconsider a residence order passed by the Family Court in light of the interests of an aggrieved wife. In this case, the Family Court had granted the aggrieved wife right of residence in the matrimonial home, but had not restrained the husband from entering the matrimonial home. Accordingly, the relief provided by the Family Court required the aggrieved wife to reside within the same premises as her alcoholic husband and his second wife. Recognizing that the wife would be required to live under the same roof with her husband and his second wife, the Bombay High Court held that "[i]f the husband can offer the wife no alternative accommodation to reside there peaceably, he would be required to be injuncted from living in such a matrimonial home with his second wife." In this case, however, since the husband and wife had significant means, the Court held that the wife was entitled to either reside in two flats on the twelfth floor of the same building, or in their prior matrimonial home. [141]

Similarly, in *Natasha Kohli v. Mon Mohan Kohli,* the Delhi High Court revised the initial directions from the lower court which had confined the aggrieved woman to living in the guest annex of the house and instructed her not to enter the main building. In revising these orders which denied the aggrieved woman access to even the kitchen, the Delhi High Court reasoned: "[c]ourts must abjure adopting a feudal and archaic attitude by thinking that a wife can be relegated to Outhouse as if [she] is a mere chattel" and "[o]n the contrary, efforts must be made to ensure that she can live a life of respect." [142]

Similarly, in *V.D Bhanot v. Savita Bhanot* the Supreme Court considered the safety needs of an aggrieved woman who expressed apprehension for her safety if she were to live alone in

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140 2009 (5) Bom CR 486 (Bombay H.C.)(31.03.2009), para. 14. See page 568 of this compilation for full text of judgment.

141 2011 (1) MhLj 427 (Bombay H.C.) (21.10.2010), paras. 6-17, 32. See page 413 of this compilation for full text of judgment.

142 172 (2010) DLT 516, 2010 (119) DRJ 44 (Delhi H.C.) (24.09.2010), paras. 1, 12, 15. See page 577 of this compilation for full text of judgment.

a rented accommodation. Considering the objectives of PWDVA and the particular needs of the aggrieved woman, the Supreme Court modified the order passed by the High Court and directed that the aggrieved woman be provided her right of residence where her husband was residing. The husband was directed to provide a "suitable portion" of his residence for the aggrieved woman with all the amenities required to make the residential premises properly habitable, including furniture chosen by the aggrieved woman. These provisions were designed "to enable her to live with dignity in the shared household." The Court also passed protection orders and awarded the aggrieved woman monetary relief toward her expenses.[143]

While in each of these cases, the needs of the aggrieved woman were distinct, together they reinforce a commitment by India's Higher Judiciary to providing dignified living conditions that meet the practical needs of each aggrieved woman.

SPECIFYING LIVING ARRANGEMENTS FOR THE AGGRIEVED WOMAN

In *Rajaram Panwari v. Asha Panwari*, the Madhya Pradesh High Court held that Section 18 empowers the Court to pass an interim protective order that specifies the exact boundaries within the shared household that cannot be breached by either party during pending proceedings. In this case, a sketch map filed with the Court and not disputed by either party was used to partition a four-room house. The Madhya Pradesh High Court mandated that the map be part of the orders.[144]

In *Natasha Kohli v. Mon Mohan Kohli*, the Delhi High Court devised specific living arrangements for the aggrieved woman and her husband during proceedings. The aggrieved woman was instructed to reside in the "study" due to its proximity to the son's bedroom and a separate toilet; and to remove her belongings from the cupboards in the main bedroom. She was also given access to the annex where her belongings were currently stored and entitled to use the remaining portions of the house, including the kitchen and drawing room. The aggrieved woman was not, however, entitled to access the master bedroom or the mezzanine that were to be the exclusive domain of the husband. [145]

ENFORCING RESIDENCE ORDERS

Directions to police to implement residence orders

A Magistrate is entitled to pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist in the implementation of a residence order or protection order.[146]

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143 I (2012) DMC 482 SC, AIR 2012 SC 965 (Supreme Court)(07.02.2012), para. 11. See page 470 of this compilation for full text of judgment.

144 I MPHT 383 (Madhya Pradesh H.C.) (07.10.2009), para. 12. See page 583 of this compilation for full text of judgment.

145 172 (2010) DLT 516, 2010 (119) DRJ 44 (Delhi H.C.) (24.09.2010), paras. 1, 12, 15. See page 577 of this compilation for full text of judgment.

146 PWDVA, Chapter 4, Section 19(5).

In *Saraswathy v. Babu,* the Supreme Court upheld an order instructing the officer in charge of the nearest police station to protect the aggrieved woman and implement residence and protection orders by breaking the door of the respondent's house in the presence of the Revenue Inspector and assuming accommodation for the aggrieved woman. The police were also instructed to inquire about the whereabouts of the aggrieved woman's belongings and submit a report to the respondent as well as the Protection Officer.[147]

Similarly, in *P. Babu Venkatesh v. Rani*, the Madras High Court upheld an order by the Magistrate directing the police to restore an aggrieved woman to the household where she had resided prior to allegedly being beaten and driven away by her husband. Responding to this emergency situation in which the aggrieved wife, according to her affidavit, was living without food, clothes, and shelter, the Magistrate expressly directed the police to restore the woman to her home by breaking open the locks that had been put in place to prevent her from entering. The Madras High Court upheld this order with the following reasoning:

> *The interim residence order is one of the protection orders. Of course, the said provision does not specifically state that the learned Judicial Magistrate may direct the officer in charge to break open the lock. To give effect to the protection order passed ex-parte, the learned Judicial Magistrate will have to necessarily pass an order to break open the lock by the police. If the submission made on the side of the petitioners that the learned Judicial Magistrate is not empowered to give any order to break open the lock is accepted, then in all cases, the husband will lock the house and walk off and thereby depriving the wife from enjoying the protection order passed under the Act.*

The Court found, moreover, that "the learned Judicial Magistrate has ample power under Section 19(7) of the Act to give *any* order to the officer in charge to assist him in the implementation of the protection order"(emphasis supplied). The allegation of a commission of violence, the High Court explained, is sufficient for a Magistrate to pass a protection order under Section 23(2) of the Act. [148]

Protection orders accompanying residence orders

In *Ishpal Singh Kahai v. Ramanjeet Kahai*, the Bombay High Court upheld both a residence order and a protection order restraining a violent husband from entering the matrimonial home. According to the Bombay High Court, PWDVA grants the aggrieved woman not only the right of residence, but a "protective right of residence" that includes both protection from dispossession and an injunction preventing the husband from entering the shared household.

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147 2014 Cr.L.J. 1000 (SC) (Supreme Court)(25.11.2013), paras. 4,16. See page 474 of this compilation for full text of judgment.

148 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), paras. 6, 14, 16. See page 529 of this compilation for full text of judgment.

By including a protection order with the residence order, the Bombay High Court activated the potential to impose penalties for breach of the protection order by the respondent as specified under Section 31(1)—namely, that the husband could be imprisoned for up to one year or fined up to 20, 000 rupees, or both, for entering or dispossessing the aggrieved woman from the shared household.[149]

MONETARY RELIEF

Section 20(1) of PWDVA, authorizes the Magistrate to direct a 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." Relief may be awarded for losses including, but not limited to loss of earnings, medical expenses, maintenance and destruction, damage or removal of any property from the control of the aggrieved person or her children.

DETERMINING ADEQUATE, FAIR AND REASONABLE MONETARY RELIEF

Section 20(2) of PWDVA specifies that monetary relief granted under Section 20 of PWDVA must be "adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed." Following this direction, numerous courts have framed orders for monetary relief in context of the lifestyle shared by the aggrieved woman and respondent.

In *Sukrit Verma v. State of Rajasthan*, the Rajasthan High Court held "[i]n the present case, since the [aggrieved woman] had lived in the USA, naturally she was used to a high standard of living."[150] The Court concluded that monthly maintenance of $2000 was fair and reasonable.

In *Ann Menezes v. Shahajan Mohammad*, the aggrieved woman substantiated the amount she requested for monetary relief by presenting an itemized list of expenditures she was incurring each month. Her list included medical expenses (₹ 5, 000), loss of earnings (₹ 36, 000), cost of food, clothes and other basic necessities (₹ 6, 000 each month), household expenses (₹ 1000 each month), and school fees and other related expenses (₹ 1, 000). The Bombay High Court also granted monetary relief to the aggrieved woman for loss of earnings sustained during the period in which her husband would not allow her to work.[151]

In determining maintenance for the aggrieved wife in *Amit Khanna v. Priyanka Khanna,* the Delhi High Court held that the respondent's income should be the basis for fixing maintenance for his dependents.[152] The Income Tax returns submitted by respondents, however, do

149 Writ Petition No.576 of 2011 (Bombay H.C.) (23.03.2011), para. 35. See page 77 of this compilation for full text of judgment.

150 III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011), para. 16. See page 369 of this compilation for full text of judgment.

151 I(2011) DMC 683, 2010 Cr. L. J. 3592 (Bombay H.C.) (04.03.2010), para 2. See page 587 of this compilation for full text of judgment.

152 2010 (119) DRJ 182 (Delhi H.C.) (01.09.2010), para. 4. See page 591 of this compilation for full text of judgment.

not have to be taken at face value. For instance, in *Shyam Kumar Alwani v. Dimpal Alwani*, the Rajasthan High Court questioned the Income Tax returns submitted by the respondent which reflected a sudden decrease in income from ₹ 144, 000 to ₹ 35, 000. "Since there is sudden decrease in the income of the Petitioner, as reflected by the Income Tax return filed after the complainant filed the complaint," the Rajasthan High Court held, "the learned Judge was certainly justified in concluding that the Petitioner has not approached the court with clean hands." [153]

In *Amit Khanna v. Priyanka Khanna,* the Delhi High Court held that any additional movable or immovable assets must also be considered in deciding maintenance.[154] Similarly, in *Badri Lal Gurjar v. Yogesh Kumari*, a case in which the Rajasthan High Court required a father to maintain his widowed daughter, the Court calculated maintenance of ₹ 2, 000 per month on the basis that the father owned irrigated land. [155]

As previously mentioned in *Harish Bairani v. Meena Bairani*, the Rajasthan High Court granted monetary relief to an aggrieved woman to cover medical expenses on the grounds that failing to pay for medical treatment amounts to economic abuse.[156]

In *Om Prakash v. State of Rajasthan*, the Rajasthan High Court held that the right of a woman to be maintained does not make any exceptions for respondents who claim that they are unable to pay maintenance because they are physically challenged. "[T]he contention that merely because the [husband] happens to be a physically challenged person, the Act is inapplicable to him," the Court contented, "is unsustainable. [157]

NON-PAYMENT OF MAINTENANCE IS A CONTINUING WRONG

Under PWDVA, a court may order the respondent to pay maintenance to the aggrieved person and the children—either in lump sum or as monthly installments. According to the Rajasthan High Court in *Anil Solanki v. Ila Solanki*, non-payment of interim maintenance is a continuous wrong wherein the limitations period begins on the date on which the maintenance became due. [158]

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153 S.B. Criminal Revision Petition No. 1310/2010 (Rajasthan H.C. (Jaipur Bench)) (09.12.2010), para. 5-6. See page 594 of this compilation for full text of judgment.

154 2010 (119) DRJ 182 (Delhi H.C.) (01.09.2010), para. 3. See page 591 of this compilation for full text of judgment.

155 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009), para. 5. See page 319 of this compilation for full text of judgment.

156 RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011). See page 101 of this compilation for full text of judgment.

157 S.B. Criminal Revision Petition No.1220/2010 (Rajasthan H.C) (29.04.2011). See page 112 of this compilation for full text of judgment.

158 RLW 2010 (3) Raj 2533 (Rajasthan H.C.) (15.10.2009), para. 21. See page 596 of this compilation for full text of judgment.

ENFORCING MAINTENANCE ORDERS

In cases of default, maintenance orders can be executed by filing a separate maintenance case calling for recovery of the amount due by issuing an arrest warrant under Section 125(3) Cr.P.C. An aggrieved woman can also take recourse under Section 20(6) of PWDVA that empowers the Magistrate to direct an employer or debtor of the respondent to pay the aggrieved woman directly.[159]

Ordering recovery of maintenance dues

In *Radha Raman Srivastava v. State of Bihar*, the Patna High Court ordered the aggrieved woman's husband to pay more than 1.5 lakhs due toward outstanding interim maintenance. The respondent was ordered to pay the amount due within a maximum period of two months. The High Court also held that if the maintenance was not paid within the prescribed time, then the Additional Principal Judge of the Family Court that issued the order is at liberty to take coercive measures to recover the money, including from the household property, through his employer, or through any other legal means.[160]

Protection orders accompanying monetary relief orders

As previously discussed, in *Sunil @ Sonu v. Sarita Chawla*, the Madhya Pradesh High Court upheld a protection order issued under Section 18 to protect a woman from economic violence. Accordingly, since a protection order was issued "and no amount of maintenance has been paid by the petitioner," the High Court concluded that "no illegality was committed by the learned Trial Court in initiating the proceedings under Section 31 of the Act."[161] According to this reasoning by the Madhya Pradesh High Court, if a court grants maintenance and also issues a protection order against economic abuse, an aggrieved woman has a clear mechanism for redress for failure to pay maintenance payments under Section 31.

TEMPORARY CUSTODY ORDERS

Under Section 21 of PWDVA, courts can grant a woman temporary custody of her children at the time she applies for a protection order or at any other point in the proceedings. As clarified by the Madras High Court in *A. Gomathieswar v. G. Rameena*, an aggrieved person can only seek the relief of temporary custody in a proceeding applying for protection orders or other relief under the Act.[162] Permanent custody of children must, however, be settled in separate proceedings in Family Court of another appropriate court. Section 21 also empowers the Magistrate to make any necessary arrangements for visitation between a respondent and

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159 PWDVA, Chapter 4, 20(6).

160 2013 Cr.L.J. 459 (Patna H.C.) (27.06.2012), para. 16. See page 605 of this compilation for full text of judgment.

161 2009 (5) MPHT 319 (Madhya Pradesh H.C.)(31.08.2009), para. 5. See page 610 of this compilation for full text of judgment.

162 Crl.O.P.No.569 of 2007 in M.P.Nos.1 & 2 of 2007 (Madras H.C.)(8.4.2008), para. 6. See page 613 of this compilation for full text of judgment.

the child or children concerned, or to refuse visitation if visitation may be harmful to the interests of the child or children.

In determining custody, the primary consideration for the court is to act in the best interest of the child. As explained by the Punjab and Haryana High Court in *Balwinder Singh v. Herpreet Kaur,* "[t]he paramount consideration in such matters is the welfare of the child." In this case, the Court considered the requirements of love, affection, emotion, care and maintenance in granting temporary custody of the three year-old daughter to her mother.[163]

COMPENSATION

Under Section 22 of PWDVA, the Magistrate may "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." Distinct from monetary relief, compensation orders are meant to account for injuries caused to the aggrieved person—an amount over and above the actual monetary loss incurred.

In *Saraswathy v. Babu,* the Supreme Court directed the respondent-husband to pay compensation and damages to the extent of ₹ 500,000 to the appellant-wife for injuries including mental torture and emotional distress.[164] According to the Chattisgarh High Court in *Sunil Singh v. Smt. Neetu Singh* "at the time of awarding compensation, the Courts are required to consider all surrounding circumstances."[165] In this case, the Court upheld compensation awarded to an aggrieved woman for her husband's failure to maintain her in a dignified manner.

In *Yadvinder Singh v. Manjeet Kaur*, in addition to awarding monthly maintenance sufficient to cover expenses and rent for the aggrieved woman and her son, the Punjab and Haryana High Court ordered the respondent to pay ₹ 10,000 as compensation and damages for the mental torture and emotional distress caused to the aggrieved woman. Domestic violence inflicted upon the aggrieved woman included being turned out of her matrimonial home without any cause by her alcoholic husband. [166]

In *Swapan Kr. Das v. Aditi Das*, the Calcutta High Court held that under Section 22 of the Act, the Court can award compensation to an aggrieved woman if they find that she has been ill-treated mentally, or physically or emotionally distressed in the shared household. According to the High Court a compensation award does not require a specific reason: "I find that the provisions of section 22 of the act does not make obligatory on the part of the Court to assign specific reason for awarding compensation in addition to, any relief," the Court explained.

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163 2013 Cr.L.J. (NOC) 409 (Punjab and Haryana H.C.) (10.07.2012), para. 7. See page 615 of this compilation for full text of judgment.

164 2014 Cr.L.J. 1000 (SC) (Supreme Court)(25.11.2013), para. 15. See page 474 of this compilation for full text of judgment.

165 First Appeal M 35 of 2010 (Chattisgarh H.C.) (03.09.2010), para. 18. See page 617 of this compilation for full text of judgment.

166 Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.)(26.11.2010), para. 5. See page 352 of this compilation for full text of judgment.

Accordingly, the Calcutta High Court upheld the order by the lower Court awarding the aggrieved woman ₹ 50,000 in compensation.[167]

7. EVIDENCE, BURDEN OF PROOF AND STATUTORY INTERPRETATION

Since relief under PWDVA is civil in nature, the degree of proof is preponderance of probabilities as under civil law, rather than beyond a reasonable doubt as required in criminal cases.[168] The only exception to this is when a protection order under PWDVA is violated because violation of a protection order, according to PWDVA Section 31, is a criminal offence and therefore must be proved beyond a reasonable doubt.

In *Madhusudan Bhardwaj. v. Mamta Bhardwaj*, the Madhya Pradesh High Court explained how the procedure that governs PWDVA applications impacts the manner in which evidence must be produced in these cases. Under Section 126(2) Cr.P.C., the Court explained, "all evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made." Accordingly, the Madhya Pradesh High Court held that two things are required before passing an order in favor of an aggrieved woman:

- An opportunity for hearing must be granted to the parties; and
- the court must be *prima facie* satisfied, based upon adequate evidence, that domestic violence has happened or is likely to happen.[169]

Recognizing the need to expedite proceedings under PWDVA, however, in *Lakshmanan v. Sangeetha*, the Madras High Court held that in order to reduce the amount of time necessary for proceedings, the Court may allow chief examination of witnesses to be furnished by affidavit.[170]

PWDVA is a remedial, beneficent, or social justice oriented Act. When considering remedial statutes, statutory interpretation should be liberal and doubt should be resolved in favor of the class of persons for whose benefit the statute is enacted. Accordingly, as explained by High Court of Andhra Pradesh in *Mohit Yadam v. State of Andhra Pradesh*[171] and the Bombay High Court in *Chandrakant Nivruti Wagh v. Manisha C. Wagh,*[172] under PWDVA, doubts

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167 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011), para. 5. See page 481 of this compilation for full text of judgment.

168 Lawyers Collective, Handbook on Law of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009), p 40.

169 2009 Cr.L.J. 3095, II (2010) DMC 57 (Madhya Pradesh H.C. (Gwalior Bench))(31.03.2009), paras. 9-D. See page 622 of this compilation for full text of judgment.

170 (Madras H.C.) Crl. R.C. No. 576 of 2009 (12.10.2009), para. 11. See page 458 of this compilation for full text of judgment.

171 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (Andhra H.C.)(13.11.2009), para. 21-22. See page 251 of this compilation for full text of judgment.

172 I (2014) DMC 640 (Bombay H.C.)(4.4.2013), para. 11. See page 630 of this compilation for full text of judgment.

with regard to statutory interpretation should be resolved in favor of women who are victims of violence of any kind occurring within the family.

8. ALTERATION OF ORDERS

In the instance that an aggrieved woman or respondent seeks alteration, modification, or revocation of an order on the basis of changed circumstances, Section 25(2) empowers the Magistrate, after being satisfied that circumstances have in fact changed, to make any appropriate adjustments.[173]

In *Alexander Sambath Abner v. Miran Lada* the Madras High Court considered whether, in the case of interim *ex parte* orders, whether merely giving an opportunity to the affected party to be heard can be considered a change of circumstances authorizing alteration, modification, or revocation of an order under Section 25(2). "When a party was not heard in earlier circumstance, but subsequently heard," the Court decided, "it could be considered as a change of circumstance." [174] According to this reasoning, an *ex parte* order, passed under Section 23(2), can be altered, modified, or revoked under Section 25(2) of PWDVA after hearing the affected person.

9. APPEALS UNDER SECTION 29

Section 29 of PWDVA provides for an appeal within thirty days to the Court of Sessions against orders passed by a Magistrate.[175]

In *Shalu Ojha v. Prashant Ojha,* the Supreme Court considered the authority of the Sessions Court in an Appeal under Section 29. In this case, the Magistrates court passed orders granting monthly maintenance to the aggrieved woman, including rental charges for alternative accommodation and a time limit within which arrears of maintenance were to be cleared. The respondent-husband appealed these orders in the Sessions court under Section 29. The Sessions Court stayed execution of the Magistrates orders and passed an interim order directing the respondent-husband to pay the entire arrears of the maintenance due to the aggrieved woman till presentation of the appeal within a period of two months. The Sessions court subsequently dismissed the respondent-husbands appeal due to his non-compliance with these interim orders.

The respondent-husband appealed this dismissal to the High Court. After failure of mediation recommended by the High Court, the respondent-husband was directed by the High Court to pay ₹ 10 lakhs in two installments to the aggrieved woman. The High Court also,

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173 PWDVA, Section 25(2).

174 2010 1 LW (Crl) 93 (Madras H.C.) (14.09.2009), paras. 16, 22. See page 634 of this compilation for full text of judgment.

175 PWDVA, Chapter 4, Section 29.

however, stayed the execution petition filed by the aggrieved woman for recovery of arrears of maintenance. The aggrieved woman then filed a Special Leave Petition in the Supreme Court.

The Supreme Court cautioned against interference in proceedings under PWDVA and set aside the interim stay granted by the High Court on the execution petition filed by the appellant. The Supreme Court also directed that the maintenance order passed by the Magistrate be executed and restored the appeal to the Sessions Court.

The Supreme Court observed: "In a matter arising under a legislation meant for protecting the rights of the woman, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant [wife]."[176]

In *Abhijit Bhikaseth Auti v. State of Maharashtra*, the Bombay High Court considered both whether every order passed by a Magistrate can be appealed, and the scope of appeal under Section 29 of the Act.[177] In adjudicating this case, the Bombay High Court set forth guidelines regarding appeals of final, interim or *ex parte*, and procedural orders under PWDVA Section 29:

- **Final orders:** Under Section 29, a final order passed by a Magistrate under Section 12(1), which grants relief under PWDA, can be appealed;
- **Interim or *ex parte* orders:** Under Section 29, interim and *ex parte* orders passed by a Magistrate under Section 23(1) and (2) can also be appealed. However, when dealing with either an interim or *ex parte* order under Section 23, the Appellate Court will usually not interfere with the discretion exercised by the Magistrate. The Appellate Court will interfere only if discretion has been "arbitrarily, capriciously, perversely exercised" or "it is found that the Court ignored settled principles of law regulating grant or refusal of interim relief;"
- **Procedural orders**: Procedural orders that do not decide or determine rights and liabilities of the parties cannot be appealed under Section 29.

According to these guidelines, *only* final orders and interim or *ex parte* orders determined to be arbitrary, capricious, perverse or illegal can be appealed under Section 29. In all other circumstances, interim and *ex parte* orders issued by the Magistrate should not be interfered with. Also, procedural orders that do not decide or determine rights and liabilities of the parties cannot be appealed under Section 29.

According to the Orissa High Court in *Smita Singh v. Bishnu Priya Singh*, however, questions as to whether the Magistrate has jurisdiction to entertain a proceeding, whether a proceeding is maintainable, or whether a person can be impleaded as a respondent in the proceeding are not matters merely relating to procedure. In fact, the Court explained, "they are so fundamental

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176 2015 Cr.L.J. 63 (Supreme Court) (18.9.2014), para. 32. See page 641 of this compilation for full text of judgment.

177 AIR 2009 (NOC) 808, 2009 Cr.L.J. 889 (Bombay H.C.) (16.09.2008), para. 25(iv). See page 648 of this compilation for full text of judgment.

that the determination of rights and liabilities of the parties in the proceeding depends on the decision of such questions." Since the right to proceed against a person has direct nexus with the question of seeking relief from that person, "[s]uch orders which scuttle the rights of the applicants to get relief under the Act or bring the proceeding to an end at the threshold must be held to be appealable under Section 29 of the Act." [178]

It is important to note that an order passed by the Magistrate is well executable until and unless it is stayed by the appellate court. Mere pendency of an appeal or revision does not stay the operation of the order appealed against or the proceedings in the trial court.

10. SECTION 482 CR.P.C. PETITIONS TO QUASH PROCEEDINGS

Cr.P.C. Section 482 envisages three circumstances in which a high court has inherent jurisdiction to quash or invalidate proceedings:

- To give effect to an order under the code
- To prevent abuse of the process of the court
- To otherwise secure the ends of justice

Addressing the question of whether the extraordinary inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the court to quash a proceeding initiated under PWDVA, in *Vijayalakshmi Amma v. Bindu*, the Kerala High Court begins by distinguishing between civil liability and criminal liability under PWDVA.

- **Civil liability relief**: applications claiming relief under Sections 18, 19, 20, 21, 22, and/or 23
- **Criminal liability relief**: offences under Section 31(1) or Section 33, and orders passed by the Magistrate under Section 19(3)

According to the Kerala High Court, when adjudicating civil liability reliefs, it is not within the authority of the High Court under Section 482 of the Code of Criminal Procedure to quash the proceedings by invoking the extraordinary inherent powers provided under the Code. In the case of civil liability reliefs, the court reasoned, Section 482 is neither necessary to give effect to any order under the code, nor to prevent abuse of process or secure the ends of justice. Instead, matters of civil liability are to be adjudicated by the Magistrate. In the case of criminal liability, however, the Kerala High Court considers it within the authority of the High Court to exercise extraordinary inherent powers under Section 482 of the Code of Criminal Procedure. [179]

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178 2013 Cr.L.J. 4826, I (2014) DMC 365 (Orissa H.C.) (6.5.2013), para. 8. See page 658 of this compilation for full text of judgment.

179 ILR 2010 (1) Kerala 60, 2010 (1) KLT79 (Kerala H.C.) (02.12.2009), para. 17. See page 660 of this compilation for full text of judgment.

In *Nidhi Kumar Gandhi v. The State*, the Delhi High Court held that the criminal jurisdiction of the High Court under Section 482 Cr.P.C. is valid in cases where an impugned order would result in a grave miscarriage of justice: "When in the view of this Court the impugned order would cause a grave miscarriage of justice," the Delhi High Court explained, "the Court is not powerless in exercise of its powers under Section 482 Cr.P.C. read with Article 227 of the Constitution."[180]

In *Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder)*, the Calcutta High Court presented a different line of reasoning for why the High Court did not have authority under 482 of the Code of Criminal Procedure to quash proceedings under PWDVA. If proceedings are quashed, "the appellate authority of the Act will have to be set aside and thereby the appellate authority of the Court of Session contemplated in Section 29 of the Act will be usurped under the sweep of Section 482 Cr.P.C."

The Court explained that "the inherent power conferred under Section 482 Cr.P.C. cannot be exercised usurping the jurisdiction of the appellate authority without reasonable cause." Grounding this reasoning in the Supreme Court holding in *Hossein Kasam Dada (India) Ltd. v. State of Madhya Pradesh*,[181] in *Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder),* the Calcutta High Court furthered that "[t]o disturb an existing right of appeal is not a mere alteration in procedure" and [s]uch a vested right cannot be taken away except by express enactment of necessary intendment." Moreover, [t]he Act of 2005 is a special beneficial legislation containing specific provision of appeal," the Court concluded, and "[w]here such special law provides Provision for appeal, with period of limitation under Section 29 of the Act, no external aid is permissible to interpret such express provision in terms of general inherent powers under Section 482 Cr.P.C." [182]

Like the Calcutta High Court, in *Amit Sundra v. Sheetal Khanna*, the Delhi High Court held that since specific remedies by way of appeal and alteration, modification, or revocation of any order have been provided under the Act, an application under 482 Cr.P.C. is not maintainable. In their decision, the Delhi High Court cited Section 29 of PWDVA which provides for appeals against the orders of the lower court, and Section 25(2) which empowers the Magistrate, after being satisfied that any circumstances changed, to make any appropriate alterations, modifications, or revocations of orders under the Act. [183]

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180 2010 Cr.L.J. (NOC) 79, 157 (2009) DLT 472, II (2009) DMC 647 (Delhi H.C.) (16.01.2009), para. 11. See page 495 of this compilation for full text of judgment.

181 AIR 1953 SC 221 (Supreme Court)(23.2.1953).

182 C.R.R. 1835 of 2010 (Calcutta H.C.) (06.10.2010), para. 5. See page 390 of this compilation for full text of judgment.

183 2008 Cr.L.J. 66 (Delhi H.C.)(31.08.2007), para. 10-11. See page 672 of this compilation for full text of judgment.

SUMMARY OF KEY STRATEGIES AND PRECEDENTS

This checklist provides key points from the judgments and highlights important strategies for advocates.

1. DEFINITIONS

DOMESTIC VIOLENCE

Strategy: In addition to a general pleading that the aggrieved woman has faced domestic violence, an advocate should name the particular types of domestic violence faced by the woman—physical, sexual, verbal or emotional and economic abuse. This specific pleading provides the foundation for requesting appropriate corresponding reliefs. For instance, in order to protect a woman from physical abuse, an advocate should write a specific prayer for a protection order preventing the particular physical abuse. After pleading economic abuse, an advocate has the basis to argue for a protection order against economic abuse as well as independent maintenance and compensation orders to provide relief from economic abuse.

PHYSICAL ABUSE

Key Points

- ✓ Alcoholism leading to uncontrolled aggression has been recognized as physical abuse. Bombay High Court. *Ishpal Singh Kahai v. Ramanjeet Kahai*[184]

ECONOMIC ABUSE

Key Points

- ✓ It is not necessary to establish any further abuse beyond economic abuse in order to substantiate domestic violence under PWDVA**.** Bombay High Court, *Jovita Olga Ignesia Mascarehas e Coutinho. v. Rajan Maria Countinho;*[185] Andhra Pradesh High Court, *Sikakollu Chandramohan v. Sikakollu Saraswathi Devi*[186]
- ✓ Conduct recognized as economic abuse by the higher judiciary:
  - Failing or refusing to provide money for maintaining a woman and/or children. Jharkand High Court in *Rakesh Sachdeva v. Neelam Sachdeva*[187]

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184 Writ Petition No.576 of 2011 (Bombay H.C.) (23.03.2011), paras. 3, 5, 7, 8, 37. See page 77 of this compilation for full text of judgment. See page 4 of this compilation for discussion of this case.

185 2011 Cr.L.J. 754 (Bombay H.C. (Goa Bench)) (24.08.2010), para. 7. See page 104 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

186 Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010), para. 6. See page 108 of this compilation for full text of judgment. See page 7 of this compilation for discussion of this case.

187 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 6. See page 87 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

- Expelling a woman from the household. Jharkand High Court, *Rakesh Sachdeva v. Neelam Sachdeva*[188]
- Threats to alienate assets. Jharkand High Court, *Rakesh Sachdeva v. Neelam Sachdeva*[189]
- Depriving financial resources to which an aggrieved woman is entitled under any law or custom whether payable under an order of a court or otherwise or which she requires out of necessity. Allahabad High Court, *Preetam Singh v. State of U.P.*[190]
- Withholding maintenance. Calcutta High Court, *Vidyawati v. Kishen*[191]
- Witholding money for medical treatment. Rajasthan High Court, *Harish Bairani v. Meena Bairani*[192]
- Failing to pay for medical treatment. Rajasthan High Court, *Harish Bairani v. Meena Bairani*[193]

✓ Disability and poverty are not defenses to ongoing economic abuse. Rajasthan High Court, *Om Prakash v. State of Rajasthan.*[194]

RESPONDENT

Strategy: Only include respondents who live in the shared household. Include specific details on the domestic relationship between the respondent and the aggrieved woman.

Key Points

✓ In order for a family member to be included as a respondent, the aggrieved woman must establish that she lived with the person named as a respondent in a shared household at some point. Delhi High Court, *Harbans Lal Malik v. Payal Malik*,[195] *Razia Begum v. State*,[196]

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188 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 6. See page 87 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

189 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 6. See page 87 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

190 2013 Cr.L.J. 22 (Allahabad H.C.) (31.07.2012), para. 12. See page 93 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

191 2013 Cr.L.J. 4469 (Calcutta H.C.) (08.02.2013), para. 12. See page 97 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

192 RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011), para. 8. See page 101 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

193 RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011), para. 8. See page 101 of this compilation for full text of judgment. See page 6 of this compilation for discussion of this case.

194 (Rajasthan H.C) S.B. Criminal Revision Petition No.1220/2010 (29.04.2011), para. 10. See page 112 of this compilation for full text of judgment. See page 7 of this compilation for discussion of this case.

195 II (2010) DMC 202 (Delhi H.C.) (29.07.2010), para. 15. See page 145 of this compilation for full text of judgment. See page 8 of this compilation for discussion of this case.

196 172 (2010) DLT 619 (Delhi H.C.) (4.10.2010), para. 8. See page 156 of this compilation for full text of judgment. See page 8 of this compilation for discussion of this case.

Nandan Singh Manral v. State,[197] *Hima Chugh v. Pritam Ashok Sadaphule*;[198] Kerala High Court, *K. Narasimhan v. Rohini Devanathan*[199]

FEMALE RESPONDENT

Key points

- ✓ Mother-in-law and sister-in-law recognized as respondents. Supreme Court, *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*[200]
- ✓ Daughters-in-law included as respondents. Delhi High Court, *Kusum Lata Sharma v. State;*[201] Kerala High Court, *Bismi Sainudheen v. P.K. Nabeesa Beevi*[202]

Note: In both of these cases, daughters-in-law were included as respondents in allegations that the son and daughter in law were seen to be acting in collusion.

RELATIONSHIPS QUALIFYING WOMEN FOR PROTECTION UNDER PWDVA

Strategy: Apply for relief as a lawful wife. Leave any contestation of the validity of the marriage to the respondent.

Marriage, relationships in the nature of marriage and live in relationships

Key Points

- ✓ Proof of marriage should not be a condition of maintenance when a man and woman have been living together as husband and wife for a reasonably long period of time. Supreme Court, *Chanmuniya v. Virendra Kumar Singh Kushwaha*[203]
- ✓ Determination of the validity of a marriage between an aggrieved woman and respondent can only be made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Supreme Court, *Deoki Panjhiyara v. Shashi Bhusan Narayan Azad*[204]

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197 2011 (2) RCR (Criminal) 271 (24.09.2010), para. 4. See page 159 of this compilation for full text of judgment. See page 8 of this compilation for discussion of this case.

198 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013) para. 10. See page 160 of this compilation for full text of judgment. See page 8 of this compilation for discussion of this case.

199 2010 Cr.L.J. 2173 (Karnataka H.C.) (24.11.2009), para. 10. See page 169 of this compilation for full text of judgment. See page 9 of this compilation for discussion of this case.

200 (2011) 3 SCC 650 / 2011 Cr.L.J. 1687 / II (2011) DMC 811(SC) (Supreme Court) (31.01.2011), paras. 12-13. See page 171 of this compilation for full text of judgment. See page 9 of this compilation for discussion of this case.

201 III (2011) DMC 1 (Delhi H.C.) (2.09.2011), para. 9. See page 175 of this compilation for full text of judgment. See page 10 of this compilation for discussion of this case.

202 I 2014 DMC 770 (Ker)/ 2014 Cr.LJ 904 (Kerala H.C.) (07.08.2013), para. 18. See page 180 of this compilation for full text of judgment. See page 10 of this compilation for discussion of this case.

203 2011 Cr.L.J. 96 (Supreme Court)(7-10-2010), paras. 41-43. See page 191 of this compilation for full text of judgment. See page 11 of this compilation for discussion of this case.

204 I (2013) DMC 18 (SC) /AIR 2013 SC 346 / 2013 C.r.L.J 684 (Supreme Court)(12.12.2012), para. 19. See page 198 of this compilation for full text of judgment. See page 11 of this compilation for discussion of this case.

- ✓ Validity of marriage need not be considered as a preliminary issue in order for the petition of an aggrieved woman to be heard. Kerala High Court, *Thanseel v. Sini*[205]
- ✓ There is a distinction between the fact of marriage and the legal validity of marriage. Disputing the legal validity of the marriage alone does not prevent an aggrieved woman from obtaining relief under PWDVA. Jharkhand High Court, *Ayushman Panday v. State of Jharkhand*[206]
- ✓ The Supreme Court outlined four specific requirements to establish a relationship in the nature of marriage. Supreme Court, *Velusamy v. Patchaiammal*[207]
- ✓ The Supreme Court outlined eight factors to consider in determining whether a live-in relationship amounts to a relationship in the nature of marriage. Supreme Court, *Indra Sarma v. V.K.V. Sarma*[208]
- ✓ Formal marriage rituals are not necessary to establish a relationship in the nature of marriage. Court recognizes relationship in the nature of marriage even though respondent was legally married to another woman during relations with the aggrieved woman. Bombay High Court, *Manda R. Thaore v. Ramaji Ghanshyam Thaore*[209]

Second wives

Key points

- ✓ Second wife granted relief under PWDVA. Bombay High Court, *Pratibha v. Bapusaheb s/o Bhimrao Andhare*[210]

Divorced women

Key points

- ✓ Divorced women can seek relief under PWDVA. Orissa High Court, *Sunil Kumar v. Sumitra Panda*;[211] Bombay High Court, *Bharti Naik v. Ravi Ramnath Halarnkar*;[212] Andhra

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205 WP(C) No. 7450 of 2007 (J) (Kerala H.C.)(06.03.2007), para. 3. See page 208 of this compilation for full text of judgment. See page 12 of this compilation for discussion of this case.

206 III (2011) DMC 618 (Jharkand H.C.)(28.03.2011), paras. 5, 7. See page 204 of this compilation for full text of judgment. See pages 11-12 of this compilation for discussion of this case.

207 II (2010) DMC 677 (SC) / 2011 Cr.L.J. 320/ AIR 2011 SC 479 (Supreme Court) (21.10.2010), paras. 33-34. See page 209 of this compilation for full text of judgment. See page 12 of this compilation for discussion of this case.

208 AIR 2014 SC 309 (Supreme Court) (26.11.2013), paras. 55(1)-(7), 56, 57, 61, 62. See page 116 of this compilation for full text of judgment. See pages 12-14 of this compilation for discussion of this case.

209 (Bombay H.C.) (20.04.2010), para. 4-5. See page 216 of this compilation for full text of judgment. See page 14 of this compilation for discussion of this case.

210 I (2013) DMC 530 (Bombay H.C.) (2.11.2012), paras. 7-11. See page 219 of this compilation for full text of judgment. See page 15 of this compilation for discussion of this case.

211 2014 Cr.L.J. 1293 (Orissa H.C.) (06.01.2014), para. 14. See page 225 of this compilation for full text of judgment. See page 15 of this compilation for discussion of this case.

212 2011 Cr.L.J. 3572, III (2011) DMC 747 (Bombay H.C.) (17.02.2010), para. 9. See page 230 of this compilation for full text of judgment. See page 15 of this compilation for discussion of this case.

Pradesh High Court, *A. Ashok Vardhan Reddy v. Smt. P. Savitha*[213] and *Mohit Yadam v. State of Andhra Pradesh*;[214] Delhi High Court, *Syed Md. Nadeem @ Mohsin v. State*[215]

Widows

Key points

- ✓ Widowed woman living with her in-laws falls within the definition of domestic relationship. Delhi High Court, *Eveneet Singh v. Prashant Chaudhri*,[216] Orissa High Court, *Gangadhar Pradhan v. Rashimbala Pradhan*[217]
- ✓ Widowed woman who could not stay in the household of her in-laws granted monetary compensation in order to secure the same level of alternate accommodation. Calcutta High Court, *Ashish Bhowmik v. Tapasi Bhowmik*[218]

Consanguinity and family members living in a joint family

Key points

- ✓ Widowed daughter awarded interim maintenance from her father after she was allegedly thrown out of her matrimonial home. Rajasthan High Court, *Badri Lal Gurjar v. Yogesh Kumari*[219]
- ✓ Protection under PWDVA awarded to a widowed mother who, after her husband's death, was defrauded of her shares in the family business, deprived of immovable property, cash deposits and jewellery, ill-treated, and ultimately dispossessed from her home by her three sons. Andhra Pradesh High Court, *Sikakollu Chandramohan v. Sikakollu Saraswathi Devi*[220]

Children and foster children

- ✓ Foster children entitled to relief under PWDVA. Madhya Pradesh High Court, *Razzak Khan v. Shahnaz Khan*[221]

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213 2012 Cr.L.J. 3462 (Andhra H.C.) (29.02.2012), para. 29. See page 236 of this compilation for full text of judgment. See page 16 of this compilation for discussion of this case.

214 (Andhra H.C.) 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (13.11.2009), para. 14. See page 251 of this compilation for full text of judgment. See page 16 of this compilation for discussion of this case.

215 W.P. (Crl.) 887/2011 and Crl. M.A. No. 7238/2011 (for stay) (Delhi H.C.) (15.06.2011), para. 3. See page 291 of this compilation for full text of judgment. See page 17 of this compilation for discussion of this case.

216 I (2011) DMC 239 (Delhi H.C.) (20.12.2010), para. 11. See page 305 of this compilation for full text of judgment. See page 18-19 of this compilation for discussion of this case.

217 (Orissa H.C.) W.P.(Crl) No.519 of 2011 (18.05.2012), paras. 6, 22-24. See page 296 of this compilation for full text of judgment. See page 18 of this compilation for discussion of this case.

218 (Calcutta H.C.) C.R. R. No. 10 of 2009 (30.06.2010), para. 3. See page 303 of this compilation for full text of judgment. See page 18 of this compilation for discussion of this case.

219 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009), para. 5. See page 319 of this compilation for full text of judgment. See page 19 of this compilation for discussion of this case.

220 Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010), paras. 5-6. See page 108 of this compilation for full text of judgment. See page 19 of this compilation for discussion of this case.

221 2008 (4) MPHT 413 (Madhya Pradesh H.C.)(25.03.2008), paras. 10. See page 292 of this compilation for full

2. MECHANISMS TO ASSIST WOMEN TO ACCESS RELIEF UNDER PWDVA

PROTECTION OFFICERS

Strategy: Protection Officers can help women to access free legal aid, shelter, medical services and other support. This is a valuable resource for an aggrieved woman.

Key Points

✓ Protection Officers are not responsible for investigating claims. An aggrieved woman, therefore, can file a DIR with a Protection Officers in a different jurisdiction from where the alleged incident of violence took place. Allahabad High Court, *Neeraj Goswami v. State of Uttar Pradesh*[222]

3. DOMESTIC INCIDENT REPORTS (DIRS)

Strategy: When filing a DIR with a Protection Officer or Service Provider, ensure that the aggrieved woman receives a copy.

Key Points

✓ A DIR is not mandatory to initiate proceedings. Kerala High Court, *Aboobacker Master v. Jaseena K*;[223] Jharkand High Court, *Rakesh Sachdeva v. Neelam Sachdeva*;[224] Uttar Pradesh High Court, *Milan Kumar Singh v. State of Uttar Pradesh;*[225] Himachal Pradesh High Court, *Rahul Soorma v. State of Himachal Pradesh*[226]

✓ A DIR does not need to be considered prior to issuing notice to either party. Madhya Pradesh High Court, *Ajay Kant v. Alka Sharma*[227]

✓ A Magistrate can pass an interim order prior to receiving a DIR from a Protection Officers. Bombay High Court, *Nandkishor Vinchurkar v. Kavita Vinchurkar*[228]

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text of judgment. See page 19 of this compilation for discussion of this case.

222 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013). See page 320 of this compilation for full text of judgment. See page 20 of this compilation for discussion of this case.

223 Crl.MC.No.3960 of 2009 (Kerala H.C.) (8.12.2009), para. 4. See page 335 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

224 2011 Cr.L.J. 158 (Jharkhand H.C.)(09.07.2010), para. 12. See page 87 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

225 2007 Cr.LJ 4742 (Allahabad H.C.) (18.7.2007), para. 4. See page 336 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

226 2012 Cr.L.J. 2742 (Himachal Pradesh H.C.) (01.05.2011), para. 13-15. See page 340 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

227 2008 Cr.L.J. 264, I (2008) DMC 1 (Madhya Pradesh H.C. (Gwalior Bench)) (19.06.2007). See page 353 of this compilation for full text of judgment. See page 24 of this compilation for discussion of this case.

228 2009 (3) Bom. C.R. (Cri.) 280 (Bombay H.C.) (5.8.2009), para. 14. See page 344 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

- ✓ If the Magistrate receives a DIR, either from a Protection Officers, or a Service Provider, the Magistrate is obliged to consider the DIR prior to passing an order on the application. Karnataka High Court, *Nayankumar v. State of Karnataka*[229]
- ✓ A DIR submitted by a Protection Officers is a particularly important to consider because it is unbiased. Punjab and Haryana High Court, *Yadvinder Singh v. Manjeet Kaur*[230]

4. COURT JURISDICTION

Key Points

- ✓ In choosing where to file, women may opt for the jurisdiction that is most convenient, comfortable and accessible. Allahabad High Court, *Manish Tandon v. State* [231]
- ✓ Women may file from a temporary residence in a different locale from where the act of domestic violence takes place. Court defines temporary residence. Delhi High Court, *Sharad Kumar Panday v. Mamta Pandey* [232]
- ✓ The need to seek refuge is evidence of a continuing offense that establishes jurisdiction of the court in the place of refuge. Court upholds right of aggrieved woman to file from her parents home although alleged domestic violence took place elsewhere. Allahabad High Court, *Neeraj Goswami v. State of UP* [233]
- ✓ Court takes jurisdiction in case where domestic violence took place overseas and the aggrieved woman returned to India and sought relief under PWDVA. Delhi High Court, *Hima Chugh v. Pritam Ashok Sadaphule;*[234] Rajasthan High Court, *Sukrit Verma v. State of Rajasthan* [235]

RELIEF UNDER PWDVA IN CONTEXT OF OTHER SUITS AND LEGAL PROCEEDINGS

Strategy: If the aggrieved woman seeks specific, temporary relief and is engaged in an existing legal proceeding an advocate can avoid multiple proceedings by praying for specific interim

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229 Crl.Pet. No. 2004 of 2009 (Karnataka H.C.) (12.08.2009), paras. 11-12. See page 348 of this compilation for full text of judgment. See page 23 of this compilation for discussion of this case.

230 Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.) (26.11.2010), para. 5. See page 352 of this compilation for full text of judgment. See pages 23-24 of this compilation for discussion of this case.

231 I (2010) DMC 242 (Allahabad H.C.) (12.10.2009), para. 17. See page 359 of this compilation for full text of judgment. See page 24 of this compilation for discussion of this case.

232 II (2010) DMC 600 (Delhi H.C.) (01.09.2010), para. 9. See page 364 of this compilation for full text of judgment. See pages 24-25 of this compilation for discussion of this case.

233 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013). See page 320 of this compilation for full text of judgment. See page 25 of this compilation for discussion of this case.

234 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013), para. 8. See page 160 of this compilation for full text of judgment. See page 25 of this compilation for discussion of this case.

235 III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011), para. 16. See page 369 of this compilation for full text of judgment. See page 25 of this compilation for discussion of this case.

relief under PWDVA Section 18, 19, 20, 21, and 22 within existing proceedings. If the aggrieved woman seeks exhaustive relief under PWDVA, approach the Magistrate Court.

Key Points

- ✓ Women can seek relief under PWDVA within pending proceedings in a Family Court or Civil Court. Chattisgarh High Court, *Neetu Singh v. SuniI Singh*;[236] Madras High Court, *M.J. John v. Elizabeth John*[237]
- ✓ Women can seek relief under PWDVA in distinct proceedings alongside pending proceedings in a Family Court or Civil Court. Madras High Court, *A.V. Rojer v. Janet Sudha*[238]
- ✓ The only precondition to claiming reliefs under PWDVA in addition to reliefs claimed in distinct pending civil or family proceedings is that any proceedings must be mentioned in the initial PWDVA filing and the outcome of relevant proceedings should be communicated to the court. Guahati High Court, *Bimal Mitra v. Ashalata Mitra;*[239] Calcutta High Court, *Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder)*[240]

CLAIMING MAINTENANCE UNDER PWDVA AND 125 CR.P.C.:

There is no consensus among the higher judiciary on the issue of whether an aggrieved can claim maintenance under PWDVA and 125 Cr.P.C. simultaneously.

Strategy: An advocate can defend a woman's ability to simultaneously seek maintenance under PWDVA and 125 Cr.P.C. by arguing that due to distinct burdens of proof under PWDVA and Section 125 Cr.P.C, the court adjudicating the matter under PWDVA is concerned with distinct evidentiary standards. These proceedings, therefore, cannot be considered identical. Chattisgarh High Court, *Rajesh Kurre v. Safurabai*[241]

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236 AIR 2008 Chattisgarh 1 (Chattisgarh H.C.)(28.09.2007), para. 9. See page 378 of this compilation for full text of judgment. See page 26 of this compilation for discussion of this case.

237 Civil Revision Petition (PD) No. 3396 of 2009 and M.P. Nos. 1 and 2 of 2009 (Madras H.C.) (28.03.2011), para. 12. See page 382 of this compilation for full text of judgment. See page 26 of this compilation for discussion of this case.

238 Crl. O.P. (MD). No. 2496 of 2007 and M.P (MD) Nos. 1 and 2 of 2007 (Madras H.C.) (12.04.2007). See page 385 of this compilation for full text of judgment. See page 26 of this compilation for discussion of this case.

239 2013 Cr.L.J. 4110 (Gauhati H.C.) (23.07.2013), para. 9. See page 388 of this compilation for full text of judgment. See page 26 of this compilation for discussion of this case.

240 C.R.R. 1835 of 2010 (Calcutta H.C.)(06.10.2010), para. 6. See page 390 of this compilation for full text of judgment. See page 27 of this compilation for discussion of this case.

241 AIR 2009 (NOC) 813 (CHH) (Chattisgarh H.C.)(11.11.2008), para. 9. See page 396 of this compilation for full text of judgment. See page 27 of this compilation for discussion of this case.

Key Points

- ✓ A woman can seek maintenance under PWDVA and Section 125 Cr.P.C. Madras High Court, *A. V. Rojer v. Janet Sudha*;[242] Chattisgarh High Court, *Rajesh Kurre v. Safurabai*[243]
- ✓ An application for maintenance under PWDVA should not be entertained when a petition for maintenance had already been filed under Section 125 Cr.P.C. and maintenance has been awarded. Delhi High Court, *Renu Mittal v. Anil Mittal*[244]

CLAIMING MAINTENANCE UNDER PWDVA AND THE MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

Key Points

- ✓ A Muslim woman can receive maintenance under PWDVA and the Muslim Women (Protection of Rights on Divorce) Act, 1986. Rajasthan High Court, *Anwar V. Shamim Bano*[245]

TRANSFER OF APPLICATIONS FROM MAGISTRATE'S COURTS TO OTHER COURTS

Key Points

- ✓ Transferring cases to another court where similar reliefs are pending undermines the purpose of the act by causing a delay in awarding orders. Kerala High Court, *MA Mony v. MP Leelamma*[246]

5. PROCEDURE FOR OBTAINING RELIEF UNDER PWDVA

APPLICATION TO MAGISTRATE

Strategy: Key components of an application under PWDVA:[247]

1. **Name(s) and addresse(s) of the aggrieved person(s)**
   If the cause of action is the same and the respondent(s) are common, more than one aggrieved person can file a common application, such as mother and sister against the son-brother(s), wife and children against the husband-father, etc.
2. **Name(s) and address(es) of the Respondent(s)**

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242 Crl. O.P. (MD). No. 2496 of 2007 and M.P (MD) Nos. 1 and 2 of 2007 (12.04.2007) (Madras H.C.), para. 8. See page 385 of this compilation for full text of judgment. See page 27 of this compilation for discussion of this case.

243 AIR 2009 (NOC) 813 (CHH) (Chattisgarh H.C.)(11.11.2008), para. 9. See page 396 of this compilation for full text of judgment. See page 27 of this compilation for discussion of this case.

244 II (2010) DMC 775 (Delhi H.C.) (27.09.2010), para 5. See page 394 of this compilation for full text of judgment. See page 27 of this compilation for discussion of this case.

245 2012 Cr.L.J. 2552 (Rajasthan H.C.) (13.04.2012), para. 8. See page 401 of this compilation for full text of judgment. See page 28 of this compilation for discussion of this case.

246 2007 Cr.L.J. 2604 (Kerala H.C.)(29.03.2007), paras. 8,10. See page 407 of this compilation for full text of judgment. See page 28 of this compilation for discussion of this case.

247 These tips are drawn in part from Lawyers Collective, Handbook On Law Of Domestic Violence, Indira Jaising ed. (LexisNexis: Nagpur, 2009).

A common application can be made against more than one Respondent if there is a single cause of action but the reliefs sought are different. For example, a wife can ask for a protection order against her mother-in-law and a compensation order against her husband.

3. **Detailed chronological history of violence that corresponds with any documentary evidence and contains all details of the alleged violence.** Evidence can include complaints to police, Protection Officers, Service Providers, Women's Commissions or any other authorities; and medical, injury, mental health, counseling and other reports. If there is more than one respondent, mention incidents of violence committed by each respondent.
4. **Copy of the Domestic Incident Report (optional).**
5. **Details of any related cases, including the reliefs, if any, granted in the other proceedings.**
6. **Request for specific reliefs and corresponding implementation orders** in order to help the Magistrate grant immediate relief.
7. **Detailed listing of family assets, background and earning capacity** in order to secure appropriate maintenance, compensation and residence orders. Provide the pay slip of the respondent, proof of property ownership, income tax returns, etc.
8. **List of witnesses**, if any (apart from the aggrieved person).
9. **Basis of the court's jurisdiction.**
10. **Affidavit** of the aggrieved woman detailing the alleged violence.
11. After compiling all the documents, clearly number the pages for easy reference.
12. In addition to the original set that will be filed in court, make identical copies (one set for the woman, one set for the lawyers and one for each respondent.

Key Points

✓ If particular reliefs are requested and accompanied by an independent affidavit, a woman does not need to file a separate application to the court in order to be granted interim relief. Bombay High Court, *Vishal Damodar Patil v. Vishakakha Vishal Patil,*[248] Kerala High Court, *P. Chandrasekhra Pillai v. Valsala Chandran.*[249]

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248 2009 Cr.L.J. 107 (Bombay H.C.) (20.08.2008), para. 6. See page 427 of this compilation for full text of judgment. See page 29 of this compilation for discussion of this case.

249 2007 Cr.L.J. 2328, I (2008) DMC 83 (Kerala H.C.)(27.02.2007), para. 11. See page 431 of this compilation for full text of judgment. See page 29 of this compilation for discussion of this case.

- ✓ An initial application for relief that contains all necessary information cannot be rejected on the grounds that it has not been filed using Forms II and III. Allahabad High Court, *Milan Kumar Singh v. State of UP*[250]
- ✓ Application must explicitly request particular reliefs in order for those reliefs to be granted. Sikkim High Court, *Samten Tshering Bhutia v. Passang Bhutia*[251]

SERVICE OF NOTICE

Strategy: Request the Court to order service of notice by speed post simultaneously with usual mode of service through the Protection Order.

Strategy: Lawyers can request the court to order private service of notice to expedite proceedings

Key Points

- ✓ Service of notice can be made privately to expedite proceedings. Madras High Court, *Amar Kumar Mahadevan v. Kathiyayini*[252]

PROCEDURAL GUIDELINES INTRODUCED BY THE JUDICIARY UNDER SECTION 28(2)

Strategy: Furnish examinations in chief of witnesses by affidavit in order to reduce the time required for proceedings. Madras High Court, *Lakshmanan v. Sangeetha*[253]

Key Points

- ✓ After the respondent files a reply, Magistrates should determine from the applicant what reliefs she is seeking under PWDVA and frame issues on the basis of the reliefs sought. Bombay High Court, *Jovita Olga Ignesia Mascarehas e Coutinho. v. Mr. Rajan Maria Countinho*[254]
- ✓ Magistrate may allow amendment of the initial application in order to incorporate additional reliefs and correct misrepresentations by lawyers. Kerala High Court, *Saramma v. Shyju Varghese*[255]

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250 2007 Cr.L.J. (Allahabad H.C.) 4742 (18.07.2007), para. 5. See page 336 of this compilation for full text of judgment. See page 30 of this compilation for discussion of this case.

251 2014 Cr.L.J. 149 (Sikkim H.C.) (13.09.2013), paras. 8-9. See page 436 of this compilation for full text of judgment. See page 30 of this compilation for discussion of this case.

252 Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Madras H.C.) (28.11.2007), para. 12. See page 439 of this compilation for full text of judgment. See page 30 of this compilation for discussion of this case.

253 Crl. R.C. No. 576 of 2009 (Madras H.C.) (12.10.2009) para. 11. See page 458 of this compilation for full text of judgment. See page 33 of this compilation for discussion of this case.

254 2011 Cr.L.J. 754 (Bombay H.C. (Goa Bench)) (24.08.2010), para. 12. See page 104 of this compilation for full text of judgment. See page 32 of this compilation for discussion of this case.

255 III (2011) DMC 390 (Kerala H.C. (Ernakulam))(28.06.2011), para. 5. See page 461 of this compilation for full text of judgment. See page 33 of this compilation for discussion of this case.

✓ Magistrate may allow amendment of pending proceedings to incorporate reliefs under PWDVA even when technical amendment requirements are not met. Delhi High Court, *Sarbjyot Kaur Saluja v. Rajender Singh Saluja*[256]

RETROSPECTIVE EFFECT OF PWDVA

Key Points

✓ Conduct (domestic violence) that took place prior to PWDVA coming into force can be considered in proceedings under the Act. Supreme Court, *V.D Bhanot v. Savita Bhanot*[257]

✓ Applications under PWDVA can be made based upon conduct that amounts to continued domestic violence that began prior to when PWDVA came into force. Supreme Court, *Saraswathy v. Babu*[258]

6. RELIEFS UNDER PWDVA

INTERIM ORDERS

Strategy: Always file an application for interim relief orders along with the main application.

EX PARTE ORDERS

Key Points

✓ A prayer for setting aside an *ex parte* order can be made by filing an appropriate application within trial court proceedings. Calcutta High Court, *Swapan Kr. Das v. Aditi Das* [259]

PROTECTION ORDERS

Strategy: When asking for any relief under PWDVA, interim or final, always pray for corresponding protection orders so that the provision under PWDVA Section 31 can be activated. The higher judiciary has issued protection orders alongside residence and maintenance orders to ensure that breach of these orders are a punishable offence under the Act

Strategy: Protection orders should also be sought on behalf of any person who may be safeguarding the aggrieved woman from domestic violence.

Strategy: Request specific protection orders under PWDVA Section 18. For instance, seek a protection order to prohibit the respondent from operating a bank account, entering a work place, sending abusive communication by e-mail or SMS, etc.

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256 148 (2008) DLT 650 (Delhi High Court) (20.11.2007), para. 20. See page 464 of this compilation for full text of judgment. See page 33 of this compilation for discussion of this case.

257 AIR 2012 SC 965, I (2012) DMC 482 SC (07.02.2012)), para. 8. See page 470 of this compilation for full text of judgment. See page 33 of this compilation for discussion of this case.

258 2014 Cr.L.J. 1000 (SC), A 2014 SC 857, I (2014) DMC 3 (SC) (25.11.2013), para. 14. See page 474 of this compilation for full text of judgment. See page 33 of this compilation for discussion of this case.

259 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011), para. 5. See page 481 of this compilation for full text of judgment. See page 34 of this compilation for discussion of this case.

Key Points

✓ If a protection order under Section 31(1) is passed not by a Magistrate, but in a civil, criminal, or family court, the court that passed the order is entitled and obliged to try the offence if the order is breached. Bombay High Court, *Pramodini Vijay Fernandes v. Vijay Fernandes*[260]

RESIDENCE ORDERS

Strategy: Request orders, including interim residence and protective orders that specify the exact boundaries where the aggrieved woman will live within a shared household and the areas she will have access to. File a sketch map clearly showing these rooms and areas. Madhya Pradesh High Court, *Rajaram Panwari v. Asha Panwari*[261]

Strategy: advocates should request orders from the Magistrate that include very specific instructions for implementation. Under Section 19(5) and 19(7) of PWDVA, Magistrates have the authority to give *any* order to the officer in charge to assist him in the implementation of a protection order. This provision can be used to request orders of protective residence. For instance, request orders calling for police to break the locks or take any other action that may be necessary in order to restore a woman to the shared household. Madras High Court, *P. Babu Venkatesh v. Rani*[262]

Strategy: Always pray for an order restraining the respondent from alienating or disposing of the shared household.

Strategy: When praying for a residence order within the shared household, always include prayers for alternative residence and rent under PWDVA Section 19(6).

Strategy: When praying for a residence order, under Section 19(3) of PWDVA request that the Magistrate require the respondent to execute a bond with sureties for preventing the commission of domestic violence.

RELEVANCE OF PROPERTY OWNERSHIP IN DETERMINING SHARED HOUSEHOLDS

Key Points

✓ Section 17(1) of the Act entitles the wife to claim a right to reside in the shared household only when the house is joint family property. Supreme Court, *S.R. Batra v. Taruna Batra*[263]

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260 I (2010) DMC 425 (Bombay H.C.) (17.02.2010), paras. 12-13. See page 486 of this compilation for full text of judgment. See page 36 of this compilation for discussion of this case.

261 I MPHT 383 (Madhya Pradesh H.C.) (07.10.2009), para. 12. See page 583 of this compilation for full text of judgment. See page 43 of this compilation for discussion of this case.

262 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), paras. 6, 14, 16. See page 529 of this compilation for full text of judgment. See page 39 of this compilation for discussion of this case.

263 2007 (2) ALD 66 (SC), A 2007 SC 1118 (Supreme Court)(15.12.2006), para. 22. See page 490 of this compilation for full text of judgment. See page 37 of this compilation for discussion of this case.

JUDGMENTS DISTINGUISHING *S.R. BATRA V. TARUNA BATRA* AND UPHOLDING THE RIGHT OF RESIDENCE:

Strategy: In distinguishing the *Batra* judgment, following *Eveneet Singh v. Prashant Chaudhri* an advocate can distinguish their case in three ways:

1. in *Batra* the dispute did not emanate from PWDVA;
2. the wife in *Batra* was not an occupant of the property at the time of filing;
3. the court did not directly consider the definition of "respondent" or "domestic relationship;" and, moreover, failed to explore the link between these two concepts and the definition of "shared household." [264]

Key Points

- ✓ It is not appropriate to consider questions of ownership addressed in *Batra* while determining urgent interim relief. Delhi High Court, *Nidhi Kumar Gandhi v. The State* [265]
- ✓ The aggrieved woman did not have the right to reside in a particular shared household according to the reasoning in *Batra* but her right of residence was upheld by providing money/property for residence for the duration of her life. Delhi High Court, *Shumita Didi Sandhu v. Sanjay Singh Sandhu* [266]
- ✓ Court concluded that the property in question was not a shared household pursuant to *Batra* but did not order the aggrieved woman to vacate the house. Instead, the Court held that if the aggrieved woman vacates the father-in-laws flat, her husband is required to pay ₹ 7, 000 per month. Delhi High Court, *Umesh Sharma v. State* [267]
- ✓ Court recognizes *Batra* (ownership of household must be determined in adjudicating whether property is a shared household). Holds that title can be transferred to frustrate residence of an aggrieved wife; and challenges evidentiary value of manufactured sales deed presented by the husband and mother-in-law. Bombay High Court, *Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey* [268]
- ✓ Court explicitly recognized that the Supreme Court decision in *Batra* can be used to frustrate residence of an aggrieved wife if the husband transfers title of the property to a family member

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264 I (2011) DMC 239 (Delhi H.C.) (20.12.2010), paras. 16-17. See page 305 of this compilation for full text of judgment. See page 39-40 of this compilation for discussion of this case.

265 2010 Cr.L.J. (NOC) 79, 157 (2009) DLT 472, II (2009) DMC 647 (Delhi H.C.)(16.01.2009), para. 13. See page 495 of this compilation for full text of judgment. See page 37 of this compilation for discussion of this case.

266 II (2010) DMC 882 (Dehi H.C.) (26.10.2010), para. 48. See page 500 of this compilation for full text of judgment. See page 38 of this compilation for discussion of this case.

267 I (2010) DMC 556 (Delhi H.C.) (25.01.2010), paras. 7-9. See page 521 of this compilation for full text of judgment. See page 38 of this compilation for discussion of this case.

268 2008 (6) Bom CR 831, AIR 2009 (NOC) 1013 (Bombay H.C.) (26.08.2008), paras. 14,18. See page 524 of this compilation for full text of judgment. See page 39 of this compilation for discussion of this case.

and upheld the order restoring the aggrieved wife to the house from which she had been driven away in the middle of the night. Madras High Court, *P. Babu Venkatesh v. Rani*[269]

JUDGMENTS CHALLENGING S.R. BATRA V. TARUNA BATRA:

Key Points

- ✓ Court holds that there is no reason to conclude that the definition [of shared household does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of 'respondent' under Section 2(q). Delhi High Court, *Eveneet Singh v. Prashant Chaudhri* [270]
- ✓ Court upheld an aggrieved wife's right to reside in a shared household, despite claims by the father-in-law that he held absolute right, title and interest over the residential building in question. Kerala High Court, *S. Prabhakaran v. State of Kerala*[271]
- ✓ Court upheld the rights of the aggrieved woman and her young child to reside in a house owned by her father-in-law. Uttar Pradesh High Court, *Nishant Sharma v. State of Uttar Pradesh*[272]
- ✓ Court upheld the right of a daughter-in-law to reside in a shared household held by her mother-in-law—a female respondent. Delhi High Court, *Preeti Satija v. Smt. Raj Kumari*[273]

RELEVANCE OF PRIOR RESIDENCE IN DETERMINING SHARED HOUSEHOLDS

Key Points

- ✓ Court upheld the aggrieved woman's right of residence in her husband's rented flat even though she had never resided with him in the flat in question. Delhi High Court, *Kavita Dass v. NCT of Delhi* [274]
- ✓ Court provided a distinct and very specific interpretation of the nature of residence that must be established in order to claim the right to reside in a shared household: when a family member leaves the shared household to establish their own household, and actually

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269 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), para. 3. See page 529 of this compilation for full text of judgment. See page 39 of this compilation for discussion of this case.

270 I (2011) DMC 239 (Delhi H.C.) (20.12.2010), paras. 16-17. See page 305 of this compilation for full text of judgment. See page 39 of this compilation for discussion of this case.

271 AIR 2009 (NOC) 1017 (Kerala H.C.) (6.6.2008), paras. 19-20, 25. See page 534 of this compilation for full text of judgment. See page 40 of this compilation for discussion of this case.

272 2012 Cr.L.J. 4423 (Uttar Pradesh H.C.) (4.05.2012). See page 540 of this compilation for full text of judgment. See page 40 of this compilation for discussion of this case.

273 RFA (OS) 24/2012, C.M. APPL.4236/2012, 4237/2012 & 5451/2013 (Delhi H.C.) (15.01.2014), para. 20. See page 543 of this compilation for full text of judgment. See page 41 of this compilation for discussion of this case.

274 CRL.M.C. 4282/2011 and Crl. M.A. No. 19670/2011 (Delhi H.C.) (17.04.2012), paras. 4-6, 10, 32-33. See page 557 of this compilation for full text of judgment. See page 41 of this compilation for discussion of this case.

establishes their own household, they can no longer claim the existence of a domestic relationship in the previously shared household. Delhi High Court, *Adil v. State*[275]

- ✓ The shared household must be the residence shared by an aggrieved woman and a respondent. The right to reside is limited by the Act to one household—and for an aggrieved married woman, it is the matrimonial home. The right to reside in the matrimonial household is retained until an aggrieved wife is given a permanent right to reside in another property or alimony. Delhi High Court, *Bindiya A. Chawla v. Ajay Lajpatraj Chawla*[276]

RESPECTFUL RESIDENTIAL ARRANGEMENTS FOR AGGRIEVED WOMEN

Key Points

- ✓ Supreme Court considered the safety needs of an aggrieved woman who expressed apprehension for her safety if she were to live alone in a rented accommodation and directed that the aggrieved woman be provided her right of residence where her husband was residing. Supreme Court, *V.D. Bhanot v. Savita Bhanot*[277]
- ✓ Court held that if the husband can offer the wife no alternative accommodation to reside there peaceably, he was enjoined from living in such a matrimonial home with his second wife. Bombay High Court, *Sabah Sami Khan v. Adnan Sami Khan*[278]
- ✓ Court reasoned: "[c]ourts must abjure adopting a feudal and archaic attitude by thinking that a wife can be relegated to Outhouse as if [she] is a mere chattel" and "[o]n the contrary, efforts must be made to ensure that she can live a life of respect" and revised the initial directions from the lower court which had confined the aggrieved woman to living in the guest annex of the house and instructed her not to enter the main building, Delhi High Court, *Natasha Kohli v. Mon Mohan Kohli*[279]

SPECIFYING LIVING ARRANGEMENTS FOR THE AGGRIEVED WOMAN

Key Points

- ✓ Court devised specific living arrangements for the aggrieved woman and her husband during proceedings. The aggrieved woman was instructed to reside in the "study" due to its proximity to the son's bedroom and a separate toilet and to remove her belongings from the cupboards in the main bedroom. She was also given access to the annex where her belongings

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275 II (2010) DMC 861 (Delhi H.C.) (20.09.2010), paras. 6, 11. See page 564 of this compilation for full text of judgment. See page 41 of this compilation for discussion of this case.

276 2009 (5) Bom CR 486 (Bombay H.C.)(31.03.2009), para. 14. See page 568 of this compilation for full text of judgment. See page 42 of this compilation for discussion of this case.

277 I (2012) DMC 482 SC, AIR 2012 SC 965 (Supreme Court)(07.02.2012), para. 11. See page 470 of this compilation for full text of judgment. See page 42-43 of this compilation for discussion of this case.

278 2011 (1) MhLj 427 (Bombay H.C.) (21.10.2010), paras. 6-17, 32. See page 413 of this compilation for full text of judgment. See page 42 of this compilation for discussion of this case.

279 172 (2010) DLT 516, 2010 (119) DRJ 44 (Delhi H.C.) (24.09.2010), paras. 1, 12, 15. See page 577 of this compilation for full text of judgment. See page 42 of this compilation for discussion of this case.

were currently stored and entitled to use the remaining portions of the house, including the kitchen and drawing room. Delhi High Court, *Natasha Kohli v. Mon Mohan Kohli*[280]

ENFORCING RESIDENCE ORDERS

Protection orders accompanying residence orders

Key Points

- ✓ Supreme Court upheld an order instructing the officer in charge of the nearest police station to protect the aggrieved woman and implement residence and protection orders by breaking the door of the respondent's house in the presence of the Revenue Inspector and making accommodation for the aggrieved woman, inquiring about her belongings and submiting a report to the Protection Officer. Supreme Court, *Saraswathy v. Babu*[281]
- ✓ Court upheld an order by the Magistrate directing the police to restore an aggrieved woman to the household where she had resided prior to allegedly being beaten and driven away by her husband. Responding to this emergency situation in which the aggrieved wife, according to her affidavit, was living without food, clothes, and shelter, the Magistrate expressly directed the police to restore the woman to her home by breaking open the locks that had been put in place to prevent her from entering.[282] Madras High Court, *P. Babu Venkatesh v. Rani*[283]
- ✓ Court upheld both a residence order and a protection order restraining a violent husband from entering the matrimonial home, reasoning that PWDVA grants the aggrieved woman not only the right of residence, but a "protective right of residence" that includes both protection from dispossession and an injunction preventing the husband from entering the shared household. Bombay High Court, *Ishpal Singh Kahai v. Ramanjeet Kahai*[284]

MONETARY RELIEF

Strategy: Pray for a protection order under Section 18 to protect a woman from economic abuse. Madhya Pradesh High Court, *Sunil alias Sonu v. Sarita Chawla*[285]

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280 172 (2010) DLT 516, 2010 (119) DRJ 44 (Delhi H.C.) (24.09.2010), paras. 1, 12, 15. See page 577 of this compilation for full text of judgment. See page 43 of this compilation for discussion of this case.

281 2014 Cr.L.J. 1000 (SC) (Supreme Court)(25.11.2013), paras. 4,16. See page 474 of this compilation for full text of judgment. See page 44 of this compilation for discussion of this case.

282 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), paras. 6, 14, 16. See page 529 of this compilation for full text of judgment. See page 44 of this compilation for discussion of this case.

283 AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008), paras. 6, 14, 16. See page 529 of this compilation for full text of judgment. See page 44 of this compilation for discussion of this case.

284 Writ Petition No.576 of 2011 (Bombay H.C.) (23.03.2011), para. 35. See page 77 of this compilation for full text of judgment. See page 45 of this compilation for discussion of this case.

285 (Madhya Pradesh H.C.) 2009 (5) MPHT 319 (31.08.2009), para. 5. See page 610 of this compilation for full text of judgment. See page 47 of this compilation for discussion of this case.

Strategy: Include separate prayers to cover educational expenses for children and medical treatment for the aggrieved person if the circumstances require.

Strategy: Submit a list of expenses to the court along with prayers for maintenance to ensure that the aggrieved woman is maintained in a manner that is adequate, fair, reasonable and consistent with the respondent's lifestyle.

Strategy: Under Section 19(8) request that the Magistrate order the respondent to return *stridhan* or any other property or valuable security to the aggrieved woman. In cases of default, request that the court order damages consistent with the value of the property.

Strategy: In cases of default, seek recourse under Section 20(6) of PWDVA that empowers the Magistrate to direct an employer or debtor of the respondent to pay the aggrieved woman directly.[286] Alternately, execute maintenance orders by filing a separate execution case calling for recovery of the amount due by issuing an arrest warrant under Section 125(3) Cr.P.C.

DETERMINING ADEQUATE, FAIR AND REASONABLE MONETARY RELIEF

Key Points

- ✓ Court determines that maintenance of $2000 every month was fair and reasonable for a woman who had lived in the USA during the time of marriage. Rajasthan High Court, *Sukrit Verma v. State of Rajasthan*[287]
- ✓ Aggrieved woman substantiated the amount she requested for monetary relief by presenting an itemized list of the expenditures she incurred. Bombay High Court, *Ann Menezes v. Shahajan Mohammad*[288]
- ✓ Respondent's income should be the basis for fixing maintenance for his dependents. Delhi High Court, *Amit Khanna v. Priyanka Khanna*[289]
- ✓ In determining maintenance for the aggrieved wife, Income Tax returns submitted by respondents do not have to be taken at face value. Rajasthan High Court, *Shyam Kumar Alwani v. Dimpal Alwani*[290]
- ✓ Any additional movable or immovable assets must also be considered in deciding maintenance. Delhi High Court, *Amit Khanna v. Priyanka Khanna*[291]

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286 PWDVA, Chapter 4, 20(6).

287 III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011), para. 16. See page 369 of this compilation for full text of judgment. See page 45 of this compilation for discussion of this case.

288 I (2011) DMC 683, 2010 Cr.L.J. 3592 (Bombay H.C.)(04.03.2010), para. 2. See page 587 of this compilation for full text of judgment. See page 45 of this compilation for discussion of this case.

289 2010 (119) DRJ 182 (Delhi H.C.) (01.09.2010), para. 4. See page 591 of this compilation for full text of judgment. See page 45 of this compilation for discussion of this case.

290 S.B. Criminal Revision Petition No. 1310/2010 (Rajasthan H.C. (Jaipur Bench)) (09.12.2010), para. 5-6. See page 594 of this compilation for full text of judgment. See page 46 of this compilation for discussion of this case.

291 2010 (119) DRJ 182 (Delhi H.C.) (01.09.2010), para. 3. See page 591 of this compilation for full text of

- ✓ Maintenance calculated on the basis of land ownership. Delhi High Court, *Badri Lal Gurjar v. Yogesh Kumari*[292]
- ✓ Court granted monetary relief to an aggrieved woman to cover medical expenses on the grounds that failing to pay for medical treatment amounts to economic abuse. Rajasthan High Court, *Harish Bairani v. Meena Bairani*[293]
- ✓ The right of a woman to be maintained does not make any exceptions for respondents who claim that they are unable to pay maintenance because they are physically challenged. Rajasthan High Court, *Om Prakash v. State of Rajasthan*[294]

NON-PAYMENT OF MAINTENANCE IS A CONTINUING WRONG

Key Points

- ✓ Non-payment of interim maintenance is a continuous wrong wherein the limitations period begins on the date on which the maintenance became due. Rajasthan High Court, *Anil Solanki v. Ila Solanki*[295]

ENFORCING MAINTENANCE ORDERS

Key Points

- ✓ Court held that if the maintenance was not paid within the prescribed time, then the Additional Principal Judge of the Family Court that issued the order is at liberty to take coercive measures to recover the money, including whether from the household property, through his employer, or through any other legal means. Patna High Court, *Radha Raman Srivastava v. State of Bihar*[296]

TEMPORARY CUSTODY ORDERS

Key Points

- ✓ An aggrieved person can only seek the relief of temporary custody in a proceeding applying for protection orders or other relief under the Act. Madras High Court, *A. Gomathieswar v. G. Rameena*[297]

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judgment. See page 46 of this compilation for discussion of this case.

292 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009), para. 5. See page 319 of this compilation for full text of judgment. See page 46 of this compilation for discussion of this case.

293 RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011). See page 101 of this compilation for full text of judgment. See page 46 of this compilation for discussion of this case.

294 S.B. Criminal Revision Petition No.1220/2010 (Rajasthan H.C) (29.04.2011). See page 112 of this compilation for full text of judgment. See page 46 of this compilation for discussion of this case.

295 RLW 2010 (3) Raj 2533 (Rajasthan H.C.) (15.10.2009), para. 21. See page 596 of this compilation for full text of judgment. See page 46 of this compilation for discussion of this case.

296 2013 Cr.L.J. 459 (Patna H.C.) (27.06.2012), para. 16. See page 605 of this compilation for full text of judgment. See page 47 of this compilation for discussion of this case.

297 Crl.O.P.No.569 of 2007 in M.P.Nos.1 & 2 of 2007 (Madras H.C.)(8.4.2008), para. 6. See page 613 of this compilation for full text of judgment. See page 47 of this compilation for discussion of this case.

✓ Welfare of the child is the paramount consideration in custody matters. The Court considered the requirements of love, affection, emotion, care and maintenance in granting temporary custody of the three year-old daughter to her mother. Punjab and Haryana High Court, *Balwinder Singh v. Herpreet Kaur* [298]

COMPENSATION

Strategies: Always pray for compensation for the loss incurred by the woman as a result of any form of domestic violence. Beyond economic losses, compensation should be asked for physical injury and damage to the psychological, spiritual and emotional health and well being of the aggrieved woman and her children.

Key Points

✓ Court directed the directed the respondent-husband to pay compensation and damages to the extent of ₹ 5,00,000 to the appellant-wife for injuries including mental torture and emotional distress caused by domestic violence. Supreme Court, *Saraswathy v Babu* [299]

✓ Court upheld compensation awarded to an aggrieved woman for her husband's failure to maintain her in a dignified manner. Chattisgarh High Court, *Sunil Singh v. Smt. Neetu Singh* [300]

✓ Court ordered the respondent to pay ₹ 10,000 as compensation and damages for the mental torture and emotional distress caused to the aggrieved woman. Punjab and Haryana High Court, *Yadvinder Singh v. Manjeet Kaur* [301]

✓ Court can award compensation to an aggrieved woman if they find that she has been mistreated mentally, or physically or emotionally distressed in the shared household. Calcutta High Court, *Swapan Kr. Das v. Aditi Das* [302]

7. EVIDENCE, BURDEN OF PROOF AND STATUTORY INTERPRETATION

Key Points

✓ In order to pass an order under PWDVA, an opportunity for hearing must be granted to the parties; and the court must be *prima facie* satisfied, based upon adequate evidence,

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298 2013 Cr.L.J. (NOC) 409 (Punjab and Haryana H.C.) (10.07.2012), para. 7. See page 615 of this compilation for full text of judgment. See page 48 of this compilation for discussion of this case.

299 2014 Cr.L.J. 1000 (SC) (Supreme Court)(25.11.2013), para. 15. See page 474 of this compilation for full text of judgment. See page 48 of this compilation for discussion of this case.

300 First Appeal M 35 of 2010 (Chattisgarh H.C.) (03.09.2010), para. 18. See page 617 of this compilation for full text of judgment. See page 48 of this compilation for discussion of this case.

301 Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.)(26.11.2010), para. 5. See page 352 of this compilation for full text of judgment. See page 48 of this compilation for discussion of this case.

302 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011), para. 5. See page 481 of this compilation for full text of judgment. See page 49 of this compilation for discussion of this case.

that domestic violence has happened or is likely to happen. Madhya Pradesh High Court, *Madhusudan Bhardwaj. v. Mamta Bhardwaj*[303]

- ✓ Court may allow chief examination of witnesses to be furnished by affidavit in order to reduce the amount of time necessary for proceedings, under Section 28(2). Madras High Court, *Lakshmanan v. Sangeetha*[304]
- ✓ PWDVA is a remedial, beneficent, or social justice oriented Act. When considering remedial statutes, statutory interpretation should be liberal and doubt should be resolved in favor of the class of persons for whose benefit the statute is enacted—in this instance, women who are victims of violence of any kind occurring within the family. Andhra Pradesh High Court, *Mohit Yadam v. State of Andhra Pradesh*[305] and Bombay High Court, *Chandrakant Nivruti Wagh v. Manisha C. Wagh*[306]

8. ALTERATION OF ORDERS

Strategy: Use Section 25(2) to seek enhancement of monetary relief orders for the aggrieved woman in cases in which the financial circumstances of the husband have improved.

Key Points

- ✓ A party not heard in earlier circumstance but subsequently heard by the Court can be considered a change of circumstance under Section 25(2) that empowers the Magistrate to make any appropriate adjustments. Madras High Court, *Alexander Sambath Abner v. Miran Lada*[307]

9. APPEALS UNDER SECTION 29

Strategy: Always file an appeal for enhancement of monetary relief, whether at the interim or final stage.

Strategy: During proceedings on appeal, at the time of disposal, pray for an order of disposal within a specific expedited time limit.

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303 2009 Cr.L.J. 3095, II (2010) DMC 57 (Madhya Pradesh H.C. (Gwalior Bench))(31.03.2009), para. 9-D. See page 622 of this compilation for full text of judgment. See page 49 of this compilation for discussion of this case.

304 (Madras H.C.) Crl. R.C. No. 576 of 2009 (12.10.2009), paras. 11. See page 458 of this compilation for full text of judgment. See page 49 of this compilation for discussion of this case.

305 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (Andhra H.C.) (13.11.2009), para. 21-22. See page 251 of this compilation for full text of judgment. See page 49 of this compilation for discussion of this case.

306 I (2014) DMC 640 (Bombay H.C.)(04.04.2013), para. 11. See page 630 of this compilation for full text of judgment. See page 49 of this compilation for discussion of this case.

307 2010 1 LW (Crl) 93 (Madras H.C.) (14.09.2009), paras. 16, 22. See page 634 of this compilation for full text of judgment. See page 50 of this compilation for discussion of this case.

Key Points

- ✓ In a matter arising under PWDVA, the High Court should be slow in granting interim orders that interfere with the orders by which maintenance is granted to the aggrieved woman. Supreme Court, *Shalu Ojha v. Prashant Ojha*[308]
- ✓ Court set forth guidelines regarding appeals of final, interim or *ex parte*, and procedural orders under PWDVA Section 29. *Only* final orders and interim or *ex parte* orders determined to be arbitrary, capricious, perverse or illegal can be appealed under Section 29. In all other circumstances, interim and *ex parte* orders issued by the Magistrate should not be interfered with. Also, procedural orders that do not decide or determine rights and liabilities of the parties cannot be appealed under Section 29. Bombay High Court, *Abhijit Bhikaseth Auti v. State of Maharashtra*[309]
- ✓ Questions as to whether the Magistrate has jurisdiction to entertain a proceeding, whether a proceeding is maintainable, or whether a person can be impleaded as a respondent in the proceeding are not matters merely relating to procedure. They are so fundamental that the determination of rights and liabilities of the parties in the proceeding depends on the decision of such questions and therefore must be appealable under Section 29. Orissa High Court, *Smita Singh v. Bishnu Priya Singh*[310]

Note: An order passed by the Magistrate is well executable until and unless it is staid by the appellate court. Mere pendency of an appeal or revision does not stay the operation of the order appealed against or the proceedings in the trial court.

10. SECTION 482 CR.P.C. PETITIONS TO QUASH PROCEEDINGS

Key Points

- ✓ When adjudicating civil liability reliefs, it is not within the authority of the High Court under Section 482 of the Code of Criminal Procedure, to quash the proceedings by invoking the extraordinary inherent powers provided under the Code. In the case of criminal liability it is within the authority of the High Court to exercise extraordinary inherent powers under Section 482 of the Code of Criminal Procedure. Kerala High Court, *Vijayalakshmi Amma v. Bindu*[311]

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308 2015 Cr.L.J. 63, para. 32. See page 641 of this compilation for full text of judgment. See page 50-51 of this compilation for discussion of this case.

309 AIR 2009 (NOC) 808, 2009 Cr.L.J. 889 (Bombay H.C.) (16.09.2008), para. 25(iv). See page 648 of this compilation for full text of judgment. See page 51 of this compilation for discussion of this case.

310 2013 Cr.L.J. 4826, I (2014) DMC 365 (Orissa H.C.) (6.5.2013), para. 8. See page 658 of this compilation for full text of judgment. See page 52 of this compilation for discussion of this case.

311 ILR 2010 (1) Kerala 60, 2010 (1) KLT79 (Kerala H.C.) (02.12.2009), para. 17. See page 660 of this compilation for full text of judgment. See page 52 of this compilation for discussion of this case.

- ✓ Criminal jurisdiction of the High Court under Section 482 Cr.P.C. is valid in cases where an impugned order would result in a grave miscarriage of justice. Delhi High Court, *Nidhi Kumar Gandhi v. The State*[312]
- ✓ If proceedings are quashed, the appellate authority of the Act will have to be set aside and thereby the appellate authority of the Court of Session contemplated in Section 29 of the Act will be usurped under the sweep of Section 482 Cr.P.C. Calcutta High Court, *Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder)*[313]
- ✓ Since specific remedies by way of appeal and alteration, modification, or revocation of any order have been provided under the Act, an application under 482 Cr.P.C. is not maintainable. Delhi High Court, *Amit Sundra v. Sheetal Khanna*[314]

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312 2010 Cr.L.J. (NOC) 79, 157 (2009) DLT 472, II (2009) DMC 647 (Delhi H.C.) (16.01.2009), para. 11. See page 495 of this compilation for full text of judgment. See page 53 of this compilation for discussion of this case.

313 C.R.R. 1835 of 2010 (Calcutta H.C.) (06.10.2010), para. 5. See page 390 of this compilation for full text of judgment. See page 53 of this compilation for discussion of this case.

314 2008 Cr.L.J. 66 (Delhi H.C.)(31.08.2007), para. 10-11. See page 672 of this compilation for full text of judgment. See page 53 of this compilation for discussion of this case.

CHAPTER 2

Compilation of Judgments

1. DEFINITIONS

DOMESTIC VIOLENCE

PHYSICAL VIOLENCE

Ishpal Singh Kahai v. Ramanjeet Kahai, (Bombay H.C.) Writ Petition No.576 of 2011 (23.03.2011)

Judge: R.S. Dalvi

Judgment

1. The Petitioner/husband has challenged the order of the learned Judge, Family Court, Mumbai, directing him to remove himself from the residential flat in which he resides being flat No.2102, 21st floor, Beverly Hills, Shastri Nagar, Lokhandwala Complex, Andheri (West), Mumbai (the suit flat) and from creating nuisance by attempting to enter in the suit flat until the hearing and final disposal of the Petition. The Respondent/wife sued the Petitioner/husband for divorce and other incidental reliefs, being inter alia a mandatory order directing her husband to remove himself, from entering into the suit flat and disturbing her possession. She applied for temporary injunction for the aforesaid reliefs in which the impugned order came to be passed.

2. Though the Petition is not expressly stated to be filed under the provisions of the Protection of women against Domestic Violence Act (DV Act), the substantial interim reliefs are available to the wife under it and it is gratifying to note that the learned Judge has impliedly treated the interim application as one also under the DV Act and granted reliefs.

3. The wife's essential case is that her husband is an inveterate and consummate alcoholic. She has lodged several complaints with Versova Police Station. It is her case that her husband displays uncontrolled aggression due to excessive consumption of alcohol and abuses her and her children. The relief of injunction claimed by her is essentially upon the domestic violence caused to her by her husband's behaviour which makes it impossible for her to continue to reside in the matrimonial home with her children if her husband continues to live there as before. She, therefore, claims protection against domestic violence, a statutory right granted to women under DV Act.

4. Though only the relief of prohibitory injunction against disturbance of possession has been granted to wives, as in the case of B.P. Achala Anand vs. Appi Reddy, 2005 3 SCC 313, since prior to the enactment of the DV Act, in this case the wife has claimed and been granted the injunction against the entry of the husband in the matrimonial home. She has made out a case that her husband is a habitual alcoholic, unable to improve or withdraw from the symptoms of alcohol constituting domestic violence and entitling her and her children to the relief of protection from such onslaught in the matrimonial home under the impugned residence order. She must, therefore, show prima facie the case of alcoholism as would constitute domestic violence. Her case must be appreciated to see whether she would be entitled to the injunctions sought.

5. Aside from her oral statement as also her criminal complaint, which would be tested in trial, she has relied upon and produced the case papers of her husband of Holy Spirit Hospital, Mahakali Caves Road, Andheri (East), Mumbai-400 093, where he was hospitalised for treatment of alcohol dependence. The documentary evidence shown by her is not disputed as incorrect and untruthful. It shows the husband being hospitalised on 5th December 2007 under the treatment of Dr.Prabhu and Dr.Rai. The case papers show alcoholic dependence since 15-20 years. It shows that the husband drinks in the morning as well as in the evening, as shown by the expression: Morn drinks + Eve drinks, concomitant smoking on going and aggravating stressers etc. His case history shows two attempts at abstinence 9 years prior to the hospitalisation after father s death, after which he returned to alcoholism. The conclusion of the case history shows Imp : Alcohol dependence in withdrawal. It advises urgent admission to hospital. Hence started the treatment of the phase of retoxification.

6. This documentary evidence corroborates the case of the wife that the husband is abusive and violative. Judicial notice is required to be taken of the fact that persistent alcoholic husbands are invariably violative.

7. The wife has given an instance of the after effects of the husbands alcoholism. The instance is also admitted by the husband. He has justified it on the ground that it was his mistake. The incident took place in the evening of 10th January 2010. The husband had been to

Juhu Club. The wife and children were not at home. He consumed alcohol and returned home with a food parcel. He heat it up on the cooking gas. He ate and went to sleep. He found somebody knocking on the door but did not get up. Fire brigade was called who broke open the door, entered the kitchen and closed the gas cylinder knob. The husband realised his mistake.

8. This shows that the case of the wife that the husband had left the cooking gas on in his alcoholic stupor when he collapsed to sleep leaving the gas on and requiring their neighbour one Mr.Tanna to call the fire brigade is not only correct but also accurate. The requirement of calling the fire brigade shows the gravity of the situation. The wife was not in the house. She had to be called. Therefore, it stands to reason that despite knocking and banging the door, the Respondent was unable to bring himself to open it requiring the fire brigade to break it down.

9. It is in this situation that the statutory rights of protection of a wife in her matrimonial home under the DV Act are required to be considered.

10. It is the contention of the husband that the wife is not the full and complete owner of the flat in which he also resides and hence could not be granted the relief of injunction against him. The entire case of the husband is based upon ownership rights. Incidentally, in this case, the matrimonial home, in which the parties reside and for which the wife has applied for injunction, temporary as well as permanent, is in the name of the wife and her mother-in-law. That is, however, the most immaterial and even redundant consideration. Human Rights of the person of a wife has little to do with her ownership rights in property. It is, therefore, not material to consider in whose name the matrimonial home stands. What has to be only considered and appreciated in a case of domestic violence of a wife of an alcoholic and abusive husband is the protection against such violence.

11. It is in this light that the evolution of the law of Domestic Violence has to be considered.

12. At common law in England a mere desertion of a wife entitled her to peaceable occupation of and protection in the matrimonial home. This was held to fall within the doctrine of The Deserted Wife s Equity in the case of National Provincial Bank Ltd. vs. Hastings Car Mart Ltd. & ors., (1964) 1 Ch. D. 665.

13. The Matrimonial Homes Act, 1967 granted the right to both the spouses to enter into and occupy the matrimonial home and in certain cases to have the other spouses right to live there terminated despite the fact that she/he did own, fully or partly, the matrimonial home. The right was, therefore, available irrespective of the title to the house.

14. In the case of Gurasz v. Gurasz (1969) 3 WLR 482 CA = (1969) 3 AER 822, Lord Denning, as he then was considered the case of the wife who was a joint owner with her husband. Holding that the right to protection of her occupation extended to a wife who was also a part owner of the house, (though her husband was also a part owner in that

case), he restrained the husband, who caused cruelty upon her, from the occupation rights thus: "It is true, of course, that the husband is also a joint owner, and by virtue thereof, the husband has a right to occupy it. But that is a right which the courts, for the protection of the wife, can restrict; just as it can restrict this right if he were the sole owner. Such a power to restrict arises out of her personal right, as a wife, to occupy the house. If his conduct is so outrageous as to make it impossible for them to live together, the court can restrain him from using the house even though he is a joint owner."

15. Hence the precedent law in England held that financial interest of a husband has nothing to do with the equity of protecting a wife in cases of cruelty or abuse. Their respective contributions to the purchase of the house could be considered only in cases where the marriage broke up requiring considerations of alimony and provisions for residence.

16. The right of a battered wife was statutorily recognised under the Domestic Violence and Matrimonial Proceedings Act, 1976 (the said Act) in England. The relevant provisions of the said Act show thus:

Under Section 1 of the said Act, an injunction could be issued (termed as a matrimonial injunction). The breach of the injunction empowered the Police to arrest the violator.

Under Section 1(1) of the said Act, an injunction could be issued restraining the other party from molesting the Applicant or her children as also from excluding the other party from the matrimonial home or any part thereof and from permitting the Applicant to enter into the matrimonial home or any part thereof.

Under Section 2 of the said Act, where an injunction restraining violence or excluding the other party is issued and bodily harm is caused to the Applicant or the child a power of arrest would be attached to the injunction so as to empower a constable to arrest without warrant the person reasonably suspected of causing breach of injunction and further incidental orders could be passed.

Under Section 3 of the said Act, the order of regulating the exercise of the right of occupation by a spouse in the dwelling house as granted under Section 1(2) of the Matrimonial Homes Act, 1967 came to be substituted by the order of prohibiting, suspending or restricting such a right. Further the positive permission to exercise the right of occupation by the Applicant came to be specifically granted by incorporation of that right.

Under Section 4 of the Act, in the case of spouses, who are joint owners of the matrimonial home, the right to occupy it or to prohibit, suspend or restrict the other party could be granted by an order of the Court.

17. Hence the order of regulating the exercise of the right of occupation by a spouse in the dwelling house under common law came to be substituted by the order of prohibiting, suspending or restricting such a right. Further the permissive right of occupation by the Applicant came to be specifically granted by incorporation of that right.

18. The Matrimonial Homes Act, 1967 was repealed by the Matrimonial Homes Act, 1983 (M.H. Act) brought into force from 9th May 1983.

19. The 1983 Act dealt with the consolidation of the rights of a husband or wife to occupy a dwelling house which was their matrimonial home. Section 1(1), (2), (3), (4) and (10) determined the statutory rights along with Section 9 thereof.

Under Section 1(1) where one spouse was entitled to occupy a dwelling house by virtue of a beneficial estate, interest or contract or an enactment and the other spouse was not so entitled, then such other spouse would have a right of occupation. Under that right of occupation, he or she had a right not to be evicted or excluded therefrom and had a right to enter upon and occupy it.

Under Section 1(2) either spouse may apply for declaring, enforcing, restricting or terminating those rights, or for prohibiting, suspending, or restricting the right of the other.

Under Section 1(3), the Court could make any just and reasonable order having regard to the conduct of the spouses, the respective needs, financial resources and the needs of their children in that behalf as also to make periodical payments to the other spouse in respect of such occupation and for repayment and maintenance of the dwelling house.

Under Section 1(4), such order would remain in force for a specified period or until further orders.

Under Section 1(10), the Act would have no application to any dwelling house which was not the dwelling house of the spouses. The spouse s rights of occupation would continue until the marriage subsisted.

Under Section 9(1) of the Act, where any spouse has the right of occupation in a matrimonial home, he or she could apply for an order prohibiting, suspending or restricting the exercise of the right by the other or requiring the other spouse to permit its exercise by the Applicant. Under Section 9(3), if the spouse had a right under a contract or an enactment to remain in occupation of the dwelling house, Section 9 would apply where they would be entitled by virtue of the legal estate vested in them jointly.

20. Hence in terms, the new legislation conferred a complete right of occupation to both the spouses to remain in their matrimonial home peaceably and without disturbance by the other. This was despite any other contractual or statutory right and also when they were joint owners. The Parliament, therefore, granted by law what Lord Denning ruled in the case of Gurasz (supra) since overturned by the House of Lords.

21. The Law in India developed much the same. Title of parties was oft considered in grant or refusal of the relief of injunction against an abusive husband.

22. The DV Act came to be enacted essentially to grant statutory protection to victims of violence in the domestic sector who had no proprietary rights so that the civil law protection could not be availed by them.

23. The DV Act 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 therewith or incidental thereto. The relevant portion of the objects and reasons of the Act inter alia provides for :

(i).....

(ii).....

(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 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. B

(v) .....

The Act, therefore, provides for security and protection of a wife irrespective of her proprietary rights in her residence. It aims at protecting the wife against violence and at prevention of recurrence of acts of violence.

24. Under Section 2(s) of the DV Act, shared household is a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith 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.

25. Her right to reside in the shared household is under Section 17(1) of the DV Act which runs thus:

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.

The statute, therefore, expressly excludes the consideration of ownership rights as a condition for determining whether or not a particular property is a shared household.

26. The DV Act grants protection to women in a shared household (or matrimonial home) in case of any domestic violence perpetrated upon her therein.

27. Under the relevant portion of Section 3 of the DV Act, domestic violence is defined inter alia as the omission or commission or conduct of the respondent which:

(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). . . .

(c). . . .

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Under Explanation I to Section 3, physical abuse is 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.

Under Explanation II to Section 3 for determining the commission of an act constituting domestic violence the overall facts and circumstances of the case shall be taken into consideration.

The DV Act thus grants protection against any form of aggression mental, physical, or emotional in a shared household which may not belong to the woman who is a victim of violence therein, but who only resides therein WITHOUT having any title thereto.

28. A wife who owns a property can even otherwise exclude any person, including her abusive or violative husband therein under civil law. The enactment of the DV Act would not be required to give such a wife any added protection by way of any injunctive relief in respect of a residential property owned by her. The DV Act steps in to protect the women who were otherwise left unprotected under the general law. This is expressly clarified under:

(1) the statement of objects and reasons:

.....whether or not she has any title or rights in such home or household.

(2) the definition of shared household under Section 2(s):

whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them.

(3) the right to reside in the shared household under Section 17:

whether or not she has any right, title or beneficial interest in the same. as also

(4) the residence order under Section 19(1)(a):

whether or not the respondent has a legal or equitable interest in the shared household

29. It can, therefore, be seen that there is no place for proprietary rights under the DV Act. The Act is an extension of the deeper and profounder principle of Women s Rights as a part of Human Rights. The matrimonial home or the shared household of a person does not require it to be owned or co-owned by the person who has been violated. It could be any household whether owned or tenanted, either jointly or by either of them as specifically set out in Section 2(s) above. It is the household in which the victim and the violator may be having rights, singly or jointly.

Consequently, they may or may not have title to the property and hence the victim can apply for a residence order to the Court in respect of a shared household, which includes their matrimonial home, whether or not she has any right, title or beneficial interest therein. The very consideration of ownership rights would put materialism before matrimony.

30. In fact, the lesser the entitlement to property rights, the more is the entitlement to protection of human rights against violence. It may not be out of place to rethink the depth of the words of none other than Mahatma Gandhi reaching out to the most vulnerable of humankind in generic terms:

I hold that the more helpless a creature, the more entitled it is to protection by men, from the cruelty of men.

31. Though this law grants her protection, it goes only thus far and not without reason. It is essentially a temporary remedy. It is entirely a protectionist and not an empowering legislation. It holds fort until the parties work out their differences and disputes and until the husband makes the reasonable alternate arrangement contemplated in the legislation itself.

Section 19(1)(f) which shall be considered presently. Consequently this law itself does not confer proprietary rights in the matrimonial home. This law does not need/require her to have any title, because it does not confer upon her any title. It can, therefore, be seen why she requires to show the Court nothing more than her residential rights to the disputed premises which is her matrimonial home or the shared residence.

32. The case made out by either of the parties with regard to the joint or co-owned residence by the wife is, therefore, completely alien to the mischief that is sought to be remedied by the DV Act. The argument on behalf of the husband that his mother owns the suit flat along with wife etc. must, therefore, be ignored as redundant to the issues required to be adjudicated in this case.

33. The right is claimed by the lawfully wedded wife in this case. The husband, who subjects his wife to domestic violence in a marital relationship (as much as in any other domestic relationship), would require a protection as well as a residence order passed against him.

34. The wife applied for what is now statutorily called a residence order in terms of the injunctions, temporary as well as permanent, as set out above in respect of the shared household which is her matrimonial home. The residence orders claimed by her are grantable under Section 19(1) of the DV Act, the relevant portion of which runs thus:

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).....

(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:

.....

(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) .....

(4) .....

(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.

35. Hence notwithstanding the law relating to ownership of immovable property any victim of domestic violence in a domestic relationship would require to be granted the protective right of residence in the shared household, including the protection against dispossession therefrom whether or not she has any legal or equitable interest therein. This right to reside contains within itself not only an injunction for protection against her dispossession, but statutorily follows as a matter of corollary, the order of injunction of the Court for removal of the violator from such household and thereafter restraining him from entering thereupon. The order of removal of the violator and an order of injunction restraining him from entering upon the shared household is, therefore, conditioned upon his abusive behaviour violating the person of his wife or any other woman in domestic relationship and not upon his proprietary rights therein. Consequently, the right to reside without having any title to the property contains within itself the right to reside peaceably and to the exclusion of the violator. Further since the Act puts the woman s personal rights above proprietary interest, even if the Respondent who is the violator has title to the property, he would be restrained by a Court from exercising unrestrained domain over his ownership property by an order of injunction restraining him from alienating or disposing of or encumbering the shared household or the matrimonial home in which the victim has been granted the right of peaceful residence for her protection. This further brings within its sway, the servants, agents, assigns, who may be the relatives of the violator since what cannot be done directly also cannot be allowed to be done indirectly. This, of course, would be until and subject to the violator securing the same level of alternate accommodation for the victim as was enjoyed by her in the shared household and upon he paying for the same.

Consequently, reading sub-sections (a), (b), (c), (d) and (f) of Section 19(1) together, a holistic view of the protection of the victim is granted under the beneficial social legislation which seeks to remedy the malaise of domestic violence in a domestic relationship.

36. It may be mentioned that the orders required to be passed by a Magistrate can also be passed by the Family Court, as the jurisdiction under Section 26 of the DV Act is conferred upon Civil Court, Family Court or Criminal Court alike.

37. It is this protection that the learned Judge has sought to grant the violated wife in this case against her violative husband. As aforesaid, the fact of his alcoholism not only having been shown, but admitted and justified and the instance shown by the wife not only having been stated, but substantiated by the fact of the fire brigade assistance having had to be sought, a case of her protection in future against the expected aftermath of the disease to which the husband has succumbed as well as for the protection of her minor children is more than prima facie made out. In fact, the learned Judge has considered the aggressive attitude of the husband in even breaking a glass in a fit of rage upon the Petitioner having

filed the Petition and applied for reliefs. The learned Judge has also considered the police complaints filed by her. She has appreciated the apprehension in the mind of the wife of further disturbance at the hands of her husband. The learned Judge has, however, also considered the joint ownership of the wife and her mother-in-law in the matrimonial home. It may be mentioned that is the only immaterial aspect in considering the relief of injunctions granted by the learned Judge.

38. The wife has made out a fit case for grant of the reliefs sought by her. The husband has not shown any apparent error on the part of the learned Judge interference whatsoever is called for.

39. The Writ Petition is, therefore, dismissed and Rule is discharged accordingly.

40. However, upon the application on behalf of the Petitioner/husband, the stay already granted by the trial Court, which has been continued pending the Writ Petition, shall be continued for a further period of two weeks from today.

ECONOMIC ABUSE

Rakesh Sachdeva v. Neelam Sachdeva, 2011 Cr.L.J. 158 (Jharkhand H.C.) (09.07.2010)

Judge: D.G.R. Patnaik

Judgment

1. The petitioners, herein, by invoking the inherent jurisdiction of this Court under Section 482 of the Cr.P.C., have prayed for quashing the entire proceedings of C.P. Case No. 754 of 2009, initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The prayer includes quashing of the order dated-23.07.2009, passed by the Judicial Magistrate, Dhanbad whereby the petition filed by the petitioners for summary dismissal of the case was rejected. The petitioners have also prayed for quashing the order dated-30.11.2009, passed by the Sessions Judge, Dhanbad in Criminal Revision No. 255 of 2009, whereby the Revision application filed by the petitioners against the order of cognizance, dated-23.07.2009, was also dismissed.

2. Heard the learned Counsel for the petitioners and learned Counsel for the Opposite Party No. 2 as also the learned Counsel for the State.

3. Brief facts of the case, are as follows:

Neelam Sachdeva the Opposite Party No. 2 filed a complaint before the court of the Chief Judicial Magistrate, Dhanbad under Section 12 of the Protection of Women from Domestic Violence Act, 2005, praying for an order of her protection under Section 18 of

the Act. The nature of protection, sought for, was by way of order of injunction in terms of Columns 4(a)(b)(c)(d)(e)(f)(g) of the application restraining them from indulging in any acts of domestic violence and also restraining them from alienating her assets as also restraining them from dispossessing her from the shared household, besides the order of protection, she has also prayed for a direction to be issued against the Opposite party for providing her monetary relief and compensation.

The case of the complainant is that her marriage with the Opposite Party, Rakesh Sachdeva was solemnized on 21.02.1985 at Dhanbad. After her marriage, she commenced living with her husband at her matrimonial house, which comprised of a joint family including the parents-in-law and the brothers and sisters-in-law. After marriage of her brother-in-law three years later, the relations between the members of the family became sour and strained and in course of time, the husband and the members of the family subjecting her to mental cruelty by taunting her that she was a barren lady unable to gave birth to a child. On the pretext that her separation from the family would restore peace, her husband brought and kept her at his brother's house at Dhanbad though he used to occasionally visit and take her on social outings during the period of his visits. She was thus compelled to live separately from her husband and her matrimonial house for more than four years and when she insisted that she should be taken back, her husband dissuaded her on the ground that his earnings from his business was not sufficient to meet the household expenses. On being compelled by her husband, she had to take a job as a teacher in a School but even then, except for attending some occasional family rituals, she was not given the privilege of permanent access to her matrimonial house and the company of her husband. She was thus forced to live separate from her husband. She later came to learn that her husband had filed a suit for divorce against her in the year 2006. In the matrimonial suit, she was granted a maintenance allowance of ₹ 1,000/ - per month. Alleging that her husband and in-laws have conspired to deprive her of her matrimonial rights as well as rights in the property of her husband including her rights to share the husband's household, she had alleged that she is being subjected to various acts of domestic violence and has therefore, sought for protection.

4. Upon receipt of the complaint, the Chief Judicial Magistrate registered a case and transferred the same to the Judicial Magistrate for enquiry.

Notice was issued to the Opposite Party, namely, the present petitioners to appear. After submitting their appearance, the petitioners filed an application for dropping the proceedings on the ground that the very initiation of the proceedings was illegal and not in consonance with law in as much as even after going through the entire allegations in the complaint petition, no case for any proceeding under Section 12 of the Act is made out nor has the complainant made out any case for grant of any order of protection as claimed by her, against the petitioners.

5. Assailing the impugned order of the Judicial Magistrate as also that of the Revisional court, learned Counsel for the petitioners would argue that the alleged acts of domestic violence relates to the period, prior to 2005. The Protection of Women from Domestic Violence Act, 2005, came into force on 26.10.2006. The provisions of the Act would have prospective operation and not retrospective, and therefore, in this view of the matter, the initiation of the proceedings for enquiry under Section 12 of the Act in respect of the alleged act of violence, pertaining to a much earlier period, is itself bad in law.

Referring to some of the allegations in the complaint, learned Counsel would want to explain that even according to the complainant's assertion, her husband was suffering from physical disability and impotency and on account of such grounds, she had voluntarily left her association with her husband and had left her matrimonial house and had ultimately deserted him since 1993. Under such circumstances, the husband had to file a suit for divorce against her in the Family Court at Dhanbad.

Learned Counsel explains further that before initiating the enquiry under Section 12 of the Act, though the Chief Judicial Magistrate had called upon the Protection Officer to submit an incident report, but even without obtaining any such report, has proceeded to conduct the enquiry into the complaint against the petitioners by summoning them to face the enquiry. This, according to the learned Counsel, is contrary to the provisions of law, since the C.J.M. could not possibly take cognizance on the complaint of the Opposite Party without taking into consideration any domestic incident report from the Protection Officer.

Learned Counsel argues further, that even otherwise, the wives of the brothers of the petitioners are not likely to be prosecuted under the Act.

Summing up his arguments, learned Counsel submits that in view of the admitted fact that a Title Matrimonial suit is pending and in view of the fact that the alleged act of domestic violence are of the period much prior to the date when the Act came into force, the continuation of the enquiry proceedings against the petitioners is bad in law and is illegal.

6. Refuting the entire grounds, raised by the petitioners, learned Counsel for the Complainant/Opposite Party No. 2 would submit that the present application is thoroughly misconceived and is not maintainable. Rather, this application is premature, since no final order under Section 18 of the Act has been passed. Even otherwise, in the event of a final order being passed under Section 18 of the Act, the procedure laid down in the act enables Revision to be filed against such order.

Referring to the contents of the complaint petition of the Complainant/Opposite Party No. 2, learned Counsel submits that the contention of the petitioners that the alleged act of domestic violence, are confined to a period prior to the date when the Act came into force, is totally misconceived. Referring to the definition of the term "Domestic

violence" as laid down in Section 2 of the Act, learned Counsel submits that the acts of domestic violence also include verbal and emotional abuse, economic abuse, deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, 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, 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. Learned Counsel adds that in the complaint petition, the Opposite Party No. 2 has specifically stated that the husband and her in-laws have been depriving her of all economic and financial resources to which she is entitled including her right of access to the shared household with her husband and have been threatening her of alienating the assets including movable and immovable properties to which she is entitled to by way of her domestic relationship with her husband. All such acts of domestic violence was still continuing against the Opposite Party No. 2 though according to the learned Counsel, her right to claim protection under the provisions of the Act.

7. I have heard the learned Counsel for the parties and I have gone through the materials available on record.

8. As it appears, upon the receipt of the complaint of the Opposite Party No. 2, an enquiry has been initiated against the petitioners under the provisions of Section 12 of the Act. The statement of the complainant was recorded in course of enquiry and simultaneously a report was called for from the Protection Officer, to be submitted within two days from receiving the notice.

9. Upon receipt of the notice issued by the Enquiry Magistrate, the Opposite Party in the proceedings, namely, the present petitioners, filed their appearance. An objection against the continuance of the proceedings, was taken by the petitioners. After hearing both the parties, the learned Magistrate rejected the prayer for dropping the proceedings on the ground that the allegations do indicate that the act of domestic violence, as alleged, by the complainant is a continuing act of violence and the provisions of the Act are certainly attracted. The mere fact that the proceedings for enquiry has been initiated against the two female members, in itself, would not render the order of cognizance as bad, since in addition to the two aforesaid female members, the other members of the Opposite Party in the proceedings are male members of the complainant's matrimonial family.

10. Against the order of the Magistrate, the petitioner has filed a Revision application before the Sessions Judge, which also came to be rejected by the impugned order of the Revisional court.

11. Section 12 as contained in Chapter IV of the Protection of Women from Domestic Violence Act, 2005 lays down the procedure for obtaining order or reliefs and it reads as under:

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.

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

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

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

12. It would thus appear that the proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass under Section 18 of the Act. The Protection orders, which the Magistrate may pass under Section 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act. The contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable.

13. As regards the petitioners' contention that since the alleged acts of domestic violence relate to a period prior to the date when the domestic violence Act was made effective no proceedings could be initiated under the Act against the petitioners, 1 find from the contents of the complaint petition of the Opposite Party No. 2, referring to the acts of mental and physical cruelty, which was allegedly inflicted upon her during her sojourn at her matrimonial house and later, such acts of cruelty include her forcible separation from the company of her husband and deprivation of her conjugal rights. She has also alleged that she has been subjected to forcible desertion and has also been refused access to the shared household with her husband as well as alienation of the assets to which she would have right in her matrimonial house by virtue of her domestic relationship with her husband. Such acts of deprivation from economic and financial resources, refusal of access to the shared household and threats of alienation of assets in which she has an interest or is entitled, by virtue of her domestic relationship with her husband, is allegedly still continuing against her.

In the light of such allegations, the contention of the petitioners that the provisions of the Protection of Women from Domestic Violence Act, 2005, would not apply, also appears to be misconceived.

14. From the admitted facts, the present stage of the proceedings is at the enquiry stage. The petitioners have been called upon to participate in the enquiry, thereby enabling them opportunity of rebutting whatever evidences, which the complainant and her witnesses may adduce in support of her claim for protection. It is for the Enquiring Magistrate, upon conducting the enquiry, to assess as to whether the complainant would be entitled to any of the relief's of protection as claimed by her. It would be open to the petitioners to satisfy the Enquiring Magistrate that the complainant has not made out any case for an order of protection in her favour.

15. As rightly pointed out by the learned Counsel for the Opposite Party No. 2, the Act does provide a remedy of appeal to the court of Sessions against the final orders, passed by the Magistrate at the conclusion of the enquiry, made under Section 18 of the Act.

16. In the light of the facts and circumstances and the discussions made, I do not find any merit in this application. Accordingly, this application is dismissed. The Enquiry Magistrate is directed to conclude the enquiry within the period stipulated under Sub-section 5 of Section 12 of the Act.

Preetam Singh v. State of U.P., 2013 Cr.L.J. 22 (Allahabad H.C.) (31.07.2012)

Judge: Manoj Misra

Order

1. I have heard learned counsel for the revisionists and the learned A.G.A. for the State.

2. By this revision, the revisionists have challenged the order dated 08.06.2012 passed by the Additional Sessions Judge-I, Jhansi in Criminal Appeal No. 22 of 2010, whereby the order dated 22.02.2010 passed by the Judicial Magistrate, Moth, Jhansi, rejecting the application of the opposite party No.2, under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2009, as not maintainable, has been set aside and the matter has been remanded back to the Court of Magistrate to decide the same in accordance with law.

3. The facts, as they emerge from the record, are that opposite party No.2 (hereinafter refered to as the 'applicant') filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 in the Court of Judicial Magistrate, Moth, Jhansi with allegations that she was married to Preetam Singh (the revisionist No. 1 herein) about 30 years ago and out of their wedlock, a son was born, after about 5 years of their marriage. It was alleged that while she was pregnant, Preetam Singh cursed her for being illeterate and of ordinary looks, and without her consent married Bitti Devi (the revisionist No.2 herein). After the birth of her son, Bitti Devi used to fight with the applicant whereas her husband used to take side of Bitti Devi, and used to beat her. Ultimately, the applicant was driven out of her matrimonial home. It was alleged that since that time, the applicant had been seeking shelter in her father and brother's house and had been living in great financial distress, and now, since her father has become old and is unable to maintain her, she was constrained to file the application.

4. This application of the opposite party No.2 was dismissed as not maintainable by the Civil Judge (Junior Division)/Judicial Magistrate, Moth, Jhansi, by its order dated 22.02.2010, on the ground that violence/harassment, alleged in the application, was of a period prior to the commencement of the Protection of Women from Domestic Violence Act, 2005, therefore, the application was not maintainable.

5. Aggrieved by the order dated 22.02.2010, the opposite party No.2 (Smt. Mithila Devi) preferred an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, which was allowed by the Court of Additional Sessions Judge, Court No.1, Jhansi, by its order dated 08.06.2012. It is against this order dated 08.06.2012, the present revision application has been filed.

6. The contention of the learned counsel for the revisionists is that the alleged atrocities/ harassment of Smt. Mithila Devi was during a period when the Protection of Women from Domestic Violence Act, 2005, was not enacted, therefore, the application of Smt. Mithila Devi was not maintainable, particularly when she has not been residing with the revisionist since much before the commencement of the said Act.

7. In order to appreciate the arguments advanced on behalf of the revisionists, it would be necessary to examine the provisions of the Protection of Women from Domestic Violence Act, 2005.

8. Under Section 12 of the Protection of Women from Domestic Violence Act, 2005, 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 the Act. Accordingly, for the purpose of entitlement to move the application under Section 12 of the Act, the person must be "an aggrieved person" or should be Protection Officer or any other person on behalf of the "aggrieved person". "Aggrieved person" is defined in Section 2(a) of the Protection of Women from Domestic Violence Act, 2005, as under:-

"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."

9. A perusal of the definition of "aggrieved person" goes to show that 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, is an aggrieved person. The word 'has been' is important. This clearly indicates that any woman "who has been" in a domestic relationship with the respondent could be an aggrieved person, if she has been subjected to any act of domestic violence.

10. Domestic violence has been defined in Section 2(g) of the Protection of Women from Domestic Violence Act, 2005, as under:-

"2(g) :"domestic violence" has the same meaning as assigned to it in section 3;"

Section 3, reads as under:-

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 –

(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."

11. A perusal of Section 3 goes to show that even economic abuse would constitute domestic violence. Section 3(iv)(a) of the Protection of Women from Domestic Violence Act, 2005 provides that economic abuse includes 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.

12. If the provisions of Section 2(a) are read together with the provisions of Section 3 (iv)(a) of the Protection of Women from Domestic Violence Act, 2005, it is clear that a wife, even if, she was driven out of her matrimonial home prior to the commencement of the Protection of Women from Domestic Violence Act, 2005, if continues to be deprived of all or any economic or financial resources to which she is entitled under any law or custom whether payable under an order of a court or otherwise or which she requires out of necessity, is entitled to move an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The view that I am taking is also supported by a decision of the Bombay High Court in the case of Maroti Lande v. Sau. Gangubai Maroti Lande, reported in 2012 CRLJ 87, where the court was of the view that deprivation to the benefits of a matrimonial home amounts to economic abuse and it generates a continuous cause of action.

13. Even the Apex Court in its recent decision in the case of V.D. Bhanot v. Savita Bhanot, reported in (2012)3 SCC 183, in paragraph 12 thereof, while approving the view taken by the Delhi High Court, observed as under:-

> "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 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. For the reasons aforesaid, I do not find any illegality in the order passed by the court below in upholding that the application of the opposite party No.2 was legally maintainable, under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The revision is, accordingly, dismissed.

Vidyawati v. Kishen, 2013 Cr.L.J. 4469 (Calcutta H.C.) (08.02.2013)

Judge: Ashim Kumar Banerjee

Judgment

1. Shri Kishen married Vidyawati on March 16, 1983. Out of the said wedlock three children were born including one daughter. According to Vidyawati, her matrimonial life was not happy. The husband was in the habit of consuming alcohol and creating chaos in the family. Many a times he assaulted Vidyawati and her children. In the year 2008, Shri Kishen pushed her out of the house. Since then she was in precarious condition and supporting her livelihood by working as domestic help. However, due to ill-health she had to stop work for the last two months before making of the application. In the meantime, Shri Kishen obtained a decree for divorce against Vidyawati ex parte. Vidyawati filed an application for setting aside the decree that is awaiting decision from the Civil Court.

2. The appellate order impugned herein, would relate to an order passed by the learned Magistrate under the provisions of section 12 of The Protection of Women from Domestic Violence Act, 2005. She prayed for maintenance at the rate of ₹ 7000/- per month. Significant to note, Shri Kishen was working under the Marine Mercantile Department and was earning about ₹ 24,000/- as contended by Vidyawati before the learned Magistrate. The husband contested the application. According to him, Vidyawati was self sufficient. She got appointment as Midwife in the G.B. Pant Hospital, Port Blair in leave vacancy. She was also a political activist and earning therefrom. She had illicit relationship with one Hari Lal that became the reason for disharmony in the family. Sri Kishen denied, she was driven out from the house. According to him, she herself left the house in the month of January, 2006 and started residing with Hari Lal after marrying him in a rental accommodation at South Point. Vidyawati examined herself as PW. 1 and one K.J. Rajendra Prasad as PW. 2 whereas Shri Kishen himself as OPW No. 1 and his daughter Kumari Kiranwati as OPW No. 2. During cross-examination PW. 1 categorically denied the allegations brought against her by OPW No. 1. However, the husband as well as OPW No. 2, the daughter of the couple deposed as against her. We would be shortly referring to the evidence of OPW No. 2 that would be relevant herein.

3. The learned Magistrate considered the evidence. In paragraph 25 of the examination-in-chief, the husband deposed, in the month of March 2006 he was not keeping well and came back home when he found Vidyawati and Hari Lal in a compromising position. In paragraph 27, he asserted, Vidyawati and Hari Lal was residing for last five years as husband and wife. During cross-examination, Shri Kishen deposed, his eldest son was aged about 27 years and working as Security Guard and his youngest son was also working as Supervisor. The daughter was, however, studying. During cross-examination, he denied to take back his wife. OPW No. 2 in her examination-in-chief admitted the relationship between her mother and Hari Lal. She also deposed, her mother left the house of her own. During cross-examination she, however, stated, "I do not know whether my mother resides with her brother Sat Lall or not." She was 23 years old at the time of cross-examination. She admitted, her mother's health was bad. She was admitted in hospital. She also deposed, there was no family interference for which her mother left.

4. Considering the evidence, the learned Magistrate allowed the application and directed payment of ₹ 3000/- per month as maintenance. The learned Magistrate observed, the allegations of adultery could not be accepted for want of corroboration. Considering the income of the OP, learned Magistrate directed payment of maintenance as referred to above.

5. Being aggrieved, Shri Kishen filed the appeal. The learned Sessions Judge, allowed the appeal and set aside the judgment and order of the learned Magistrate. Hence, this revisional application.

6. According to the learned Sessions Judge, the allegation of adultery found corroboration from the daughter that remained unshaken. According to him, the burden of proof of adultery was on the person alleging adultery and Shri Kishen could successfully prove the same and such evidence was not rebutted by Vidyawati. According to the learned Judge, once it was established that wife was living in adultery, she would not be entitled to any maintenance.

7. The learned Sessions Judge, however, discarded the other argument that after divorce Vidyawati would not be entitled to maintain the application. According to the learned Sessions Judge, as per the Apex Court decision, the divorced wife was also entitled to maintenance under section 125 till she was not married.

8. Ms. Anjili Nag, learned counsel appearing for Vidyawati, the revisionist-wife, contended as follows:

I. The learned Magistrate considered the entire evidence and rejected the defence raised by the husband and allowed the application for maintenance.

II. The learned Sessions Judge, having accepted all the contentions of the wife on the issue of maintainability, should not have dismissed the same only on the ground of

adultery that too, was dependent upon the evidence of interested witnesses having contradictions galore.

III. The learned Judge held the petition maintainable. The husband did not challenge the same and accepted the said decision. In any event, the plea of limitation now taken by the husband was not available to him.

9. She relied on the Bombay High Court decisions in the case of Maroti Dewaji Lande Vs. Sou. Gangubai Maroti Lande and another, reported in 2012 CRILJ 87 and in the case of Shaikh Ishaq Budhanbhai Vs. Shayeen Ishaq Shaikh & others, reported in 2012 CRILJ 4518.

10. She prayed for setting aside of the judgment and order of the learned Sessions Judge and restoration of the judgment and order of the learned Magistrate.

11. Mr. Krishna Rao, learned counsel appearing for the husband contended, the petition was not maintainable in view of the claim being hopelessly barred by the laws of limitation. He also contended, the wife left the house in 2005 prior to the said Act coming into force. The provisions of the said Act of 2005 could not be invoked for an offence committed prior to the said Act coming into force. He referred to paragraph 5 of the petition to show, the wife herself admitted that since 2008 she had been residing separately whereas she had filed the complaint in May, 2011. With regard to adultery, Mr. Rao contended, the daughter supported the father on the issue. That evidence could not be shaken. He relied on the decision of the Apex Court in the case of Inderjit Singh Grewal Vs. State of Punjab & another, reported in 2012 CLJ 309. He lastly contended, the wife could not have any lawful grievance after being divorced. She already married for the second time and was spending her married life with one Hari Lal, hence, she was rightly refused maintenance.

12. Before we go into the factual matrix, let us first resolve the issue of maintainability. If we look to the provisions of section 12 of the said Act of 2005, we would find, the learned Magistrate was competent to pass an order on the application of aggrieved party based upon the report of the Protection Officer. Even after passing of such order, in case the respondent would not listen to the same, and would not comply, the learned Magistrate would be entitled to take cognizance of the offence under section 31 of the said Act of 2005. Hence, section 468 of the Criminal Procedure Code would have no application at the stage when section 12 application was being heard and disposed of. Under the said Act of 2005, violence is not only physical violence, it could be economic violence as well, by creating oppression on the wife by not providing her maintenance. In the instant case, admittedly, the husband was not giving any maintenance. Hence, petition was rightly held to be maintainable.

13. Identical issue was dealt with by Aurangabad Bench of Bombay High Court in the case of Shaikh Ishaq Budhanbhai (supra) wherein His Lordship held, issue of applicability of

section 468 prescribing power to take up cognizance after the lapse of period of limitation would only arise at the time of taking cognizance under section 31. Invocation of section 12 would, thus, not be hit by section 468 of Criminal Procedure Code.

14. Mr. Rao referred to an unreported decision of this Court in CRR No. 030 of 2010 (Smti. Ruth and another Vs. K. Swamy Das and another). If we go though the facts and circumstances of the case, we would find that approach was made after about 15 years without assigning any reason. The learned Judge considered the provisions of section 3 and held, there was no prima facie case of domestic violence, precisely speaking economic abuse under the Act. I fail to appreciate, how this decision would be of any assistance to the present case.

15. Mr. Rao also relied upon the Apex Court decision in the case of Inderjit Singh Grewal (supra) where the Decree of divorce was obtained on mutual consent. The Apex Court came to conclusion, they obtained decree of divorce by playing fraud upon Court. Considering such special facts, the Apex Court denied relief to the wife being a party to the fraud.

16. In the instant case, the learned Magistrate held the petition maintainable. The learned Sessions Judge upheld the same that could not be questioned, that too, in a proceeding initiated by the wife.

17. Thus, we come to a narrow compass, as to whether the learned Sessions Judge was right in refusing relief only on the ground of adultery. The husband contended, he found the wife in a compromising position in 2006. He did not file any suit for divorce for about two years. The husband also did not dispute, the wife started living separately. According to the wife, she was driven from the house by the husband whereas the husband would contend, she deserted him. In this regard, we significantly notice, in cross-examination, the husband admitted, it was his mother's advice to part with and live separately. Be that as it may, when the wife was charged with adultery and if such allegation was correct, the husband would have filed a suit for divorce that he did not do contemporaneously. Hence, the evidence of the husband with regard to the allegation of adultery is doubtful and does not inspire confidence of this Court. The learned Sessions Judge found corroboration from the daughter. We cannot be oblivion of the fact that the daughter was 23 years old. She was unmarried at that time. She was staying with her father and obviously would be suffering from insecurity. We cannot expect, the daughter would go against [her] father. We are told, the daughter was given marriage in December, 2012 by the father. There was no independent witness to corroborate such allegation. The other children did not come to support his father. They were self sufficient earning their means of livelihood. We are told, one of the sons was already married. Hence, the learned Sessions Judge was perhaps not correct to upset the decision of the learned Magistrate who had the benefit of demeanor of the witnesses who adduced evidence before him.

18. The revisional application succeeds and is allowed. The judgment and order dated July 4, 2012 passed by the learned Sessions Judge is set aside. The judgment and order dated March 29, 2012 passed by the learned Judicial Magistrate in Misc. Case No. 62/576 of 2011 is restored. Urgent certified copy of this order, if applied for, be given to the parties forthwith.

Harish Bairani v. Meena Bairani, RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011)

Judge: R.S. Chauhan

Judgment

1. The Registry has pointed out two defects: firstly, the court fees of ₹ 2 has not been affixed on the revision petition. Secondly, the certified copy of the order dated 29.02.2008 has not been filed. Despite the lapse of three years, the defects have not been cured. However, even on merits, the case is a weak one for the following reasons:

The Petitioner is aggrieved by the order dated 29.02.2008, passed by the Additional Civil Judge (JD) and Judicial Magistrate No. 22, Jaipur City, Jaipur, whereby the learned Magistrate had directed the Petitioner to pay ₹ 2,500/- per month to the Respondent-wife, Smt. Meena @ Riya Bairani, under Section 23 of the Protection of Women from Domestic ViolenceAct, 2005 ('the Act', for short) for her treatment as she is suffering from failure of kidney. The Petitioner is also aggrieved by the order dated 19.05.2008, passed by the Additional District and Sessions Judge No. 4, Jaipur City, Jaipur, whereby the learned Judge has upheld the order dated 29.02.2008.

2. Mr. Santosh Kumar Jain, the learned Counsel for the Petitioner, has vehemently contended that there is no allegation of any domestic violence being committed by the Petitioner upon the Respondent-wife. Secondly, since the Respondent-wife does not stay with him, therefore, he is not liable to pay for her treatment.

3. Heard the learned Counsel and perused the impugned orders.

4. Section 3 of the Act defines the term "domestic violence" 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 ofwoman;

(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 domesticrelationship 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.

5. Section 3 of the Act recognizes the economic rights of a woman.

6. Section 20 of the Act reflects the "economic rights" of a women as under:

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.

7. Section 20(1)(b) of the Act entitles a woman to claim monetary relief for her medical treatment.

8. A bare perusal of the impugned orders clearly reveals that according to the certificate issued by the Monilek Hospital, the Respondent-wife is suffering from failure of kidney. For her treatment, she would require at least ₹ 2,50,000/-. Admittedly, the Respondent-wife is living away from the Petitioner-husband. However, she is neither being maintained by him, nor she is given any money for medical treatment. Prima facie, the Petitioner's omission

in not maintaining her and in not providing her medical treatment, such a omission falls within the definition of economic abuse contained in Section 3 of the Act. Thus, domestic violence is being committing. Hence, the learned courts below were certainly justified in directing the Petitioner-husband to pay ₹ 2,500/- per month for the medical expenses of the Respondent-wife under Section 20 of the Act.

9. In this view of the matter, this Court does not find any illegality or perversity in the impugned order. This petition, being devoid of any merit is, hereby, dismissed.

Jovita Olga Ignesia Mascarehas e Coutinho. v. Rajan Maria Countinho, 2011 Cr.L.J. 754, I (2011) DMC 257 (Bombay H.C. (Goa Bench)) (24.08.2010)

Judge: N.A. Britto

Judgment

1. Heard.

2. This petition can be considered under Section 482 of the Code (Code of Criminal Procedure, 1973).

3. This petition is directed against Judgment/Order dated 3-3-2010 of the learned Additional Sessions Judge, Margao, by which the learned Additional Sessions Judge has upheld the dismissal of the Petitioner's application filed under Section 12 of the Protection of Women from Domestic Violence Act , 2005 (Act, for short) by the learned J.M.F.C. (Magistrate, for short) by Judgment/Order dated 7-10-2009.

4. The Petitioner and the Respondent were married on 10-4-2005. They lived together till 18-4-2006. Their marriage has now been annulled by the Patriarchal Tribunal for the Archidiocese of Goa and Daman by Judgment dated 17-1-2009, and the registration of their marriage has been cancelled. Their differences now appear to become irreconcilable as efforts to reconcile their differences have failed.

5. The Petitioner had filed a report and an application in the prescribed forms, Forms I and II under Section 12 of the Act on or about 11-12-2007. In the said application, the Petitioner had alleged physical violence on the part of the Respondent of assaulting her on several occasions in the matrimonial house. The Petitioner had sought a Protection Order prohibiting the Respondent in terms of Section 18, Clause (b) (i.e. aiding or abetting in the commission of acts of domestic violence); Clause (d) (i.e. attempting to communicate in any form, whatsoever, with her including personal, oral or written or electronic or telephonic contact) and Clause (e) (i.e. alienating any assets, operating bank lockers or

bank accounts ... etc.). The Petitioner had also sought a Residence Order and that should have been under Section 19(1)(a) and not under Section 19(8). She also sought an order under Section 19(8) (i.e. a direction for return of her stridhan or any other property or valuable security to which she was entitled to). The Petitioner had also sought a Maintenance Order under Section 20(3) (i.e. an Order to pay appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require). In fact, the Petitioner had sought maintenance of ₹ 12,000/- per month as well as compensation for acts of domestic violence committed under Section 22 of the Act. These reliefs sought by the Petitioner can be seen from a combined reading of pages 10 of Form I and 1 and 2 of Form II. In other words, the Petitioner had sought from the Magistrate six reliefs. It is conceded that the Petitioner's personal belongings have been returned and therefore no direction need be issued under Section 19(8) of the Act.

6. There is no dispute nor any dispute can be raised that both the Courts below have not at all dealt with the aspect of maintenance claimed by the Petitioner of a sum of ₹ 12,000/- per month in terms of Section 20(3) of the Act and therefore a remand is inevitable. Whether the Petitioner would not be entitled to the said amount of ₹ 12,000/- per month because of the anullment of the marriage or otherwise was a matter which was required to be decided by the learned Magistrate, and in fact has not been decided by both the Courts below and to that extent remanding of the case to the Magistrate has become inevitable so that the relief claimed by the Petitioner on that score can be considered by the learned Magistrate.

7. As regards the domestic violence or for that matter physical abuse is concerned, the learned Magistrate is totally silent about it but the matter has been considered by the learned Additional Sessions Judge in the Judgment dated 3-3-2010 observing that the Petitioner had failed to prove any acts of domestic violence against her, had in fact taken place, when she resided alongwith the Respondent in the matrimonial house at Chinchinim. The said attempt appears to be not very satisfactory either, as the learned Additional Sessions Judge has misunderstood the concept of domestic violence. In fact, it appears that another Additional Sessions Judge in Criminal Appeal No. 30/2008, between the same parties, had in fact noted in his Order dated 1-8-2008, and in my view rightly, that domestic violence includes "physical abuse", "sexual abuse", "verbal and emotional abuse". The learned Additional Sessions Judge had also observed that to consider the application (under Section 12 of the Act) it is not necessary to consider other forms of abuses except the economic abuse, since the Complainant had averred that she was living without any monetary support, had no means to support her and that the Respondent had deliberately kept the passbook and the FDR in his custody in order to cause hardship to her.

8. The expression "domestic violence" has a very wide amplitude, as defined under Section 3 of the Act, and it includes, as already stated physical abuse, sexual abuse, verbal and emotional abuse, economic abuse which in turn, inter alia, includes 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, the property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance.

9. As already stated, the Petitioner had also sought a Residence Order under Section 19 and whether the Petitioner was entitled to the same or not, as the house did not belong to the couple as defined under Clause 2(s) of the Act or because it belonged to the parents of the couple, was again a matter which was required to be decided by the Magistrate and which admittedly has not been decided.

10. Smt. Agni, learned Counsel on behalf of the Petitioner has submitted that the only relief which does not survive is the relief sought by the Petitioner in column No. 5 of the application i.e. for return of the personal belongings of the Petitioner and no other relief as sought for have been considered by the learned Magistrate.

11. Although, the learned Magistrate took note in the first para of the Judgment, of some of the reliefs claimed by the Petitioner, the learned Magistrate has not at all stated in the impugned Order as to why the Petitioner was not entitled to any of the reliefs claimed by the Petitioner. The learned Additional Sessions Judge framed three points for determination and as regards the first point, relying on Dr. Prakash v. Joshi (unreported Judgment of this Court dated 18-7-2009) held that an application under Section 12 of the Act was maintainable in relation to the cause of action which took place prior to 26-10-2006 i.e. the date on which the Act of 2005 came to force. Regarding the second point, the learned Additional Sessions Judge completely missed the bus by confusing the concept of physical abuse with the concept of domestic violence and without considering at all whether the Petitioner was entitled to the reliefs claimed by her. Regarding the third point, the learned Additional Sessions Judge held that the Petitioner was entitled to the amount in FDR No. 05140. What follows from the above discussion is that both the Courts below were not at all alive to the reliefs claimed by the Petitioner. No reasons have been assigned why the Petitioner was not entitled to one or the other reliefs. The Act, cannot be termed as new legislation. It is in force for almost five years now. The Magistrates will do well in case they try to understand what is the concept of domestic violence as defined under Section 3 of the Act rather than go by the ordinary concept of violence. The procedure to be followed by the Magistrate, in terms of Section 28 of the Act is that which is prescribed in the Code

of Criminal Procedure. Sub-section (2) of Section 28 of the Act provides that nothing contained in Sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 of the Act.

12. Although the Magistrate is required to follow the procedure as governed by the Code of Criminal Procedure or its own procedure, the nature of proceedings like those under Section 125 of the Code, would be civil. (See P.S. Thube 1999 Cri.L.J. 2919). Magistrates will do well, after a reply is filed by the Respondent, to find out from the parties or their pleaders what are the reliefs an applicant is seeking in terms of the provisions of the Act and frame issues on the basis of the same. Such a step will not be opposed to any procedural law and that apart it will enable the parties to know each others case and also facilitate a decision thereon.

13. In civil proceedings after perusing the claim and the reply or written statement, issues are framed. Issues are framed when a material proposition of fact or law is affirmed by one party and denied by the other. The object of framing issues plays a distinguished role in a civil proceeding and the whole object is to direct the attention of the parties to the principal questions on which they are at variance and they are required to be framed for the purpose of having the material points in controversy rightly decided, and to bring a finality in the litigation. Unless proper issues are framed, a party who suffers a Judgment on the basis of findings not based on proper issues may have a legitimate grievance to contend that because of such non framing of issues he has been denied the opportunity of leading proper evidence for rebutting relevant facts. Issues can be of fact or of law and the duty is that of the Court to frame the issues. An issue can also be framed on the basis of the reliefs. Although in cases of this nature where there are no pleadings as such and the applications are filed in the prescribed form by ticking the reliefs sought, it would be desirable that the Court after hearing both the parties frames issues on the basis of the reliefs sought by the Petitioner so that each can meet the case of the other and avoid such orders of remand. If this procedure is followed there is no question of any of the reliefs going unnoticed and undecided, like the case at hand. This can also reduce the controversy between the parties, in case the columns in the application, were ticked earlier without much application of mind.

14. The Petitioner had sought Protection Order under Section 18, Residence Order under Section 19, Maintenance Order under Section 20, and Compensation Order under Section 22, etc. Both the Courts below ought to have marshalled the evidence led by the parties on each of the reliefs and given a decision thereon. That has not been done.

15. In the circumstances, therefore, I have no other option but to set aside both the Orders of the Courts below and direct the learned Magistrate to frame the issues regarding the reliefs claimed, after hearing the parties and then consider the evidence produced by the parties

and the law applicable and give a decision on each of the reliefs sought by the Petitioner. Consequently, this petition succeeds. The Orders of both the Courts below are hereby set aside and the learned Magistrate is hereby directed to decide the application afresh in the light of observations made.

16. Parties to appear before the learned Magistrate on 5-9-2010 at 10.00 a.m. and the learned Magistrate is directed to decide the application within a period of four weeks, and in case a revision or an appeal is filed therefrom, the same may be decided by the Court of Sessions within a further period of six weeks.

17. Petition disposed of accordingly with no order as to costs.

Sikakollu Chandramohan v. Sikakollu Saraswathi Devi, Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010)

Judge: Samudrala Govindarajulu

Order

1. The sons/petitioners 1 to 3 question judgment dated 18.05.2010 passed by the III Additional Metropolitan Sessions Judge, Hyderabad in Criminal Appeal No.7 of 2007 by which the lower appellate court confirmed order dated 20.10.2009 passed by the III Additional Chief Metropolitan Magistrate, Hyderabad in D.V.C. No.17 of 2007 granting maintenance of ₹ 75,000/- per month at the rate of ₹ 25,000/- by each of the sons and compensation of ₹ 50,000/- from each ofthe sons to the 1st respondent/mother.

2. The 1st respondent has got three sons (who are the petitioners 1 to 3) and five married daughters. The 1st respondent was aged 76 years by the time she filed Domestic Violence Case before the Magistrate. Her husband Subbarao died in the year 1994. Originally, the parties belonged to Singarayakonda of Prakasam District. Now the 1st respondent is residing at Hyderabad along with her third daughter. It is alleged that the 1st respondent is suffering from several ailments and that her health condition is deteriorating day-by-day.

Originally late Subba Rao established Coromandel Cements Limited in which the first respondent was also an Additional Director. Now the petitioners changed the company into Coromaandel Cements Limited. Under will dated 10.03.1991 of her husband, the 1st respondent got several properties to the extent of 1/4th share in the estate left by him. It is alleged that the petitioners obtained several signatures of the 1st respondent on several documents on the pretext of managing affairs of the company and also on several blank papers and empty stamp papers. It is also further alleged that the 1st respondent was deprived by the petitioners of her immovable property, cash deposits, shares, 100 tolas

of gold jewellery and 10 kgs. of silver. Originally the 1st respondent was residing with the 2nd petitioner at Vijaywada. There is no dispute that in or about May, 2006, the 1st respondent left the 2nd petitioner's house due to alleged ill-treatment, cruelty, negligence etc. and began residing with one or the other daughters.

3. Having regard to date of separate living of the 1st respondent since May, 2006, it is contended by the Senior Counsel for the petitioners that since cause of action took place prior to the Protection of Women from Domestic Violence Act, 2005 (in short, the Act) coming into force, D.V.C. No.17 of 2007 does not lie and that the Act is prospective in its operation and not retrospective in operation. Though the Act was passed in the year 2005, it came into force on 26.10.2006 after the rules were framed thereunder.

4. It is well settled principle of law that any substantive enactment is prospective in nature unless specifically stated otherwise. There is no indication in the Act to hold that the Act is not prospective but retrospective in operation. But, simply because the Act is found to be prospective in operation, it cannot be said that provisions under the Act cannot be invoked in case separation between the parties was prior to the Act coming into force. It has to be seen whether the cause of action arose or cause of action continued to exist even after the Act coming into force.

Section 3 of the Act defines domestic violence 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, 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, injuries or endangers the aggrieved person with a view to coerce her or any 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."

The above definition includes physical abuse, sexual abuse, verbal and emotional abuse and also economic abuse within the meaning of domestic violence.

When there was separation between the parties prior to the Act came into force, there may not be possibility of physical abuse; but, there may be possibility of verbal and emotional abuse and economic abuse. As per Clause (iv) of

Explanation-I to Section 3 of the Act, economic abuse includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom, and requires out of necessity. Even though separation between the parties was prior to the Act coming into force, still economic abuse by way of deprivation of the aggrieved person of right to residence and right to maintenance etc., would continue both before and after the Act coming into force. In that view of the matter, it cannot be said that the mother/1st respondent has no cause of action to maintain domestic violence case against the petitioners after the Act coming into force.

5. The 1st respondent previously filed maintenance case in OP No.202 of 2007 before the Judge, Family Court, Visakhapatnam and obtained order of interim maintenance under Section 125 Cr.P.C against the petitioners 1 to 3 to an extent of ₹ 25,000/- per month. Apart from the said interim maintenance of ₹ 25,000/- per month, both the courts below granted ₹ 75,000/- per month from the petitioners 1 to 3 at the rate of ₹ 25,000/- per month each. Grant of interim maintenance by the Family Court under Section 125 Cr.P.C is no bar for granting monetary relief under Section 20 of the Act by way of further maintenance amount over and above granted by the Family Court under Section 125 Cr.P.C. Section 20(1)(d) of the Act provides for granting relief of maintenance to the aggrieved person in addition to an order of maintenance under Section 125Cr.P.C or any other law for the time being in force. So, it has to be seen whether there is any justification for grant of the above maintenance by the Courts below under Section 20 of the Act. As per Section 20(2) of the Act, monetary relief granted thereunder should be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. The 2nd respondent is widow of founder of Coromaandel Cements Limited company and she was also an Additional Director in that company when her husband was alive and thereafter until, according to her, she was deprived of that position by obtaining her signatures on several documents. The documents executed by the 2nd respondent are subject-matter of civil suits and the litigation went upto the Supreme Court. There is no dispute that the petitioners 1 to 3 as Chairman, full time Director and Managing Director of Coromaandel Cements Limited are drawing salaries or emoluments from the company to the extent of ₹ 8,00,000/- per month each. Having regard to status of the parties and need of the petitioner who is aged about 80 years and her health condition and medical needs, it cannot be said that a sum of ₹ 1,00,000/- per month (including interim maintenance granted by the Family Court under Section 125 Cr.P.C) is in no way excessive or unreasonable and unjust. It is contended by the Senior Counsel appearing for the petitioners that the 2nd respondent can have monetary compensation of ₹ 50,000/- from each of the petitioners as per orders of the courts below and that the 1st respondent wanted to extract money at the rate of ₹ 1,00,000/- per month from the petitioners 1 to 3 with a view to give the same to her daughters. Naturally, when the 1st respondent is taking shelter in daughter's house and is taking food and getting assistance to her in daughter's house, the 1st respondent may part with some of the cash to her daughter or daughters who attend on her and provide her personal and medical needs. Having regard to status of the parties, in case of any hospitalisation, the 1st respondent may not go to a Government hospital or a third rate private hospital, but she may prefer to go and take treatment from Corporate hospitals having super speciality facilities, which may charge even more than ₹ 5,000/- per day. Having regard to background of family of the parties and requirements of the 2nd respondent, this Court is of the opinion that amount of

maintenance awarded by the courts below at ₹ 25,000/- per month from each of the petitioners is highly reasonable.

6. It is contended by the Senior Counsel for the petitioners that the 2nd respondent as P.W.1 in cross-examination deposed that it was only the 2nd petitioner who committed domestic violence against her and not the petitioners 1 and 3. One cannot expect the 2nd respondent to know definition of domestic violence with all its explanations contained in Section 3 of the Act. What P.W.1 stated was physical abuse and mental abuse when she referred to domestic violence. But, as per law, domestic violence includes economic abuse also,which further includes deprivation of any economic or financial resources to which she is entitled under any law or custom. Therefore, the evidence of P.W.1 in her cross-examination cannot have any bearing in determining existence of domestic violence in this case as per law and as per definition contained under Section3 of the Act. Therefore, this Court has no hesitation to hold that the petitioners 1 to 3 are guilty of domestic violence against the 1st respondent and that the courts below rightly granted monetary relief by way of maintenance and also compensation in favour of the 1st respondent against the petitioners 1 to 3.

7. In the result, the revision case is dismissed.

Om Prakash v. State of Rajasthan, S.B. Criminal Revision Petition No.1220/2010 (Rajasthan H.C) (29.04.2011)

Judge: R.S. Dalvi

Judgment

Aggrieved by the order dated 07.02.2009, passed by the Additional Chief Judicial Magistrate No.2, Jaipur District, Jaipur, whereby the learned Magistrate has allowed the application of the respondent-wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act', for short) and aggrieved by the order dated 23.10.2010, passed by the Additional District and Session Judge No.2, Jaipur District Jaipur, whereby the learned Judge has upheld the former order, the petitioner has approached this Court.

The brief facts of the case are that the respondent-wife filed an application under Section 12 of the Act against the petitioner-husband before the trial court wherein she claimed that she got married with the petitioner twelve years back in Jaipur. But ever since her marriage, her in-laws and husband have tortured her for dowry demands. She further claimed that due to the torture committed on her, she is living separately from the petitioner since last seven years. Thus, she prayed for maintenance. The respondent-husband filed reply to the application and

denied the contents thereof. After hearing both the parties, vide order dated 07.02.2009, the learned trial court allowed the application and directed the petitioner to pay ₹ 800/- per month as maintenance to the respondent-wife. Being aggrieved by the said order, the petitioner-husband filed an appeal before the appellate court. However, vide order dated 23.10.2010, the learned appellate court upheld the order dated 07.02.2009 and dismissed the appeal. Hence, this petition before this Court.

Mr. Arvind Gupta, the learned counsel for the petitioner, has vehemently contended that according to the complainant herself, she was married with the petitioner twelve years prior to 2008. Moreover, according to her, the petitioner and the respondent are living separately ever since 2001. Therefore, ever since 2001, no act of domestic violence has been committed. Yet, both the learned courts below have allowed an application under Section 12 of the Act. Since the Act came into force on October 26, 2006, the Act cannot be given a retrospective effect and cannot be made applicable to the alleged acts of domestic violence, which may have taken place prior to 2001. In order to buttress this contention, the learned counsel has relied upon the case of Hema @ Hemlata (Smt.) & Anr. Vs. Jitender & Anr. [2009 (1) Cr.L.R. (Raj.) 291].

On the other hand, Mr. Laxmi Kant Sandilya, the learned counsel for the respondent-wife, has strenuously contended that Section 3 of the Act defines the term domestic violence which includes economic abuse. An explanation in Section 3 of the Act defines the term economic abuse as the denial of maintenance and denial of Stridhan. Although it is true that the parties have been living separately since 2001, but the fact remains that after the Act came into force in 2006, even thereafter, the respondent-wife is not being maintained by the petitioner-husband. Therefore, her economic right to maintenance is being violated. Since the civil wrong is continuously being violated, therefore the Act is certainly applicable. Hence, the question of retrospective application of the Act does not even arise. In rejoinder, Mr. Gupta has contended that since the respondent-wife is not living with him, the Act cannot be applied upon him. Moreover, since he happens to be a handicapped person, the direction to pay ₹ 800/- per month, imposes a harsh financial burden upon him, which he cannot possibly discharge.

Heard the learned counsel for the parties, perused the impugned order as well as the case law cited at the Bar.

Section 3 of the Act defines the term domestic violence 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.

A bare perusal of Section 3 of the Act clearly reveals that the law recognizes the right of women to the finances of the husband, as well as, economic right of having the Stridhan and the right to be maintained by the husband. In case the said right is violated as a civil wrong

the Act provides a remedy to the aggrieved person. Admittedly, even after coming into force of the Act on October 26, 2006, the respondent-wife is not being maintained by the petitioner-husband. Therefore, she is being subjected to economic abuse. Since a civil wrong is continuously being committed after October 26, 2006, obviously the Act would apply to the petitioner. Therefore, the question of retrospective application of the Act does not even arise in the present case. The case of Hema @ Hemlata (Smt.) (Supra), does not come to the rescue of the petitioner-husband. For, the case of Hema @ Hemlata (Smt.) (Supra) and the present case are distinguishable on the factual matrix itself. In the case of Hema @ Hemlata (Smt.) (Supra), admittedly the couple was divorced in the year 2003 and the act of domestic violence alleged against the husband was prior to the year 2003. Since the couple was divorced in 2003, since the couple was living separately since 2003, the question of committing domestic violence post 2006 did not even arise. Therefore, this Court had opined that the Act cannot be given retrospective effect and cannot be applied to pre-2006 acts and omissions. However, in the present case, the marriage continues to subsist; the parties are living separately since 2001. But the facts remains that after 2006, no maintenance is being paid by the respondent-husband to the respondent-wife. Thus, as stated above, the economic rights are being violated by the petitioner-husband post-2006. Hence, the Act is certainly applicable in the present case. Therefore, the ratio laid down in the case of Hema @ Hemlata (Smt.) (Supra) is inapplicable to the present case. The Act does not make any exception in favour of those who are physically challenged. The Act recognizes the right of a women to be maintained even from a physically challenged husband. Therefore, the contention that merely because the petitioner-husband happens to be a physically challenged person, the Act is inapplicable to him, the said contention is unsustainable.

Moreover, poverty is not a defence against the right of a woman. Therefore, the petitioner is both legally and morally bound to pay maintenance of ₹ 800/- per month to the respondent-wife.

Furthermore, the Act does not require that the aggrieved person must stay with the offending husband. Hence, merely because the respondent-wife is not staying with the petitioner-husband, it would not absolve the husband from his liability under the Act. Therefore, the contention raised by the learned counsel for the petitioner is without any foundation.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned orders. This petition, being devoid of any merit is, hereby, dismissed. The stay petition also stands dismissed.

DOMESTIC RELATIONSHIPS

Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 309, III (2013) DMC 830 (Supreme Court) (26.11.2013)

Judges: K.S. Panicker Radhakrishnan and Pinaki Chandra Ghose

Judgment

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. Appellant's 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 ₹ 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 ₹ 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. Respondent's 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 ₹ 25,000/- per month regularly as being provided earlier or in the alternative to pay the permanent maintenance charges at the rate of ₹ 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 ₹ 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 ₹ 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 ₹ 75,000/- towards the medical expenses and pay the maintenance charges @ ₹ 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 father's 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 brother's 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 ₹ 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 ₹ 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 Appellant's 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 Code of Criminal Procedure. Learned amicus curiae also referred to a recent judgment of this Court in Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and Anr. (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 Indian Penal Code. 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.

xxx xxx xxx

xxx xxx xxx

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 simpliciter 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. O'Regan, J., in Dawood and Anr. v. Minister of Home Affairs and Ors. 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 Anr. 2002 (6) SA 1 (CC), Du Toit and Anr. v. Minister of Welfare and Population Development and Ors. (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 person's 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 Sub-section (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:

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 Sub-section (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 Sub-section, 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 Code of Criminal Procedure, of course, provides for maintenance of a destitute wife and Section 498A Indian Penal Code is related to mental cruelty inflicted on women by her husband and in-laws. Section 304B Indian Penal Code 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 simpliciter.

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 up keeping 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 one's 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 Anr., (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. Appellant's and the Respondent's 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 Appellant's 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 Appellant's 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.

AGGRIEVED PERSON

Dennison Paulraj v. Union of India, II (2009) DMC 252 (Madras H.C.) (03.04.2009)

Judge: K. Venkataraman

Order

By consent, the main writ petition itself is taken up for final disposal.

2. The petitioners have come forward with the present writ petition for a declaration declaring Sections 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005) as unconstitutional, ultra vires and void.

3. The short facts which are necessary for the disposal of the present writ petition, are set out here under:-

3.1. The first petitioner is the husband of the sixth respondent. Petitioners 2 and 3 are his parents. Petitioners 4 to 6 are his brother, sister in law and sister respectively. The first petitioner married the sixth respondent on 05.07.2004 at C.S.I. Trinity Church, Avadi. It is an arranged marriage. After the marriage, the sixth respondent demanded the first petitioner an extravagant and ultra modern life style and made all the other family members as servants for her simple needs and started picking up quarrels with everyone in the family for no reasons. Hence, the first petitioner had to prefer a petition under Section 22 of the Indian Divorce Act for judicial separation on the file of the learned Principal Judge, Family Court, Chennai, in O.P.No.887 of 2005 and the same is at the stage of enquiry.

3.2. Since the sixth respondent was continuously threatening the petitioners that she is going to prefer a criminal complaint against them, the petitioners approached this Court by filing Crl.O.P.No.6823 of 2005 seeking anticipatory bail and the same was dismissed as there was no case. After coming to know of the orders, the sixth respondent filed a complaint against the petitioners before the fifth respondent under Section 498-A of Indian Penal Code, which compelled the petitioners to approach this Court by filing Crl.O.P.No.10554 of 2005 seeking anticipatory bail and the same was granted by this Court.

3.3. The sixth respondent having failed in her malicious attempt, with an ulterior motive to harass the petitioners, filed an application under Sections 18, 19 and 23(2) of the Protection of Women from Domestic Violence Act, 2005 (herein after referred to as the Act) setting out false and frivolous particulars. The said private complaint filed by the sixth respondent in C.M.P.No.1772 of 2007 in unnumbered M.C.No. / 2007 on the file of the learned Judicial Magistrate No.II, Poonamallee, has been referred to the fourth re-

spondent for conducting enquiry. The petitioners attended the enquiry before the fourth respondent and submitted the malicious intention of the sixth respondent.

3.4 Aggrieved against the calculative and ulterior motivated action of the sixth respondent, the petitioners were constrained to approach this Court to quash the proceedings of the private complaint given by the sixth respondent referred to above in Crl.O.P.No.1772 of 2007 and the same was dismissed on 02.04.2008.

3.5. The proceedings initiated under the said Act is a complete abuse of process of law, especially when it was initiated after the first petitioner filed a petition seeking judicial separation before the Family Court. Hence, the petitioners have approached this Court by filing the present writ petition challenging certain provisions of the said Act.

4. The main grounds on which the present writ petition has been filed are--

(i) Sections 4, 12, 18, 29 and 23 of the said Act are discriminatory and biased in favour of the wife and affect the right of life and liberty of the husband and his relatives.

(ii) The said Act does not permit the husband to file a complaint under the Act and hence, it is violative of Article 14 and 21 of the Constitution of India.

(iii) The proceedings before the learned Judicial Magistrate No.II, Poonamallee in Crl.O.P.No.1772 of 2007 is illegal, arbitrary and opposed to principles of natural justice and violative of Article 14 and 21 of the Constitution of India.

(iv) The reference by the learned Magistrate to the fourth respondent for an enquiry even though the sixth respondent voluntarily left the matrimonial home, is untenable.

(v) The proceedings before the learned Magistrate are violative of the rights of the husband and his relatives as per Section 12 of the Act as the proviso to Section 12 envisages a report being received from the fourth respondent by the learned Magistrate before passing any orders.

(vi) Section 23 of the said Act suffers from arbitrariness and confers unrestricted powers on the Magistrate and hence, ultra vires to the provisions of the Constitution of India.

5. On notice, learned counsel appearing for the sixth respondent would submit that --

(i) the said Act has been challenged before the Delhi High Court and the Delhi High Court has held that the said Act is not ultra vires and unconstitutional.

(ii) special protection given to women is intelligible differentia and hence, the contention on the side of the petitioners that the Act is enacted with a view to help only the female members cannot be accepted.

(iii) The petitioners filed a quash petition before this Court raising the same grounds and hence, they cannot be heard to raise the same grounds in the present writ petition.

(iv) No valid ground has been raised to declare few sections of the said Act as ultra vires.

6. I have considered the submissions made by the learned counsel appearing for the petitioners and the learned Government Advocate appearing for respondents 1 to 5 and the learned counsel appearing for the sixth respondent.

7. The main ground of attack on certain provisions of the Protection of Women from Domestic Violence Act, 2005 are that under the said Act, the husband cannot file any application, but only the wife can file applications. It is therefore, discriminatory and biased in favour of the wife affecting the right of life and liberty to the husband and his relatives, which is violative of Article 14 and 21 of the Constitution of India.

8. As rightly contended by the learned counsel appearing for the sixth respondent, giving certain preferential treatment to the wife and treating them as a special category cannot be termed as violative of either Article 14 or Article 16 of the Constitution of India. Though Article 15 of the Constitution of India prohibits discrimination on grounds of religion, race, caste, sex or place of birth, however, Article 15 (3) states "nothing in this Article shall prevent the State from making any special provision for women and children". Thus, the Constitution itself provides special provision for women and children. It has been widely resorted to and the Courts have upheld the validity of the special measures in legislation and executive orders favouring women. Thus, when the Constitution itself provides for making special provision for women and children, the contention on the side of the petitioners that there could be no special treatment for women is totally untenable. In tune with Article 15(3) of the Constitution of India, the State has thought it fit to frame a special legislation for women and thus, the Protection of Women from Domestic Violence Act, 2005 came into force.

9. In A.I.R. 1954 S.C. 321 Yusuf Abdul Aziz v. State of Bombay, the Hon'ble Apex Court, while dealing with the question whether Section 497 of India Penal code contravenes Article 14 and 15 of the Constitution of India, has held that since sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children by clause (3) of Article 15. Articles 14 and 15 thus, read together validate the last sentence of Section 497 I.P.C. which prohibits the woman from being punished as an abettor of the offence of adultery. Para 6 of the said judgment is usefully extracted here under:-

"Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two Articles read together validate the impugned clause in S.497 Penal Code."

10. In (2003) 10 Supreme Court Cases 78, Sanaboina Satyanarayana v. Govt. of A.P. and others, the Hon'ble Apex Court was posed with a question whether granting remission of

sentence can be made excluding those prisoners who were convicted for life and for crimes against women. It was held by the Hon'ble Apex Court that considering Article 15 (3) and 14, exclusion of prisoners convicted of crimes against women from scheme of remission, is a sound, just, reasonable, proper and it necessitated in the larger interest of the society and greater public interest.

11. In 1985 SC 1695 Partap Singh v. Union of India, the question that was posted before the Hon'ble Apex Court was about the constitutional validity of Section 14 (1) of the Hindu Succession Act. The Hon'ble Apex Court in the said judgment has clearly held that in view of Article 15 (3) of the Constitution of India there is hardly any justification for the males belonging to the Hindu community to raise any objection to the beneficent provisions contained in Section 14 (1) of the Act on the ground of hostile discrimination. Para 6 of the said judgment is usefully extracted here under:-

"There is very little substance in the second condition raised by the petitioner also. The submission made on behalf of the petitioner in this case overlooks the benign constitutional provision in clause (3) of Article 15 of the Constitution which provides that nothing in Article 15 shall prevent the State from making any special provision for women and children. The said provision overrides clause (1) of Article 15 of the Constitution which provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Section 14 (1) of the Act was enacted to remedy to some extent the plight of a Hindu woman who could not claim absolute interest in the properties inherited by her from her husband but who could only enjoy them with all the restrictions attached to a widow's estate under the Hindu law. There is now hardly any justification for the males belonging to Hindu community to raise any objection to the beneficent provisions contained in Section 14 (1) of the Act on the ground of hostile discrimination. The above provision is further protected by the express provision contained in clause (3) of Article 15, since it is a special provision enacted for the benefit of Hindu women. We do not find any merit in the Writ Petition. The writ petition is dismissed. Consequently, the special leave petition also has to be dismissed. It is accordingly, dismissed."

12. Again, in A.I.R. 1985 Supreme Court 1618 Sowmithri Vishnu v. Union of India, the Hon'ble Apex Court has held while considering Section 497 of I.P.C., that it does not discriminate between man and woman by conferring right only on husband to prosecute the adulterer and hence, it is not violative of Article 14 or Article 15 of the Constitution of India.

13. In fact, the Delhi High Court in W.P (Crl.) No.425 of 2008, by an order dated 07.04.2008 had upheld the provisions of the said Act. Para 4 of the said judgment is usefully extracted here under:-

"Domestic violence is a world wide phenomenon and has been discussed in International fora, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra virus the Constitution of India because it accords protection only to women and not to men, is therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of parliament."

14. At this juncture, learned counsel appearing for the petitioners would submit that the said Act can only be prospective and not retrospective and further submitted that the petitioners are not liable for the charges that have been levelled against them. The arguments raised by the learned counsel appearing for the petitioners are to be considered by the authority concerned before whom the application filed by the sixth respondent is pending and the same cannot be canvassed before this Court.

15. For all the reasons stated above, I am not inclined to hold that Sections 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005 (Central Act 43 of 2005) are unconstitutional, ultra vires and void and the writ petition is liable to be dismissed and accordingly, dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

RESPONDENTS

Harbans Lal Malik v. Payal Malik, II (2010) DMC 202 (Delhi H.C.) (29.07.2010)

Judge: Shiv Narayan Dhingra

Judgment

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 Crl. Rev. P. 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 husband's 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 ₹ 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 ₹ 20,000/- per month and ₹ 50,000/- as onetime payment to meet education expenses, a car or ₹ 8,000/- per month in lieu of the car and ₹ 20,000/- per month for her day-to-day expenses and ₹ 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 ₹ 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 ₹ 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 arelationship 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 brother's 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 woman's shared household in India in such cases is also her parent's house where she lived before marriage and not her in-law's 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 8 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 Black's 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 Chamber's 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 patriarch's 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 Rao's 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 ₹ 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 ₹ 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.

Razia Begum v. State, 172 (2010) DLT 619 (Delhi H.C.) (24.09.2010)

Judge: Shiv Narayan Dhingra

Judgment

1. These two petitions have been filed assailing order dated 29th October 2009 passed by the learned Additional Session Judge. One petition has been filed by the Smt. Razia Begum widow of the deceased Abdul Rauf and other has been filed by her father-in-law, brothers-in-law and others who were made respondents in the application under Section 22 of Protection of Women from Domestic Violence Act , 2005 (in short Domestic Violence Act) by Razia Begum.

2. In her application under Domestic Violence Act, Razia Begum had made 11 respondents and she specified her relations with respondents as under:

3. That the complainant/aggrieved person married to one Abdul Rauf on 1.10.1995 who was the son of respondents No. 3, 7 & 9 and brother of respondents No. 1, 2, 4, 5, 8, 10 & 11 and dewar (brother-in-law) of respondent No. 6. That the marriage between the complainant/aggrieved person with the aforesaid late Abdul Rauf was duly performed and solemnized on 1.10.1995 in accordance with all essential Muslim/Islamic customs rites and ceremonies, and law at Delhi. However, unfortunately the husband of complainant/aggrieved person had expired on 2.9.2006.

x x x x x

4. That respondent No. 1 and respondent No. 8 are the jeth of the complaint/aggrieved person respondent No. 2 is the father-in-law, respondents No. 3 & 4 are dewars, respondents No. 5 & 9 are mothers-in-law, respondent No. 6 is the jethani of the complainant, respondent No. 7, 10 & 11 are nands (sisters-in-law).

3. The order of learned MM passed under Section 22 of Domestic Violence Act shows that the order was passed against five male respondents and all woman respondents seem to have been dropped. The five respondents against whom order has been passed are Abdul Rab, Abdul Samad, Abdul Khaliq, Kasim and Abdul Wahab. While first four respondents have been shown as residents of H. No. 450 Chawri Bazar, Chittla Gate, Jama Masjid but the fifth respondent i.e. Abdul Wahab has been shown as resident of H. No. 1456, Kala Mehal, Khirki, Jama Masjid, Delhi. Vide her order, the learned MM directed payment of maintenance of ₹ 10,000/- p.m. to the wife from the date of filing of petition and also

held that widow was entitled to stay/reside at the second floor of the joint household and could be evicted only after due process of law. However, order of learned MM did not specify which of the respondents was liable to pay what amount and why.

4. In appeal before the learned Additional Sessions Judge, the relatives of widow did not assail the order regarding residence given to the widow and stated that she was already living there and they have filed civil suit in this respect but assailed the order for granting maintenance. The learned Session Judge in appeal reduced the maintenance from ₹ 10,000/- to ₹ 6,000/- vide his order dated 29th October, 2009 both the parties are before the Court.

5. Neither the order of learned MM nor the order passed by learned Additional Sessions judge specify as to which of the respondent out of the five would be liable to make the payment and why. The learned MM has only discussed the broad allegations and counter allegations but her order is conspicuously silent as to who were in the domestic relationship with the widow and who out of the five persons had deprived the widow of financial resources, if any, and who was liable to pay maintenance. Same is true in respect of the order passed by learned Additional Session Judge. The order of learned Additional Sessions Judge is equally silent as to who would be liable to pay the maintenance.

6. It has to be noticed that although Domestic Violence Act is not a penal law but it is a peculiar Act where non-compliance of the order passed under the Act has been made as an offence under Section 31 of the Act and an FIR can be registered against the person who does not comply with the order and this offence is triable by the same Magistrate who passed the interim order for protection or maintenance. In view of this provision under Section 31, it becomes incumbent and responsibility of the Magistrate to be careful in passing order and to specify as to whether there was domestic relationship between the aggrieved person and the respondent and who was the person responsible for compliance of the order.

7. Under Domestic Violence Act every relative of the husband cannot be made as a respondent. Only those persons can be made respondents, who satisfy the definition of Section 2(q) which 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.

8. Thus, in order to fix liability upon a respondent the respondent must be a person who is or has been in domestic relationship with the aggrieved person. Domestic relationship is defined in Section 2(f) of the Act which reads 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.

Thus, it is apparent from above definition that in order to constitute domestic relationship there must have been living together in a shared household and there must be relationship as specified in Section 2(f).

9. The entire complaint of the complainant/Razia Begum does not show that she was in domestic relationship with each of the respondents nor the orders of the learned MM or Sessions Judge show that why the order has been passed against all male relatives named by the complainant in her complaint, without coming to a conclusion whether any domestic relationship existed between the aggrieved person and the respondents.

10. One of the respondents against whom order has been passed is Abdul Wahab. He has not lived even in the house where aggrieved person Razia was living. The learned MM and learned Sessions Judge passed maintenance order against him also. The parentage of respondent Kasim has not been given in the complaint. The complaint also shows that even cousin (brother) of the husband has been made a respondent. It is expected from the trial Court that before passing an order under Domestic Violence Act, it must be satisfied that there existed a domestic relationship between the petitioner and the respondent. It is also incumbent upon the Court to specify as to which of the respondents would be liable to make the payment of interim maintenance and why, keeping in view the provisions of the Act and the decision of this Court in Crl. M.C. No. 3878/2009 Vijay Verma v. State NCT of Delhi and Anr. decided on 13th August, 2010 and Crl. Rev. P. No. 253/2010 Harbans Lal Malik v. Payal Malik decided on 29th July, 2010.

11. The trial Court and the Sessions Judge passed interim orders without satisfying themselves of basic requirement of domestic violence act that the order can be passed only against the 'respondents' who had been in 'domestic relationship' with the 'aggrieved person'. The order passed by the learned MM and the learned Sessions Judge are hereby set aside the matter is remanded back to learned MM to pass order in accordance with law and in accordance with judgments given in Crl. M.C. No. 3878/2009 Vijay Verma v. State NCT of Delhi and Anr. and Crl. Rev. P. No. 253/2010 Harbans Lal Malik v. Payal Malik.

12. However, till the order is passed by the learned MM afresh, Razia Begum shall not be dispossessed from the portion of house in her occupation and petitioner Abdul Rub and Abdul Khaliq till then shall jointly pay a sum of ₹ 5,000/-p.m. as maintenance to Razia Begum from the date of application.

Both the petitions stand disposed of.

Nandan Singh Manral v. State, 2011 (2) RCR (Criminal) 271 (24.09.2010)

Judge: Shiv Narayan Dhingra

Judgment

1. This petition under Section 482 Code of Criminal Procedure has been preferred by the Petitioner seeking quashing of order dated 5th November, 2009 by which notice/process has been issued against the Petitioner in complaint case bearing CC a No. V-328/09 pending in the Court of learned Metropolitan Magistrate, Delhi under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as the said Act).

2. The present Petitioner is brother in law of the husband of wife i.e. he is husband of sister's husband (behnoi) and was living at Bareili, Uttar Pradesh whereas the wife was living with her husband at Ram Nagar, Uttrakhand.

3. She made a complaint at Delhi under Section 12 of the said Act making the Petitioner herein as a Respondent. Under the said Act only those persons can be arrayed as Respondents who had a shared household at the time of incident with the aggrieved person. The 'Respondent' is defined in Section 2(q) of the said Act and it is mandatory under Section 2(q) that in order to be a Respondent, the person must have domestic relationship with the aggrieved person. The domestic relationship as defined under Section 2(f) of the said Act provides that a relationship between two persons is called domestic relationship if the two persons have lived at any point of time in a shared household. The share household has been defined in Section 2(s) which reads as under:

> (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or alongwith 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 respect of which either the aggrieved person or the Respondent or both jointly or singly have a 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 a right, title or interest in the shared household?

4. It is apparent that the husband of married sister who lived far away from the family of the husband can under no stretch of imagination be said to have lived in shared household with the aggrieved person i.e. wife.

5. I, therefore, consider that the Petitioner could not be made a Respondent in an application under Section 12 of the said Act. The learned trial Court seems to have, without

looking into provisions of the Act, summoned everybody arrayed as Respondent in the application without even caring whether any domestic relationship existed between the aggrieved person and Respondent. The result, the petition is allowed and order dated 5th November, 2009 by which notice/process has been issued against the Petitioner in complaint case bearing CC No. V-328/09 pending in the Court of learned Metropolitan Magistrate, Delhi under Section 12 of Protection of Women from Domestic Violence Act qua Petitioner is hereby quashed.

6. The petition stands allowed.

Hima Chugh v. Pritam Ashok Sadaphule, 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013)

Judge: G.P. Mittal

Judgment

1. The Petitioner invokes inherent powers of this Court under Section 482 of the Code of Criminal Procedure (Code) for setting aside of the order dated 24.12.2010 whereby a complaint under Section 29 of the Protection of Women from Domestic Violence Act 2005(D.V. Act) was dismissed by the learned Metropolitan Magistrate(''MM") and the order dated 28.03.2011 whereby the Appeal preferred by the Petitioner was dismissed by the learned Additional Sessions Judge (ASJ).

2. The Petitioner got married to Respondent No.1 at Delhi on 05.03.2005. A week after the marriage, the Petitioner and the Respondent No.1 flew to U.K. It is important to note that the Petitioner was a resident of U.K. since the year 2000 and was working with Ubique Systems since September, 2001. On the other hand, the First Respondent (husband) came to U.K. in the month of July, 2004 for gainful employment. It was a love marriage between the Petitioner and the First Respondent which took place at Delhi on 05.03.2005. The marriage was not attended by the parents of the First Respondent. I need not go into the reason for the other Respondents to be not a party of the wedding between the Petitioner and the First Respondent.

3. To understand the factual matrix, it would be appropriate to extract paras 8 to 10 of the order dated 24.12.2010 passed by the learned 'MM' hereunder:

"8. In the present matter, Proposed Respondent No. 2 to 6 are residents of Mumbai. As per averments in application, they were not present to attend the wedding of Applicant with Proposed Respondent No. 1 at Delhi. Further, Applicant left for U.K. just after two days of her marriage with Respondent No. 1. As per her own version, Applicant happened

to first meet the proposed Respondent No. 2 and 3 on 21/05/2006 when they came to U.K. and stayed with Applicant and proposed Respondent No. 1 till 03/06/2006. Second time, in October 2006, when applicant went to Mumbai but was denied entry in their house by proposed Respondent No. 2 to 6. Applicant then stayed with Respondent No. 2 and 3 for the duration 16/06/2007 to 27/06/2007 in Mumbai. Accordingly, the proposed Respondent No. 2 to 6 cannot be taken to have resided together as family members in a joint family having domestic relationship with Applicant in a shared household. Respondent No. 4 to 6 have never resided even for a moment with Applicant Respondent No. 2 to 3 happened to visit applicant and her husband in U.K. for about 10 days and later for another 10 days when Applicant visited them in India. There is no continuity in their residence. It was only a short visit which they had paid to their son settled in U.K. and cannot be taken to have been staying or residing there in any kind of domestic relationship with Applicant. Thus, holding that there has not been any domestic relationship of proposed Respondent No. 2 to 6 with Applicant as per submission of Applicant herself there is not occasion for issuance of notice to Respondent No. 2 to 6 to answer the averments in application moved in the present case.

9. Applicant and proposed Respondent No 1 have resided together in U.K. all the while after solemnization of their marriage in Delhi with short intermittent visits to Delhi, Mumbai and to other countries also. There is also a Non Molestation Order and Occupation Order dated 01/062010 issued by Hon'ble Brent Ford Country Court in favour of Applicant Hima Chug containing directions forbidding acts and ill conduct of Respondent Pritam Sadaphule enforce till 01/06/2012 at 4.00 PM filed on record. Applicant has now come back to India and presently residing with her parents in Delhi. The Saga of violence perpetrated in different ways on applicant by Respondent No. 1 has been detailed in the Application because of which, she was constrained to fly back to Delhi to her parents having lost the courage and perseverance to confront the unsurmountable conflicts. Now Applicant has invoked the jurisdiction of this court in Delhi seeking relief under the act.

10. Now coming to case of proposed Respondent No. 1 allegedly related to Applicant as her husband. It is an admitted case of Applicant that she was residing in U.K. since year 2000. Marriage of Applicant with Respondent No. 1 got solemnized on 05/03/2005 and both left for U.K. on 12/03/2005 to resume their respective jobs. Applicant even took permanent residency of U.K. on 11/07/2005. Since then till late 2009, Applicant resided in U.K. along with Respondent No. 1 with her off and on occasional intermittent visits to India. That is to infer that Applicant resided in a shared household in a purported domestic relationship with the Respondent No. 1 outside India for all years since her marriage. Both Applicant and Respondent No. 1 were having respective employment sources outside India. They have only had short individual or joint visits to India residing here

for a couple of days but not with any intention or purpose of residency here. Applicant, after having been victim of domestic violence, chose to return back to her parental home in late 2009 in India."

4. The learned ''MM" opined that the Petitioner was a permanent resident of U.K. (even before her wedding). The domestic relationship, domestic violence as well as shared household continued to be in U.K. The offence under Section 31 of the D.V. Act would arise only when any protection orders or interim protection order was violated by the First Respondent. Thus, the Court of the learned ''MM" held that the Courts in India or for that matter in Delhi did not possess any jurisdiction to entertain a complaint under the D.V. Act. The complaint was accordingly dismissed. The Petitioner unsuccessfully challenged the order before the learned ASJ. The Appeal came to be dismissed by the learned ASJ by an order dated 28.03.2011.

5. It is urged by the learned counsel for the Petitioner that even if the Petitioner has a temporary residence within the jurisdiction of the Trial Court, it was obliged to entertain the complaint and could not have dismissed the same on the ground of jurisdiction. The learned ''MM" dismissed the complaint for want of jurisdiction on interpretation of Sections 27 and 28 of the D.V. Act. Sections 27 and 28 of the D.V. Act are extracted hereunder:

"27. Jurisdiction.- (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

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."

6. Thus, the Court of Judicial Magistrate of the First Class or the 'MM' within the local limits of which the aggrieved person permanently or temporarily resides or carries on business is competent to entertain the complaint under the provisions of D.V. Act. It is not in dispute that at the time of the filing of the complaint under the D.V. Act the Petitioner was residing with her parents within the jurisdiction of the learned M.M. Of

course, a non-molestation order was obtained by the Petitioner by approaching Brent Ford County Court under the Family Law Act, 1996. That by itself was not sufficient to exclude the jurisdiction of the learned 'MM' if she was otherwise possessed jurisdiction by virtue of Section 27 of the D.V. Act. The learned ''MM" also erred in holding that the since the offence arising out of violation of the protection order cannot be tried in Delhi Courts, the learned ''MM" will not have any jurisdiction is also without any substance. The object of enacting D.V. Act was to provide a remedy under the civil law to women who are sisters, widows, mothers, single woman in addition to a wife or a female living in a relationship in the nature of marriage. However, the protection order could be obtained only against a person who was in domestic relationship with the person aggrieved.

7. In Mohit Yadam & Anr. v. State of A.P. & Ors., 2010 Cri.L.J. 3751 while dealing with the object and scope of the D.V. Act, it was observed by Andhra Pradesh High Court as under:

"21. The object of the Domestic Violence Act, 2005 is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. The Act only confers right to remedy to the wives and women in, domestic relationship. A machinery is provided for achieving the said object, viz., it is the duty of a Police Officer, Protection Officer, Service Provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, availability of services of Service Provider and Protection Officer, right to avail free legal services. Similarly, a Magistrate is under obligation to fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing. The Domestic Violence Act, 2005 provides for comprehensive and speedy relief within a set time frame. Where aggrieved person's right is invaded or destroyed or likely to be destroyed, the Domestic Violence Act, 2005 gives a remedy by interdict to protect it or damages for its loss, etc.....

28. 'Domestic Violence' is any act of physical, mental or sexual violence and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or had family or kinship ties or cohabit or dwell in the same house. It infringes the basic right to feel comfortable within the confines one's house to all domestic violence victims is not a home. A home where one can live without any fear or insecurity. It is with this in mind, the new Protection of Women from Domestic Violence Act was passed."

8. Thus, simply because the Petitioner returned to India either temporarily or permanently it will not disentitle her to invoke the provisions of the D.V. Act if she has a case on merits.

Thus, dismissing the complaint for want of jurisdiction by the learned 'MM' and its approval by the learned ASJ was illegal and cannot be sustained.

9. But, at the same time, it has to be borne in mind that a protection order can be obtained only against a person who is in domestic relationship with the aggrieved person. To understand the same, it would be appropriate to have a look at the definition of domestic relationship and shared household as given in Sections 2(f) and 2(s) of the D.V. Act, which reads as under:

"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;

.....

(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;"

10. Respondents No.2 to 6 are the relations of the Petitioner's husband. In para 8 of the complaint, the Petitioner talks of visiting the house of Respondents No.2 to 4 for the first time on 21.05.2006. It is in dispute whether Respondent No.5 who is cousin of the Petitioner's husband was residing with the Respondents No.2 to 4. Admittedly, Respondent No.6 was not even residing with the parents of the Respondent No.1. Apart from levelling the allegations of cruelty and not meeting the financial needs of the Petitioner by the Respondent No.1, the Petitioner alleged cruelty at the hands of the Respondents No.2 to 5. It has to be borne in mind that an aggrieved person can maintain a Petition under the D.V. Act only if he is in domestic relationship with the concerned person. In K. Narasimhan v. Smt. Rohini Devanathan, 2010 Cri.L.J.2173, brother-in- law was arrayed as one of the Respondents in a Petition under the D.V. Act. The allegations against the brother-in-law were that when the Respondent (the wife) approached the Petitioner at Chennai, she was abused which according to the Petitioner was emotional abuse. The Karnataka High Court held that as per Sections 2(f) or 2(s) of the D.V. Act, when the Petitioner and Respondent never stayed together in the same household, the making of allegations against the shared household would not amount to domestic violence in the

absence of domestic relationship and shared household as defined under the D.V. Act. The shared household as envisaged under Section 2(s) of the D.V. Act is a house where the aggrieved person stayed as a member of the family or a joint family. It will not include the casual visits of a daughter-in-law to the house of her father-in-law or brother-in-law. In Harbans Lal Malik & Ors. v. Payal Malik, 2010(3) LRC 177(DEL), a coordinate Bench of this Court while dealing with the definition of domestic relationship held as under:

"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 7½ 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 brother's 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. .....

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 woman's 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.

.....

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."

11. In Vijay Verma v. State (NCT of Delhi), 2010(3) LRC 291(DEL), another coordinate Bench of this Court held that casual visits of a daughter-in-law to the house of father-in-law will not amount to living or lived together in a shared household for the purpose of domestic relationship. It was further observed that only the violence committed by the

person while living in the shared house can constitute domestic violence for the purpose of D.V. Act. Paras 6 and 7 of the report are extracted hereunder:

"6. A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can be either soon before filing of petition or 'at any point of time'. The problem arises with the meaning of phrase "at any point of time". Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past" whether the right to live survives or not.

For example if there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; can it be said that wife of each of the sons can claim a right to live in the house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his own household, and actually establishes his own household, he cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband.

Such son, daughter, daughter-in- law, son-in-law, if they have any right in the property say because of coparcenary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase 'at any point of time', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an

end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

7. This meaning of domestic relationship has sense when we come to definition of domestic violence and the purpose of the Act. The purpose of the Act is to give remedy to the aggrieved persons against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The acts of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitute domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but they cannot be covered under Domestic Violence Act. One has to make distinction between violence committed on a person living separate in a separate household and the violence committed on a person living in the shared household. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by messages etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under Domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is a violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence."

12. Thus, it cannot be said that the Respondents No.2 to 6 who are the father- in-law, brother-in-law and other near relations of the Respondent No.1 were in domestic relationship with the Petitioner. Thus, no protection order could be passed against them.

13. The Petition, therefore, has to be allowed so far as it concerns Respondent No.1 who admittedly was in domestic relationship being husband of the Petitioner. It would be a different matter whether on the basis of material on record, any protection order is required to be passed against him or not.

14. The Petition is accordingly allowed so far as it concerns the First Respondent.

15. Parties to appear before the learned 'MM' concerned on 10th May, 2013.

16. Trial Court Record be returned immediately.

17. Pending Applications stand disposed of.

K. Narasimhan v. Rohini Devanathan, 2010 Cr.L.J. 2173 (Karnataka H.C.)(24.11.2009) Huluvadi G. Ramesh

Order

1. The petitioner has sought for quashing the proceedings against him in Criminal Miscellaneous No. 1445/2008 pending before the VIII Additional CMM, Bangalore.

2. The respondent filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act against her husband and the petitioner who is her brother-in-law making certain allegations so as to attract the provisions of Section 3 of the Act. The learned Magistrate based on the said complaint, ordered to register the case and to issue summons, as against which, the petitioner is before this Court seeking for quashing the proceedings on various grounds.

3. As it transpires, the first accused was in search of a girl and contacted the respondent under the matrimonial website i.e. Shadi.com and on 23-2-2004, they got married after negotiation. After marriage, the first accused left for Canada during March 2004 and was residing there. It appears, on 1st August 2004, the respondent also joined her husband. Thereafter, differences arose between the couple and they started residing separately since May 2007. The respondent also is said to have given an advertisement in matrimonial website column stating that she is separated from her husband and looking for alliance outside India and the same was revised during August 2007. When the relationship between the respondent and her husband was strained, the respondent to torn Initiated proceedings under the Domestic Violence Act and also made allegations against her husband and the petitioner herein who is her brother-in-law.

4. According to the learned Counsel for the petitioner, the petitioner was staying independently at Canada and when he came to India, he stayed at Chennai and he never stayed together nor involved in any domestic violence as per the provisions of the Act and it is also submitted that he has been falsely implicated in this case.

5. According to the learned Counsel for the respondent, the first accused namely the husband of the respondent asked the respondent to discuss the matrimonial differences with the petitioner and it is stated that this petitioner is the cause for the differences. She also made certain allegations on the petitioner, which according to the learned Counsel for the petitioner is verbal and emotional abuse as per Section 3(iii) of the Act. As such there is prima facie case against the petitioner and also the learned Magistrate has committed a mistake in directing issuance of process, after registering the complaint.

6. The main grievance of the petitioner is that in order to attract the provisions of Domestic Violence Act and as per the definition of Section 2(s), the accused himself has shared the household. It is submitted that unless it is shown that the petitioner lived in shared house-

hold along with the respondent either jointly or individually, the question of attracting the provisions of the act do not arise.

7. per contra, the learned Counsel for the respondent submitted that Section 2(f) of the Domestic Violence Act is the answer to Section 2(s) and accordingly submitted that the provisions of Section 2(f) is very much applicable to the case.

8. As it transpires, even according to the complainant, the first accused had told the respondent to approach the petitioner who is the second accused to sort out the differences. At that time, according to the respondent, certain aspersions were made on her regarding not bearing a child. According to the learned Counsel for the petitioner it is emotional abuse and what is being noted is that as per Section 2(f) of the act, domestic relationship means a relationship between the two persons who lived together at any point of time in a shared household by marriage or through a relationship in the nature of marriage. As per the complaint itself, there is no mention that the respondent and the petitioner herein were living together under the same shelter.

9. The only allegation against the petitioner is that at the instance of the first accused i.e. the husband of the respondent, she approached the petitioner at Chennai and there she was abused which according to the petitioner is emotional abuse. As per Section 2(f) or Section 2(b), when the petitioner and respondent never stayed together in the same household, the question of making allegations against her would not arise. Moreover, the petitioner was residing in Canada and only when he came to India, ha stayed at Chennai.

10. In the circumstances, making certain allegations against the respondent by itself would not amount to domestic violence in the absence of ingredient of shared household and there is no proof of petitioner and the respondent having lived together or were living together at any point of time. In the circumstances/the proceedings initiated against the petitioner and also the complaint filed by the respondent is abuse of process.

11. The proceedings pending before the Trial Court in so far as the petitioner is concerned is quashed and the petition is accordingly allowed.

Ashish Dixit v. State of Uttar Pradesh, 2013 Cr.L.J. 1178 (Supreme Court) (7.01.2013)

Judges: H.L. Dattu, Chandramauli K.R. Prasad

Order

1. Leave granted.

2. This appeal is directed against the judgment and order dated 05.07.2010 passed by the High Court of Judicature at Allahabad in Criminal Miscellaneous Application No.8358 of 2008. By the impugned judgment and order, the High Court has refused to quash the proceedings initiated against the petitioners by the respondent no.2-wife, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity "the Act, 2005").

3. In the petition filed by respondent no.2, apart from arraying her husband and her parents-in-law as parties to the proceedings, has included all and sundry, as respondents. To say the least, she has even alleged certain actions said to have been done by the tenant whose name is not even known to her.

4. In a matter of this nature, we are of the opinion that the High Court at least should have directed that the petition filed by respondent no.2 be confined to her husband as also her parents-in-law and should not have allowed the impleadment of respondent nos.4 to 12.

5. In view of the above, while allowing this appeal in part, we quash the proceedings as against appellant nos. 4 to 12 in Case No.240 of 2007. We direct the learned Chief Judicial Magistrate, Agra to proceed with the aforesaid case; only against the husband i.e. Shri Ashish Dixit, S/o. Padmakar Dutt Sharma, her father in law, Shri Padmakar Dutt Sharma, S/o.late Pt.Diwakar Dutt Sharma and Smt.Girja Dixit, W/o.Shri Padmakar Dutt Sharma, her mother in law.

6. We are of the opinion that the direction issued by the High Court, inter-alia, directing the appellants herein to appear before the Trial Court and seek bail is wholly unnecessary.

FEMALE RESPONDENTS

Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, (2011) 3 SCC 650, 2011 Cr.L.J. 1687, II (2011) DMC 811 (Supreme Court) (31.01.2011)

Judges: Altamas Kabir and Cyriac Joseph

Judgment

Altamas Kabir, J.

1. Leave granted.

2. This Appeal is directed against the judgment and order dated 5th March, 2010, passed by the Nagpur Bench of the Bombay High Court in Crl. W.P. No. 588 of 2009, inter alia,

directing the Appellant to vacate her matrimonial house and confirming the order of the Sessions Judge deleting the names of the other Respondents from the proceedings.

3. The Appellant herein was married to the Respondent No. 1 on 20th January, 2005, and the marriage was registered under the provisions of the Special Marriage Act, 1954. After her marriage, the Appellant began to reside with the Respondent No. 1 at Khorej Colony, Amravati, where her widowed mother-in-law and sister-in-law, the Respondent Nos. 2 and 3 respectively, were residing. According to the Appellant, the marriage began to turn sour after about one year of the marriage and she was even assaulted by her husband and by the other Respondents. It is her specific case that on 16th June, 2007, she was mercilessly beaten by the Respondent No. 1, which incident was reported to the police and a case under Section 498A I.P.C. came to be registered against him.

4. In addition to the above, the Appellant appears to have filed a complaint, being Misc. Crl. Application No. 203 of 2007, on 16th July, 2007, against all the Respondents under Sections 12, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as "the Domestic Violence Act, 2005". An application filed by the Appellant before the Judicial Magistrate, First Class, Amravati, under Section 23 of the above Act was allowed by the learned Magistrate, who by his order dated 16th August, 2007, directed the Respondent No. 1 husband to pay interim maintenance to the Appellant at the rate of ' 1,500/- per month from the date of the application till the final disposal of the main application and also restrained all the Respondents from dispossessing the Appellant from her matrimonial home at Khorej Colony, Amravati, till the final disposal of the main application.

5. It further appears that the said order of the learned Magistrate dated 16th August, 2007, was challenged by Respondent No. 1 in Crl. Appeal No. 115 of 2007 before the learned Sessions Judge, Amravati, who by his order dated 2nd May, 2008, dismissed the said appeal. Aggrieved by the orders passed by the learned Sessions Judge, the Respondent No. 1 filed Criminal Application No. 3034 of 2008 in the High Court under Section 482 Code of Criminal Procedure, challenging the order dated 16th August, 2007 of the Judicial Magistrate, First Class, Amravati and the order dated 2nd May, 2008 of the Sessions Judge, Amravati. The said application was dismissed by the High Court on 4th September, 2009.

6. In the meanwhile, the Respondent No. 2 filed an application in Misc. Crl. Application No. 203 of 2007 in the Court of the Judicial Magistrate, First Class, Amravati, praying for modification of its order dated 16th August, 2007 and a direction to the Appellant to leave the house of Respondent No. 2. The said application for modification was dismissed by the learned Magistrate on 14th July, 2008 holding that it was not maintainable. Thereupon, the Respondent Nos. 2 and 3 filed Crl. Appeal No. 159 of 2008 on 11th

August, 2008, under Section 29 of the Domestic Violence Act, 2005, questioning the orders passed by the learned Magistrate on 16th August, 2007 and 14th July, 2008, on the ground that being women they could not be made Respondents in the proceedings filed by the Appellant under the provisions of the Domestic Violence Act, 2005, and that the matrimonial house of the Appellant at Khorej Colony, Amravati, belonged exclusively to Ramabai, the Respondent No. 2 and mother-in-law of the Appellant and did not, therefore, come within the definition of "shared house". The said Criminal Appeal No. 159 of 2008 was allowed by the learned Sessions Judge vide his judgment dated 15th July, 2009. The learned Sessions Judge allowed Criminal Appeal No. 159 of 2008 and set aside the judgment and order dated 14th July, 2008 and also modified the order dated 16th August, 2007, to the extent of setting aside the injunction restraining the Respondents from dispossessing or evicting the Appellant from her matrimonial house at Khorej Colony, Amravati. The Respondent No. 1 husband was directed to provide separate accommodation for the residence of the Appellant or to pay a sum of '1,000/- per month to the Appellant from the date of filing of the application till its final decision, in lieu of providing accommodation.

7. In Criminal Writ Petition No. 588 of 2009, the Appellant herein challenged the judgment and order dated 15th July, 2009, passed by the learned Sessions Judge, Amravati, in Crl. Appeal No. 159 of 2008, claiming that she had a right to stay in her matrimonial house. Although, the question as to whether a female member of the husband's family could be made a party to the proceedings under the Domestic Violence Act, 2005, had been raised in Crl. Appeal No. 159 of 2008, the learned Sessions Judge in his order dated 15th July, 2009, did not decide the said question and did not absolve the Respondent Nos. 2 and 3 herein in his order, but only observed that female members cannot be made parties in proceedings under the Domestic Violence Act, 2005], as "females" are not included in the definition of "Respondent" in Section 2(q) of the said Act.

8. The learned Single Judge of the High Court disposed of the writ petition by his judgment and order dated 5th March, 2010, with a direction to the Appellant to vacate her matrimonial house, which was in the name of the Respondent No. 2, with a further direction to the Trial Court to expedite the hearing of the Misc. Crl. Application No. 203 of 2007 filed by the Appellant herein and to decide the same within a period of six months. A further direction was given confirming the order relating to deletion of the names of the 'other members'.

9. Questioning the said judgment and order of the Nagpur Bench of the Bombay High Court, Mr. Garvesh Kabra, learned Advocate appearing for the Appellant, submitted that the High Court had erred in confirming the order of the learned Sessions Judge in regard to deletion of names of the Respondent Nos. 2 and 3 from the proceedings, upon con-

firmation of the finding of the Sessions Judge that no female could be made a party to a petition under the Domestic Violence Act, 2005, since the expression "female" had not been included in the definition of "Respondent" in the said Act. Mr. Kabra submitted that it would be evident from a plain reading of the proviso to Section 2(q) of the Domestic Violence Act, 2005, that a wife or a female living in a relationship in the nature of marriage can, not only file a complaint against her husband or male partner but also against relatives of the husband or male partner. The term "relative" not having been defined in the Act, it could not be said that it excluded females from its operation.

10. Mr. Satyajit A. Desai, learned Advocate appearing for the Respondents, on the other hand, defended the orders passed by the Sessions Judge and the High Court and urged that the term "relative" must be deemed to include within its ambit only male members of the husband's family or the family of the male partner. Learned Counsel submitted that when the expression "female" had not been specifically included within the definition of "Respondent" in Section 2(q) of the Domestic Violence Act, 2005, it has to be held that it was the intention of the legislature to exclude female members from the ambit thereof.

11. Having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "Respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted here in below: 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.

12. From the above definition it would be apparent that although Section 2(q) defines a Respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. 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.

14. 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.

15. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "Respondent" in the main body of Section 2(q) of the aforesaid Act.

16. The Appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated 15th July, 2009 and the Nagpur Bench of the Bombay High Court dated 5th March, 2010, in Crl. Writ Petition No. 588 of 2009 are set aside. Consequently, the trial Court shall also proceed against the said Respondent Nos. 2 and 3 on the complaint filed by the Appellant.

17. The appeal is allowed accordingly.

Kusum Lata Sharma v. State, III (2011) DMC 1 (Delhi H.C.) (2.09.2011)

Judges: Mukta Gupta

Judgment

1. The Petitioner, one of the Respondents in a Complaint Case No. 40/2011, PS Hauz Khas, New Delhi titled as "Ms. Shakuntala Sharma vs. Nagender Vashishtha & Ors" received summons from the Court of learned Metropolitan Magistrate under Section 12 of the Protection of Women fromDomestic Violence Act, 2005 (in short the "Act") to appear on 8th March, 2011.

The Petitioner states that the Complainant/Respondent No. 2 is her mother-in-law who is having property dispute with the Petitioner's husband since 2005 and in order to coerce the Petitioner's husband to forego his share in the property left behind by Petitioner's father-in-law, the Respondent no.2 has filed the complaint.

2. It is contended that the object of the Act was for redressal of married women who were subjected to cruelty by their husband or in-laws. The object of the Act clearly states that it does not enable any relative of the husband or the male partner to file a complaint against the wife or the female partner. Thus in a nutshell the contention is that a mother-in-law cannot take recourse to the proceedings under Section 12 of the Act to file a complaint against the daughter-in-law.

3. The learned counsel for the Petitioner relies upon the object of the Act and contends that as per para "2" and "4" of the Statements of Objects & Reasons of the Act, the Act was

enacted to address to the phenomena of cruelty inflicted under Section 498A IPC in its entirety. It is further contended that as per Section 2, the Respondent means any adult male person who is or has been in a relationship with the aggrieved person and against whom any relief has been sought under this Act. The proviso to Section 2(q)which provides that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative or the husband or the male partner does not include a female relative.

4. The issue whether the "females" are included or not in the definition of "Respondent" in Section 2(q) of the Act came up for consideration before the Hon'ble Supreme Court in Sou. Sandhya Manoj Wankhade vs. Manoj Bhimrao Wankhade & Ors., 2011 (3) SCC 650 wherein their Lordships held:-

13.It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. 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.

14.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.

15.In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "Respondent" in the main body of Section 2(q) of the aforesaid Act.

16.The Appeal, therefore, succeeds. The judgments and orders, both of the learned Sessions Judge, Amravati, dated 15th July, 2009 and the Nagpur Bench of the Bombay High Court dated 5th March, 2010, in Crl. Writ Petition No. 588 of 2009 are set aside. Consequently, the trial Court shall also proceed against the said Respondent Nos. 2 and 3 on the complaint filed by the Appellant"

5. Division Bench of this Court in "Varsha Kapoor vs. UOI & Ors. 2010 VI AD (Delhi) 472 interpreting Section 2(q) of the Act also came to the same conclusion. Thus the issue whether under Section 2(q) of the Act "the female relative" would be inclusive in the definition is no more res integra. The Division Bench held as under:-

"12. When we interpret the provisions of Section 2 (q) in the context of the aforesaid scheme, our conclusion would be that the petition is maintainable even against a woman in the situation contained in proviso to Section 2(q) of the DV Act. No doubt, the provision is not very satisfactorily worded and there appears to be some ambiguity in

the definition of "respondent" as contained in Section 2 (q). The Director of Southern Institute for Social Science Research, Dr. S.S. Jagnayak in his report has described the ambiguity in Section 2(q) as "Loopholes to Escape the Respondents from the Cult of this Law" and opined in the following words:

"As per Section 2 Clause (q) the respondent means any adult male person who is or has been in a domestic relationship. Hence, a plain reading of the Act would show that an application will not lie under the provisions of this Act against a female. But, when Section 19(1) proviso is perused, it can be seen that the petition is maintainable, even against a lady. Often this has taken as a contention, when ladies are arrayed as respondents and it is contended that petition against female respondents are not maintainable. This is a loophole which should be plugged."

13.But then, Courts are not supposed to throw their hands up in the air expressing their helplessness. It becomes the duty of the Court to give correct interpretation to such a provision having regard to the purpose sought to be achieved by enacting a particular legislation. This so expressed by the Supreme Court in the case of Ahmedabad Municipal Corpn. Anr. Vs. Nilaybhai R. Thakore & Anr. [(1999) 8 SCC 139 in the following words:

"14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the Rule in question is only a subordinate legislation and by declaring the Rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this Rule. We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher [1994] 2 All ER 155 wherein he held: "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases". This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah and Ors. v. Muddala Veeramallappa and Ors. : [1961]2SCR295 and followed as recently as in the case of S. Gopal Reddy v. Slate of Andhra Pradesh : 1996CriLJ3237 . Thus, following the above Rule of interpretation and with a view to iron out the creases in the impugned Rule which offends Article 14, we interpret Rule 7 as follows : "Local student means a student who has passed H.S.C./New S.S.C. examination and the qualifying examination from any of the High Schools or Colleges situated within

the Ahmedabad Municipal Corporation limits and includes a permanent resident student of Ahmedabad Municipality who acquires the above qualifications from any of the High School or College situated within Ahmedabad Urban Development Area."

14. This Court also followed the aforesaid principles in the case of Star India P. Ltd. Vs. The Telecom Regulatory Authority of India and Ors. [146 (2008) DLT 445 (DB) in the following words:

"28. It is also a firmly entrenched principle of interpretation of statutes that the Court is obliged to correct obvious drafting errors and adopt the constructive role of 'finding the intention of Parliament... not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it' as enunciated in State of Bihar v. Bihar Distillery Ltd.: AIR1997SC1511. The Court should also endeavor to harmoniously construe a statute so that provisions which appear to be irreconcilable can be given effect to, rather than strike down one or the other. It must also not be forgotten that jural presumption is in favor of the constitutionality of a statute."

15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2 (q) along with other provisions, out task is quite simple, which may in first blush appear to be somewhat tricky. We are of the considered view that the manner in which definition of "respondent" is given under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are:

a) Main enacting part which deals with those aggrieved persons, who are "in a domestic relationship". Thus, in those cases where aggrieved person is in a domestic relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as respondent has to be an adult male person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc.

b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of "respondent" is widened by not limiting it to "adult male person" only, but also including "a relative of husband or the male partner", as the case may be. What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female

living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

16. Having dissected definition into two parts, the rationale for including a female/ woman under the expression "relative of the husband or male partner" is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

6. The next issue which arises for consideration is whether the word "aggrieved person" in Section 2(a) of the Act has to be given a restricted meaning in view of the Statement of Objects & Reasons so as to include the daughter-in-law only and excludes only a mother-in-law, sister-in-law or daughter from its ambit. The relevant Sections read as under:-

"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;

(b).....

(c).....

(d).....

(e).....

(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;"

7. Thus, a perusal of Section 2(a) and 2(f) of the Act shows that any woman who is in a domestic relationship, the said domestic relationship being one between two persons who lived at any point of time together in a shared household related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or family members living as a joint family and alleges that she has been subjected to any domestic violence by the Respondent is entitled to relief under the Act.

8. The word "aggrieved person" cannot be given a restricted meaning in view of para "2" of the Statement of Objects & Reasons which states that:-

"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.

Thus, it is evident that phenomenon which was sought to be addressed was "domestic violence" and not "domestic violence qua the daughter-in-law or the wife only as contemplated under Section 498A."

9. As a matter of fact, para "4(i)" clarifies that even those women who are sisters, widows, mothers, single woman or living with the abuser are entitled to legal protection under the proposed legislation. A mother who is being maltreated and harassed by her son would be an "aggrieved person". If the said harassment is caused through the female relative of the son i.e. his wife, the said female relative will fall within the ambit of the "respondent". This phenomenon of the daughters-in-law harassing their mothers-in-law especially who are dependent is not uncommon in the Indian society.

10. In view of the authoritative pronouncement of the Hon'ble Supreme Court, para "4" of the Statement of Objects and Reasons cannot be stated to have excluded a female relative of the male partner or a respondent and thus, a mother-in-law being an "aggrieved person" can file a complaint against the daughter-in-law as a respondent.

11. Thus, I find that no case for quashing of the complaint is made out.

Petition and application are dismissed.

Bismi Sainudheen v. P.K. Nabeesa Beevi, I (2014) DMC 770 (Ker), 2014 Cr.LJ 904 (Kerala H.C.) (07.08.2013)

Judge: V.K. Mohanan

Order

A very crucial question that arose for consideration in the above M.C. is, whether the "wife" or "daughter in law" would come within the definition of "Respondent" contained in Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to for short as "the Act" only). In order to answer the above question, brief facts which led to the filing of the above M.C. are inevitable, which follows as:

2. The challenge in this M.C. is against an order dated 15.12.2012 in C.M.P.No.4687/10 in M.C.No.76/09 on the file of the court of Additional Chief Judicial Magistrate-Thiruvananthapuram, filed by the mother-in-law of the present petitioner, by which the learned Magistrate allowed the petition, impleading the petitioner, who is the wife of the 2nd

respondent in the above M.C. and the daughter in law of the petitioner therein. The petitioner herein, for convenience hereinafter referred to as, the wife/daughter in law and the 1st respondent as, the aggrieved person, and her son, who is the husband of the petitioner, as the 2nd respondent.

3. According to the petitioner herein, the aggrieved person approached the court below by filing C.M.P.No.3689/10, after one year from the date of filing of

M.C.No.76/09 under Section 12 of the Act. Thus, besides pointing out the delay in filing the petition for impleading the petitioner, it was contended before the court below that the same was filed to disturb harmonious matrimonial relationship between herself and the 2nd respondent, who is the son of the aggrieved person. According to the petitioner, her father-in-law, namely the husband of the aggrieved person, was the Managing Director of a Public Sector Undertaking and thus the aggrieved person is earning ₹ 10,000/- as family pension and her other daughters are well settled and the aggrieved person is residing along with one of her daughters. Thus stating all the above facts, the petitioner had filed an objection against the impleading petition. Copy of C.M.P.No.3689/10 filed by the aggrieved person for impleading the petitioner and the affidavit sworn into by her, and the objections subsequently filed therein by the petitioner are produced as Annexures A and B. Annexure C is the order of the learned Additional Chief Judicial Magistrate, in C.M.P.No.3689/10 filed by the aggrieved person, wherein cost was ordered to be paid by the aggrieved person to the 2nd respondent, for the inordinate delay in filing the petition. It is the further case of the petitioner that, against Annexure C order, by filing Crl.M.C.No.4389/10, she approached this Court, but the same was disposed by this Court, granting liberty to the petitioner to appear before the court below raising the contention that she will not come under the purview of "respondent" as defined under the Act, and Annexure D is the said order of this Court. It is the specific case of the petitioner that in terms of Annexure D, the wife/daughter-in-law, who is the petitioner herein, has filed C.M.P.No.4687/10 in the court below, challenging the maintainability of the complaint filed by the 1st respondent against the wife/daughter-in-law and the said petition was heard by the predecessor Magistrate, who issued summons to the wife/daughter-in-law on two occasions for being examined as witness from the side of the 2nd respondent.

According to the petitioner, the wife/daughter-in-law, after the assumption of charge by the present Magistrate, the said petition was dismissed without hearing the petitioner or her counsel, which order is produced here as Annexure E.

4. The case of the aggrieved person is that, she is a senior citizen and a widow, residing in an orphanage. Her husband Ibrahim Kutty had expired on 21.4.2004. Besides the 2nd respondent, she has two daughters as her children. According to her, she was residing along with her husband and children in Shahina Manzil, T.C.No.13/705, for more than

13 years and the said house and property having an extent of about 6 cents stands in the name of her deceased husband, which was purchased by him through a valid sale deed. Her daughters and the other son are residing separately. According to the aggrieved person, her son - the 2nd respondent, in collusion with his wife, harassed, humiliated and threatened her and has finally driven her out of her own house with the ulterior motive of grabbing the property. According to the aggrieved person, she being a widow who was residing in Shahina Manzil, the house and the property which were in the name of her deceased husband, proposed to spend rest of her life in the said house, as she has got sentiments with such house where she lived along with her deceased husband. According to the aggrieved person, the above property is in the name of her deceased husband and he had not executed any Will giving the right over it to anybody including her son, who is the 2nd respondent herein.

5. According to the aggrieved person, as the misbehavior and ill-treatment towards her was so cruel, she initially approached the State Women's Commission and on getting notice from the Commission, the wife/daughter in law has filed M.C.No.54/09 before the court of Additional Chief Judicial Magistrate, Thiruvananthapuram and obtained an ex parte protection order, but later the M.C. was dismissed. According to the aggrieved person, as the mental and physical harassment continued against her, she preferred a petition under section 12 of the Act and thus M.C.No.76/09 was instituted in the court below and the court below passed an interim order, and dissatisfied with the order of the learned CJM, she preferred an appeal before the Sessions Court, Thiruvananthapuram, which resulted in the order dated 21.8.2009 in Crl.A.No.517/09.

As the 2nd respondent - the son of the aggrieved person, had failed to comply with the interim order, cognizance was taken for the offence punishable under Section 31 of the Act, against which, the 2nd respondent approached this Court by filing Crl.M.C. No.3829/09, which was disposed of by this Court by order dated 15.2.2010 and subsequently, Crl.M.C.No.3829/09 was reopened suo motu by order dated 24.2.2011. It is also the case of the aggrieved person that against the order of this Court, referred above, her son preferred a Special Leave Petition before the Honourable Supreme Court, which resulted in the order dated 18.7.2011 upon the Special Leave to Appeal (Crl.) No(s).2460/11 and thereafter, the 2nd respondent filed T.P.(Crl.)No.12/11 before this Court, for transfer of the case from the court of learned Additional Chief Judicial Magistrate and the same was dismissed by this Court by order dated 4.3.2011 and subsequently, the said order was again challenged in the Honourable Supreme Court, but by order dated 9.1.2012 in the petition for Special Leave to Appeal (Crl.) No(s). 5800/2011, the same was dismissed. As the harassment continued, according to the aggrieved person, she preferred W.P.(C) No.8550/12 before this Court, seeking police protection and subsequently the same was withdrawn as this Court directed the parties to appear for mediation.

6. According to the aggrieved person, the maltreatment and harassment done by her son - the 2nd respondent, was at the instance of his wife, since she was interested in grabbing the property and the person behind all the vexatious litigation was her daughter-in-law and in the said circumstances, she moved an application as C.M.P.No.4687/10 before the court of Additional Chief Judicial Magistrate, Thiruvananthapuram, to implead the petitioner herein as additional respondent in M.C.No.76/09, which was allowed by the court below as per the impugned order.

7. According to the petitioner, who is the wife/daughter in law, she would not come under the purview of "Respondent" as defined under Section 2(q) of the Act. Therefore, the above M.C. is filed under section 482 of Cr.P.C., with a prayer to set aside Annexure E order in C.M.P.No.4687/10.

8. I have heard Adv.Sri.K.Abdul Jawad, learned counsel for the petitioner and Adv.Sri. Achuth Kylas, learned counsel for the 1st respondent herein, who is the aggrieved person and also Adv.Sri.Mohammed Al Rafi, learned counsel appearing for the 2nd respondent herein. I have also heard Adv.Sri.Rajesh Vijayan, the learned Public Prosecutor.

9. Adv.Sri.K.Abdul Jawad, learned counsel for the petitioner, the wife/daughter in law, in his persuasive arguments, after taking me through the various provisions of the Act and the circumstances under which the above Act is enacted, has submitted that the petitioner being the wife of the son of the aggrieved person, at no stretch of imagination will come under the definition of Section 2(q), more particularly, even as per the proviso to Section 2(q), because of the marital status of the petitioner with the son of the aggrieved person, the wife/daughter-in-law is out of the extended definition of the term "respondent" as contemplated under the Proviso. In support of the above contentions raised by the counsel for the petitioner, he relied upon the following decisions, reported in Afzalunnisa Begum and others Vs. State of A.P. and another (2009 KHC 5824) and also in, Manju A.Nair Vs. State of Kerala (2012(4) KLT 39).

10. Whereas, learned counsel for the 1st respondent/aggrieved person strenuously submitted that, the Act itself was adopted by the Parliament to give protection to women as a whole, from domestic violence and there is no meaning for a further classification, by excluding the wife or daughter-in-law from the ambit of Section 2(q) of the Act, and it will be against the object to be achieved by above enactment. In support of his contentions, the learned counsel relied upon the following decisions : Kusum Lata Sharma Vs. State and another (2011 KHC 2921), Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and others [(2011) 3 Supreme Court Cases 650], an order of this Court dated 2.12.2009 in Crl.M.C.No.2225 of 2009, Kanai Lal Sur. Vs. Paramnidhi Sadhukhan [AIR 1957 S.C. 907 (Y 44 C 135 Dec.)], Archana Hemant Naik Vs. Urmilaben I.Naik and another (2010 KHC 7159), Chandan Singh Vs. Shyam Sunder Agrawal (2006(4) AWC 4192)

and Directorate of Enforcement Vs. Deepak Mahajan and another{(1994) 3 Supreme Court Cases 440}.

11. Sri.Rajesh Vijayan, the learned Public Prosecutor, after taking me through various provisions including the definition Clause under Sections 2(a), 2 (q), 3 and particularly the Section 19 of the Act, has submitted that, a harmonious interpretation of various provisions are required so as to give effect to the object to be achieved, for which the Act is enacted. The learned Public Prosecutor in support of his contentions, placed reliance on the following decisions Kanai Lal Sur. Vs. Paramnidhi Sadhukhan [AIR 1957 S.C. 907 (Y 44 C 135 Dec.)] and B.Shah Vs. Presiding Officer, Labour Court Coimbatore and others (AIR 1978 SC 12).

12. I have carefully considered the submissions made by both the counsel for the petitioner as well as the respondents and also the arguments advanced by the learned Public Prosecutor. I have also perused the order impugned and the other materials produced in the above petition that are produced from the side of the petitioner and the contesting respondents. I have carefully gone through the authorities cited at the Bar.

13. From the facts stated above, it can be seen that the aggrieved person approached the court below during the year 2009 seeking various reliefs under the Act. In spite of the mandate that is contained in Sub Section (5) of Section 12 of the Act, by which it is stipulated that, "The Magistrate shall endeavour to dispose of every application made under sub- section (1) of section 12, within a period of 60 days from the date of its first hearing", the matter is still pending in the court below without any substantial progress. Several proceedings that are initiated, both at the instance of the aggrieved person as well as the other respondents, and also the present petitioner - the wife/ daughter in law, would show the several rounds of litigation, including the petitions filed before the Honourable Supreme Court on two occasions.

14. This Court is fully aware of the fact that several petitions are being filed before this Court on similar ground by the wife or daughter-in-law, contending that no action would lie against them under the above Act, as they will not come under the definition of "Respondent". Hence, according to me, the question involved in the present case, is a serious question of law bearing general importance and involving public interest.

15. The statement of objects and reasons for the enactment of the above Act says that,

"1. Short title, extent and commencement. -- (1) This Act may be called the Protection of Women from Domestic Violence Act, 2005. (2) It extends to the whole of India except the State of Jammu and Kashmir. (3) It shall come into force on such date* as the Central Government may, by notification in the Official Gazette, appoint."

The above Act is adopted by the Parliament to achieve the following objects :

"(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 or adoption. 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 relative of the 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 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 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 organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc." (Emphasis supplied).

Thus, on a consideration of the circumstances under which the Act promulgated and the objects sought to be achieved, it is crystal clear that the main object is to protect the women as a whole and according to me, that is why the Act itself named and projected as "The Protection of Women from Domestic Violence Act". It is relevant to note that, Section 2(a) of the Act defines an "aggrieved person", which reads as follows: "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."

A plain reading of the section indicates, particularly in view of the emphasised portion of the object, that any woman in a domestic relationship with the respondent can invoke the provisions of the Act, provided, the other conditions are satisfied. It is relevant to note that the definition "aggrieved person" is not confined to a lady, or woman, based upon her marital status alone. So, the definition of "aggrieved person" cannot be interpreted by giving a narrow meaning as 'wife' only.

16. It is true, in Section 2(q), where the term "respondent" defines, states as, "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;"

But, by incorporating the proviso, the said definition is extended against the relative of the husband or the male partner. So, according to me, the proviso given under Section 2(q), is not only extending the class of persons coming under the term "respondent", but the same is also extending the definition of "aggrieved person" contained in Section 2(a). In the proviso, what stated and provided are that, an aggrieved wife or female, living in a domestic relationship in the nature of marriage, can file complaint against a relative of the husband or against the male partner.

17. According to me, the definition "aggrieved person" that is contained in section 2(a), unless the same is exclusively meant for wife/daughter-in-law alone and until excludes other women who are relatives of the husband, it is incorrect to hold that the wife/daughter-in-law will not come under the definition of "respondent" as defined in Section 2(q). In this juncture, it is relevant to note that the Honourable Apex Court has held in the decision reported in Sandhya Manoj Wankhade Vs. Manoj Bhimrao Wankhade and others [(2011) 3 SCC 650] that, "legislature never intended to exclude female relatives from ambit of complaint that could be made under 2005 Act."

18. In the present case, it is relevant to note that there is no challenge against the institution of the petition, at the instance of the aggrieved person, who is the mother of the 2nd respondent and the mother-in-law of the petitioner herein, under Section 12(1) of the Act. At this juncture, as rightly pointed out by the learned counsel for the respondent, Section 19(1)(c) of the Act is relevant. Section 19, with the caption "Residence orders" reads as follows :

"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) xxxxxx xxxxxxx xxxxxxxx

(b) xxxxxxx xxxxxxx xxxxxxx

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

According to the learned counsel, if wife or daughter-in-law is not impleaded as respondent, she can prevent the aggrieved person from enjoying an order under section 19 (1)(c) of the Act. Hence, if a domestic violence is committed by the wife/daughter-in-law, she being a female person would also come within the ambit of the definition "respondent". Otherwise, as in the present case, if an order is passed under Section 19(1)(c) against the original respondent alone, who is the son of the aggrieved person, the son's wife, i.e., the daughter-in-law of the aggrieved person, who is the petitioner herein, can very well defeat the order of the court under section 19(1)(c). It is not out of context to refer to the facts agitated by the aggrieved person in support of her claim and the alleged domestic violence committed against her and the various litigations said to have initiated against her, at the instance of the petitioner herein. So, one of the objectives aimed by the Act can be defeated, if a narrow interpretation to Section 2(q) is given, excluding the wife/daughter in law from the definition of "respondent". It is to be noted that, the Act never contemplates to give any privilege or protection to a lady, whatever may be her family status, to commit any domestic violence against another female, who is in domestic relationship with the respondent. Except the male, all victims, against whom domestic violence is meted out can be included in the definition of "aggrieved person", vice versa all persons irrespective of their marital status, who meted out the domestic violence against any female member of the family, can be included in the term "respondent" and the exclusion of any woman for the sole reason that she is the wife or daughter-in-law, is against the very object and purpose of the Act. Suppose the victim is a major female or her "step mother" or "a woman living in a relationship in the nature of a marriage", such victim can file a complaint against those persons, who meted out domestic violence.

The concept of the society about "Mother" is being subjected to change and incidents are being reported that even the "Mother" is presenting her own daughter for flesh trade. Thus, while giving protection to women, a check measure has to be adopted to prevent such women from subjecting the female members of the same family to domestic violence. Hence, under the guise of being 'wife' or 'daughter-in-law', they cannot be given privilege or be allowed to escape from the liability under the provisions of the above Act, if she has committed any "domestic violence". Thus, if the second wife or wife, who being the step mother or even if a real mother, meted out domestic violence against a major daughter, they along with her father has to be arrayed as respondent, in an action under the provisions of the above Act.

19. In this juncture it is relevant to note that the learned counsel appearing for the petitioner, heavily relied upon the decision of a Division Bench of this Court reported in (2012(4) KLT 39) cited supra, wherein it is held that, "An adult female person could be made a

respondent only if the complaint is filed either by an aggrieved wife or a female living in a relationship in the nature of a marriage".

In the said decision, it is relevant to note that the question referred by a learned Single Judge of this Court was whether a mother could proceed against her daughter under the provisions of the Act, taking note of the the two decisions of this Court reported in Remadevi Vs. State of Kerala (2008(4) KLT 105) and Vijayalekshmi Amma Vs. Bindu (2010(1) KLT 79). So, according to me, the factual inputs in the present case are entirely different from the facts involved in the decisions of the Division Bench referred to above and hence the same are not relevant and applicable in the present case.

20. It is relevant to note that a learned Single Judge of the Delhi High Court in the decision reported in (2011 KHC 2921) cited supra, in a similar situation and answering a similar question of law, has held that, "A mother who is being maltreated and harassed by her son would be an "aggrieved person". If the said harassment is caused through the female relative of the son, ie., his wife, the said family relative will fall within the ambit of the "respondent" , and it is further held that, "this phenomenon of the daughters-in-law harassing their mothers-in-law especially who are dependant is not uncommon in the Indian society". The facts involved in the case on hand are identical to the facts involved in the above decision.

21. As rightly observed by the learned Single Judge of the Delhi High Court, it is beyond dispute that, with respect to the matrimonial issues and domestic violence, it is a shocking factor that, 95% of such disputes are originated from simple and petty reasons, which pave way to difference of opinion among the spouses or among the members of their family, which ultimately lead to filing of petition for divorce or for maintenance, or filing of even criminal cases, irrespective of their caste, creed or religion. Absence of proper understanding about the institution of marriage, social realities and poor economic background etc. are some of the basic reasons for such disputes. However, as I indicated earlier, irrespective of the religion, caste or creed, the victims are always the women. The discrimination or hostility against women starts from the womb of her mother and it is very shocking to hear that there is tendency to abort a female foetus in the womb itself. After birth, the females are discriminated from males and the same continues through out her life cycle, notwithstanding the fact whether she is a daughter, daughter-in-law, wife or mother. A society wherein the status of a woman is not recognized in par with that of man, or where man and woman are not recognized equally, such litigation are likely to continue and the same cannot be prevented or reduced, unless the mind set of people is brought to comprehensive and drastic change and progress through the social, educational, economic changes in the society as a whole. Since, harassment, maltreatment and cruelty against the women are being increased day by day, the legislature thought of,

adopting a new legislation to give protection to the women as a class in their domestic affairs as necessary and the said object is spelled out from the objects contained in the Bill, which I referred earlier. So, at no stretch of imagination it can be concluded that, various measures and protection contemplated in various provisions of the Act, are only for wife or female living in marital relationship with the male partner. In the decision reported in (2011) 3 SCC 650 cited supra, the Apex Court has held that, "no restrictive meaning can be given to expression "relative" nor has said expression been defined to make it specific to males only" and further held that, "Legislature never intended to exclude female relatives of the husband or the male partner from the ambit of complaint that could be made under the provisions of the Act".

22. Considering the object sought to be achieved, as spelled out from the reason and object introduced in the Bill, it is crystal clear that the Bill was introduced, purportedly to give protection to women as a whole in the areas covered by the Act and it is unconstitutional to further classify "woman" to give rigid meaning as 'wife' and limiting various protective measures meant for women, to the wife or daughter-in-law alone, especially when the definition under Section 2(a), "an aggrieved person" does not confine to such category of woman, ie., wife or daughter-in-law alone. Thus, it can be safely concluded that the law making authority never intended to make a further classification among the women and to exclude the class of woman, namely, the wife or daughter-in-law, in fixing the liability, if the aggrieved persons are subjected to domestic violence by such person.

23. As rightly pointed out by the learned Public Prosecutor that, as the Act intended to achieve the object of doing social justice to woman, a beneficial interpretation is required. In the decision reported in AIR 1978 SC 12 cited supra, it has held that:

"xxxxx xxxIt has also to be borne in mind in this connection that in interpreting provisions of beneficial pieces of legislation like the one in hand which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely fall within the purview of Art. 42 of the Constitution, the beneficent rule of construction which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child; preserve her efficiency as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court".

Similarly, in another decision reported in AIR 1957 S.C. 907 (Y 44 C 135 Dec.) cited supra, in the third paragraph of para (6) it is observed that,

"However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the Courts to

adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the Courts would prefer to adopt the latter construction."

As the real object of the Act is to give protection to the women, connected with domestic violence and related issues, the term "respondent" has to be interpreted, so as to extend the protection to all the victims of domestic violence who are females, irrespective of the fact whether such domestic violence is meted out by the wife, or female living in a relationship in the nature of a marriage or step mother, particularly when the definition "aggrieved person" contained in Section 2(a) is not confined to wife or daughter-in-law. I am of the firm view that, it is unreasonable to restrict the protection and privilege to a woman, considering her marital status alone or till she become a mother-in-law. According to me, as long as a woman satisfies with the other conditions contemplated by the Act, she is entitled to get the protection, as envisaged therein, irrespective of the fact whether she is a wife or mother-in-law and if she commits any domestic violence, she is liable to be prosecuted for such guilt of domestic violence as well, because, todays "wives" are tomorrow's "mothers-in-law". Following the dictum laid down in the above authorities and in the light of the above discussion, any interpretation giving a restrictive meaning to the definition of "respondent" under section 2(q), that a complaint can be filed only against a relative of the husband or the male partner, excluding the wife or daughter in law, is quite unreasonable and against the Constitutional Mandates that are enshrined in Articles 14 and 15 of the Constitution of India. So, the resultant conclusion is that, a wife or daughter-in-law or a female living in a relationship in the nature of a marriage, will also come under the definition of "respondent" contained in Section 2(q).

In the result, the above M.C. is dismissed upholding Annexure-E order dated 15.12.2012 in C.M.P.No.4687/10 in M.C.No.76/09 on the file of the court of Additional Chief Magistrate.

RELATIONSHIPS QUALIFYING WOMEN FOR PROTECTION UNDER PWDVA

Marriage

Chanmuniya v. Virendra Kumar Singh Kushwaha, 2011 Cr.L.J. 96 (Supreme Court)(7.10.2010)

Judges: G.S. Singhvi and Asok Kumar Ganguly

Judgment

1. Leave granted.

2. One Sarju Singh Kushwaha had two sons, Ram Saran (elder son) and Virendra Kumar Singh Kushwaha (younger son and the first respondent). The appellant, Chanmuniya, was married to Ram Saran and had 2 daughters-Asha, the first one, was born in 1988 and Usha, the second daughter, was born in 1990. Ram Saran died on 7.03.1992.

3. Thereafter, the appellant contended that she was married off to the first respondent as per the customs and usages prevalent in the Kushwaha community in 1996. The custom allegedly was that after the death of the husband, the widow was married off to the younger brother of the husband. The appellant was married off in accordance with the local custom of Katha and Sindur. The appellant contended that she and the first respondent were living together as husband and wife and had discharged all marital obligations towards each other. The appellant further contended that after some time the first respondent started harassing and torturing the appellant, stopped her maintenance and also refused to discharge his marital obligations towards her.

4. As a result, she initiated proceedings under Section 125 of the Cr.P.C. for maintenance (No. 20/1997) before the 1st Additional Civil Judge, Mohamadabad, Ghazipur. This proceeding is pending.

5. She also filed a suit (No. 42/1998) for the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 in the Court of 1st Additional District Judge, Ghazipur.

6. The Trial Court decreed the suit for restitution of conjugal rights in favour of the appellant on 3.1.2004 as it was of the opinion that the appellant had remarried the first respondent after the death of Ram Saran, and the first respondent had deserted the appellant thereafter. Thus, it directed the first respondent to live with the appellant and perform his marital duties.

7. Hence, the first respondent preferred a first appeal (No. 110/2004) under Section 28 of the Hindu Marriage Act. The main issue in appeal was whether there was any evidence on record to prove that the appellant was the legally wedded wife of the first respondent. The High Court in its judgment dated 28.11.2007 was of the opinion that the essentials

of a valid Hindu marriage, as required under Section 7 of the Hindu Marriage Act, had not been performed between the first respondent and the appellant and held that the first respondent was not the husband of the appellant and thus reversed the findings of the Trial Court.

8. Aggrieved by the aforesaid judgment of the High Court, the appellant sought a review of the order dated 28.11.2007. The review petition was dismissed on 23.01.2009 on the ground that there was no error apparent on the face of the record of the judgment dated 28.11.2007.

9. Hence, the appellant approached this Court by way of a special leave petition against the impugned orders dated 28.11.2007 and 23.01.2009.

10. One of the major issues which cropped up in the present case is whether or not presumption of a marriage arises when parties live together for a long time, thus giving rise to a claim of maintenance under Section 125 Cr.P.C. In other words, the question is what is meant by 'wife' under Section 125 of Criminal Procedure Code especially having regard to explanation under Clause (b) of the Section.

11. Thus, the question that arises is whether a man and woman living together for a long time, even without a valid marriage, would raise as in the present case, a presumption of a valid marriage entitling such a woman to maintenance.

12. On the question of presumption of marriage, we may usefully refer to a decision of the House of Lords rendered in the case of Lousia Adelaide Piers and Florence A.M. De Kerriguen v. Sir Henry Samuel Piers(1849) II HLC 331, in which their Lordships observed that the question of validity of a marriage cannot be tried like any other issue of fact independent of presumption. The Court held that law will presume in favour of marriage and such presumption could only be rebutted by strong and satisfactory evidence.

13. In Lieutenant C.W. Campbell v. John A.G. Campbell (1867) Law Rep. 2 HL 269, also known as the Breadalbane case, the House of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. This may be evidenced by habit and repute. In the instant case both the appellant and the first respondent were related and lived in the same house and by a social custom were treated as husband and wife. Their marriage was solemnized with Katha and Sindur. Therefore, following the ratio of the decisions of the House of Lords, this Court thinks there is a very strong presumption in favour of marriage. The House of Lords again observed in Captain De Thoren v. The Attorney-General (1876) 1 AC 686, that the presumption of marriage is much stronger than a presumption in regard to other facts.

14. Again in Sastry Velaider Aronegary and his wife v. Sembecutty Viagalie and Ors. (1881) 6 AC 364, it was held that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

15. In India, the same principles have been followed in the case of A. Dinohamy v. W.L. Balahamy AIR 1927 P.C. 185, in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

16. In Mohabbat Ali Khan v. Muhammad Ibrahim Khan and Ors. AIR 1929 PC 135, the Privy Council has laid down that the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for number of years.

17. In the case of Gokal Chand v. Parvin Kumari AIR 1952 SC 231, this Court held that continuous co- habitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long co- habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them.

18. Further, in the case of Badri Prasad v. Dy. Director of Consolidation and Ors., (1978) 3 SCC 527, the Supreme Court held that a strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife. Although the presumption is rebuttable, a heavy burden lies on him who seeks to deprive the relationship of legal origin.

19. Again, in Tulsa and Ors. v. Durghatiya and Ors., 2008 (4) SCC 520, this Court held that where the partners lived together for a long spell as husband and wife, a presumption would arise in favour of a valid wedlock.

20. Sir James Fitz Stephen, who piloted the Criminal Procedure Code of 1872, a legal member of Viceroy's Council, described the object of Section 125 of the Code (it was Section 536 in 1872 Code) as a mode of preventing vagrancy or at least preventing its consequences.

21. Then came the 1898 Code in which the same provision was in Chapter XXXVI Section 488 of the Code. The exact provision of Section 488(1) of the 1898 Code runs as follows:

> 488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding five

hundred rupees in the whole as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

22. In Jagir Kaur and Anr. v. Jaswant Singh, AIR 1963 SC 1521, the Supreme Court observed with respect to Chapter XXXVI of Cr.P.C. of 1898 that provisions for maintenance of wives and children intend to serve a social purpose. Section 488 prescribes forums for a proceeding to enable a deserted wife or a helpless child, legitimate or illegitimate, to get urgent relief.

23. In Nanak Chand v. Chandra Kishore Aggarwal and Ors., 1969 (3) SCC 802, the Supreme Court, discussing Section 488 of the older Cr.P.C, virtually came to the same conclusion that Section 488 provides a summary remedy and is applicable to all persons belonging to any religion and has no relationship with the personal law of the parties.

24. In Captain Ramesh Chander Kaushal v. Veena Kaushal and Ors., AIR 1978 SC 1807, this Court held that Section 125 is a reincarnation of Section 488 of the Cr.P.C. of 1898 except for the fact that parents have also been brought into the category of persons entitled for maintenance. It observed that this provision is a measure of social justice specially enacted to protect, and inhibit neglect of women, children, old and infirm and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. Speaking for the Bench Justice Krishna Iyer observed that- "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 is 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- the cause of the derelicts.» (Para 9 on pages 1809-10)

25. Again in Vimala (K) v. 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....

26. Thus, in those cases where a man, who lived with a woman for a long time and even though they may not have undergone legal necessities of a valid marriage, should be made

liable to pay the woman maintenance if he deserts her. The man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a de facto marriage without undertaking the duties and obligations. Any other interpretation would lead the woman to vagrancy and destitution, which the provision of maintenance in Section 125 is meant to prevent.

27. The Committee on Reforms of Criminal Justice System, headed by Dr. Justice V.S. Malimath, in its report of 2003 opined that evidence regarding a man and woman living together for a reasonably long period should be sufficient to draw the presumption that the marriage was performed according to the customary rites of the parties. Thus, it recommended that the word ‹wife› in Section 125 Cr.P.C. should be amended to include a woman who was living with the man like his wife for a reasonably long period.

28. The Constitution Bench of this Court in Mohammad Ahmed Khan v. Shah Bano Begum and Ors. reported in (1985) 2 SCC 556, considering the provision of Section 125 of the 1973 Code, opined that the said provision is truly secular in character and is different from the personal law of the parties. The Court further held that such provisions are essentially of a prophylactic character and cut across the barriers of religion. The Court further held that the liability imposed by Section 125 to maintain close relatives, who are indigent, is founded upon the individual›s obligation to the society to prevent vagrancy and destitution.

29. In a subsequent decision, in Dwarika Prasad Satpathy v. Bidyut Prava Dixit and Anr., (1999) 7 SCC 675, this Court held that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 of IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance. The learned Judges held that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached. (See para 9)

30. However, striking a different note, in Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and Anr. reported in AIR 1988 SC 644, a two-Judge Bench of this Court held that an attempt to exclude altogether personal law of the parties in proceedings under Section 125 is improper. (See para 6). The learned Judges also held (paras 4 & 8) that the expression 'wife' in Section 125 of the Code should be interpreted to mean only a legally wedded wife.

31. Again in a subsequent decision of this Court in Savitaben Somabhat Bhatiya v. State of Gujarat and Ors. reported in AIR 2005 SC 1809, this Court held however desirable it may be to take note of 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. While coming to the aforesaid finding, the learned Judges relied on the decision in the Yamunabai case (supra).

32. It is, therefore, clear from what has been discussed above that there is a divergence of judicial opinion on the interpretation of the word ‹wife› in Section 125.

33. We are inclined to take a broad view of the definition of 'wife' having regard to the social object of Section 125 in the Code of 1973. However, sitting in a two-Judge Bench, we cannot, we are afraid, take a view contrary to the views expressed in the abovementioned two cases.

34. However, law in America has proceeded on a slightly different basis. The social obligation of a man entering into a live-in relationship with another woman, without the formalities of a marriage, came up for consideration in the American courts in the leading case of Marvin v. Marvin (1976) 18 Cal. 660. In that context, a new expression of 'palimony' has been coined, which is a combination of 'pal' and 'alimony', by the famous divorce lawyer in the said case, Mr. Marvin Mitchelson.

35. In the Marvin case (supra), the plaintiff, Michelle Marvin, alleged that she and Lee Marvin entered into an oral agreement which provided that while "the parties lived together they would combine their efforts and earnings and would share equally any and all property accumulated as a result of their efforts whether individual or combined." The parties allegedly further agreed that Michelle would "render her services as a companion, homemaker, housekeeper and cook." Michelle sought a judicial declaration of her contract and property rights, and sought to impose a constructive trust upon one half of the property acquired during the course of the relationship. The Supreme Court of California held as follows:

(1) The provisions of the Family Law Act do not govern the distribution of property acquired during a non-marital relationship; such a relationship remains subject solely to judicial decision.

(2) The courts should enforce express contracts between non-marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services.

(3) In the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts, when warranted by the facts of the case.

36. Though in our country, law has not developed on the lines of the Marvin case (supra), but our social context also is fast changing, of which cognizance has to be taken by Courts in interpreting a statutory provision which has a pronounced social content like Section 125 of the Code of 1973.

37. We think the larger Bench may consider also the provisions of the Protection of Women from Domestic Violence Act, 2005. This Act assigns a very broad and expansive definition to the term "domestic abuse" to include within its purview even economic abuse. "Economic abuse" has been defined very broadly in sub-explanation (iv) to explanation I of Section 3 of the said Act to include deprivation of financial and economic resources.

38. Further, Section 20 of the Act allows the Magistrate to direct the respondent to pay monetary relief to the aggrieved person, who is the harassed woman, for expenses incurred and losses suffered by her, which may include, but is not limited to, maintenance under Section 125 Cr.P.C. [Section 20(1)(d)].

39. Section 22 of the Act confers upon the Magistrate, the power to award compensation to the aggrieved person, in addition to other reliefs granted under the Act.

40. In terms of Section 26 of the Act, these reliefs mentioned above can be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent.

41. Most significantly, the Act gives a very wide interpretation to the term ‹domestic relationship› as to take it outside the confines of a marital relationship, and even includes live-in relationships in the nature of marriage within the definition of ‹domestic relationship› under Section 2(f) of the Act.

42. Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act.

43. We are thus of the opinion that if the abovementioned monetary relief and compensation can be awarded in cases of live-in relationships under the Act of 2005, they should also be allowed in a proceedings under Section 125 of Cr.P.C. It seems to us that the same view is confirmed by Section 26 of the said Act of 2005.

44. We believe that in light of the constant change in social attitudes and values, which have been incorporated into the forward-looking Act of 2005, the same needs to be considered with respect to Section 125 of Cr.P.C. and accordingly, a broad interpretation of the same should be taken.

45. We, therefore, request the Hon'ble Chief Justice to refer the following, amongst other, questions to be decided by a larger Bench. According to us, the questions are:

1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them

and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provision of Domestic Violence Act, 2005?

3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?

46. We are of the opinion that a broad and expansive interpretation should be given to the term 'wife' to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a pre-condition for maintenance under Section 125 of the Cr.P.C., so as to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125.

47. We also believe that such an interpretation would be a just application of the principles enshrined in the Preamble to our Constitution, namely, social justice and upholding the dignity of the individual.

Deoki Panjhiyara v. Shashi Bhusan Narayan Azad, I (2013) DMC 18 (SC), AIR 2013 SC 346, 2013 Cr.L.J 684 (Supreme Court)(12.12.2012)

Judge: Markandey Katju

Judgment

1. Leave granted.

2. The appellant, who was married to the respondent in the year 2006, had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act') seeking certain reliefs including damages and maintenance. During the pendency of the aforesaid application the appellant filed an application for interim maintenance which was granted by the learned trial court on 13.02.2008 at the rate of ₹ 2000/- per month. The order of the learned trial court was affirmed by the learned Sessions Judge on 09.07.2008. As against the aforesaid order, the respondent (husband) filed a Writ Petition before the High Court of Jharkhand.

3. While the Writ Petition was pending, the respondent sought a recall of the order dated 13.02.2008 on the ground that he could subsequently come to know that his marriage

with the appellant was void on the ground that at the time of the said marriage the appellant was already married to one Rohit Kumar Mishra. In support, the respondent – husband had placed before the learned trial court the certificate of marriage dated 18.04.2003 between the appellant and the said Rohit Kumar Mishra issued by the competent authority under Section 13 of the Special Marriage Act, 1954 (hereinafter referred to as 'the Act of 1954').

4. The learned trial court by order dated 7.8.2009 rejected the aforesaid application on the ground that notwithstanding the certificate issued under Section 13 of the Act of 1954, proof of existence of the conditions enumerated in Section 15 of the Act would still required to be adduced and only thereafter the certificate issued under Section 13 of the Act can be held to be valid.

5. The aforesaid order dated 07.08.2009 was challenged by the respondent-husband in a revision application before the High Court which was heard alongwith the writ petition filed earlier. Both the cases were disposed of by the impugned common order dated 09.04.2010 holding that the marriage certificate dated 18.04.2003 issued under Section 13 of the Act of 1954 was conclusive proof of the first marriage of the appellant with one Rohit Kumar Mishra which had the effect of rendering the marriage between the appellant and the respondent null and void. Accordingly, it was held that as the appellant was not the legally wedded wife of the respondent she was not entitled to maintenance granted by the learned courts below. It is against the aforesaid order of the High Court that the present appeals have been filed by the appellant – wife.

6. We have heard Shri Gaurav Agarwal, learned counsel for the appellant and Shri Mahesh Tiwari, learned counsel for the respondent.

7. Learned counsel for the appellant has strenuously urged that the allegation of the earlier marriage between the appellant and Rohit Kumar Mishra had been denied by the appellant at all stages and the said fact is not substantiated only by the Marriage Certificate dated 18.04.2003. Even assuming the marriage between the appellant and the respondent to be void, the parties having lived together, a relationship in the nature of marriage had existed which will entitle the appellant to claim and receive maintenance under the DV Act, 2005. Placing the legislative history leading to the aforesaid enactment, it is urged that in the Bill placed before the Parliament i.e. Protection from Domestic Violence Bill, 2002 an "aggrieved person" and "relative" was, initially, defined in the following terms:

"Section 2……

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

(b)… (c)…

(d)….

(e)….

(f)…

(g)…

(h)….

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

Thereafter, the different clauses of the Bill were considered by a Parliamentary Standing Committee and recommendations were made that having regard to the object sought to be achieved by the proposed legislation, namely, to protect women from domestic violence and exploitation, clause (2)(i) defining "relative" may be suitably amended to include women who have been living in relationship akin to marriages as well as in marriages considered invalid by law. Pursuant to the aforesaid recommendation made by the Standing Committee, in place of the expression "relative" appearing in clause 2(i) of the Bill, the expression "domestic relationship" came be included in clause (f) of Section 2 of the Act. Learned counsel by referring to the definition of "aggrieved person" and "domestic relationship" as appearing in the DV Act, 2005 has urged that the legislative intent to include women, living in marriages subsequently found to be illegal or even in relationships resembling a marriage, within the protective umbrella of the DV Act is absolutely clear and the same must be given its full effect. It is submitted that having regard to the above even if the marriage of the appellant and the respondent was void on account of the previous marriage of the appellant, the said fact, by itself, will not disentitle the appellant to seek maintenance and other reliefs under the DV Act, 2005.

8. Before proceeding further it will be appropriate to notice, at this stage, the definition of the expressions "aggrieved person" and "domestic relationship" appearing in Section 2(a) and (f) of the DV Act, 2005.

"Section 2…..

(a) "aggrieved person" means any women 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;

(b) …… (c) …… d) …… (e) ……

(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."

9. Learned counsel, in all fairness, has also drawn the attention of the court to a decision rendered by a coordinate Bench in D. Velusamy vs. D.Patchaimmal wherein this court had occasion to consider the provisions of Section 2(f) of the DV Act to come to the

conclusion that a "relationship in the nature of marriage" is akin to a common law marriage which requires, in addition to proof of the fact that parties had lived together in a shared household as defined in Section 2(s) of the DV Act, the following conditions to be satisfied:

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……." [Para 33]

10. Learned counsel has, however, pointed out that in Velusamy (supra) the issue was with regard to the meaning of expression "wife" as appearing in Section 125 Cr.P.C. and therefore reference to the provisions of Section 2(f) of the DV Act, 2005 and the conclusions recorded were not required for a decision of the issues arising in the case. Additionally, it has been pointed out that while rendering its opinion in the aforesaid case this Court had no occasion to take into account the deliberations of the Parliamentary Standing Committee on the different clauses of Protection of Women from Domestic Violence Bill, 2002. It is also urged that the equation of the expression "relationship in the nature of marriage" with a common law marriage and the stipulation of the four requirements noticed above is not based on any known or acceptable authority or source of law. Accordingly, it is submitted that the scope and expanse of the expression "relationship in the nature of marriage" is open for consideration by us and, at any rate, a reference of the said question to a larger bench would be justified.

11. Opposing the contentions advanced on behalf of the appellant learned counsel for the respondent – husband has submitted that the object behind insertion of the expression "relationship in the nature of marriage" in Section 2(f) of the DV Act is to protect women who have been misled into marriages by the male spouse by concealment of the factum of the earlier marriage of the husband. The Act is a beneficial piece of legislation which confers protection of different kinds to women who have been exploited or misled into a marriage. Learned counsel has pointed out that in the present case the situation is, however, otherwise. From the marriage certificate dated 18.04.2003 it is clear that the appellant was already married to one Rohit Kumar Mishra which fact was known to her but not to the respondent. The second marriage which is void and also gives rise to a bigamous relationship was voluntarily entered into by the appellant without the knowledge of the husband. Therefore, the appellant is not entitled to any of the benefits under the DV Act. In fact, grant of maintenance in the present case would amount to conferment of benefit and protection to the wrong doer which would go against the avowed object of the Act.

Learned counsel has also submitted that the conduct of the appellant makes it clear that she had approached the court by suppressing material facts and with unclean hands which disentitles her to any relief either in law or in equity. In this regard the decision of this court in S.P. Changalvaraya Naidu vs. Jagannath and others has been placed before us.

12. Having considered the submissions advanced by the learned counsels for the contesting parties, we are of the view that the questions raised, namely, whether the appellant and the respondent have/had lived together in a shared household after their marriage on 4.12.2006; if the parties have/had lived together whether the same gives rise to relationship in the nature of marriage within the meaning of Section 2(f) of the DV Act, 2005; whether the decision of this Court in Velusamy (supra) is an authoritative pronouncement on the expression "relationship in the nature of marriage" and if so whether the same would require reference to a larger Bench, may all be premature and the same need not be answered for the present. Instead, in the first instance, the matter may be viewed from the perspective indicated below.

13. The Respondent before us had claimed (before the trial court as well as the High Court) that the marriage between him and the appellant solemnised on 4.12.2006, by performance of rituals in accordance with Hindu Law, was void on account of the previous marriage between the appellant with one Rohit Kumar Mishra. In support thereof, the respondent relied on a marriage certificate dated 18.4.2003 issued under Section 13 of the Special Marriage Act, 1954. Acting solely on the basis of the aforesaid marriage certificate the learned trial court as well as the High Court had proceeded to determine the validity of the marriage between the parties though both the courts were exercising jurisdiction in a proceeding for maintenance. However, till date, the marriage between the parties is yet to be annulled by a competent court. What would be the effect of the above has to be determined first inasmuch as if, under the law, the marriage between the parties still subsists the appellant would continue to be the legally married wife of the respondent so as to be entitled to claim maintenance and other benefits under the DV Act, 2005. Infact, in such a situation there will be no occasion for the Court to consider whether the relationship between the parties is in the nature of a marriage.

14. Admittedly, both the appellant and the respondent are governed by the provisions of the Hindu Marriage Act, 1955. Section 11 of the Hindu Marriage Act makes it clear that a marriage solemnised after the commencement of the Act "shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions so specified in clauses (i), (iv) and (v) of Section 5."

15. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955 this Court in Yamunabai v. Anantrao has taken the view that a marriage covered by Section 11

is void-ipso-jure, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in Yamunabai (supra) there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void.

16. A similar view has been expressed by this Court in a later decision in M.M. Malhotra v. Union of India wherein the view expressed in Yamunabai (supra) was also noticed and reiterated.

17. However, the facts in which the decision in M.M. Malhotra (supra) was rendered would require to be noticed in some detail:

The appellant M.M. Malhotra was, inter alia, charged in a departmental proceeding for contracting a plural marriage. In reply to the charge sheet issued it was pointed out that the allegation of plural marriage was not at all tenable inasmuch as in a suit filed by the appellant (M.M. Malhotra) for a declaration that the respondent (wife) was not his wife on account of her previous marriage to one D.J. Basu the said fact i.e. previous marriage was admitted by the wife leading to a declaration of the invalidity of the marriage between the parties. The opinion of this court in M.M. Malhotra (supra) was, therefore, once again rendered in the situation where there was no dispute with regard to the factum of the earlier marriage of one of the spouses.

18. In the present case, however, the appellant in her pleadings had clearly, categorically and consistently denied that she was married to any person known as Rohit Kumar Mishra. The legitimacy, authenticity and genuineness of the marriage certificate dated 18.4.2003 has also been questioned by the appellant. Though Section 11 of the aforesaid Act gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be understood to be in all situations voluntarily. Situations may arise when recourse to a court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted upon in departure to the normal rule. This, in our view, is the correct ratio of the decision of this Court in Yamunabai (supra) and M.M. Malhotra (supra). In this regard, we may take note of a recent decision rendered by this Court in A. Subash Babu v. State of Andhra Pradesh & Anr. while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198 (1)(c) of the Code of Criminal Procedure to maintain a complaint alleging commission of offences under section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

"Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband."

19. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a "relationship in the nature of marriage" would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.

20. Our above conclusion would render consideration of any of the other issues raised wholly unnecessary and academic. Such an exercise must surely be avoided.

21. We, accordingly, hold that the interference made by the High Court with the grant of maintenance in favour of the appellant was not at all justified. Accordingly, the order dated 09.04.2010 passed by the High Court is set aside and the present appeals, are allowed.

Ayushman Panday v. State of Jharkhand, III (2011) DMC 618 (Jharkand H.C.)(28.03.2011)

Judge: D.K. Sinha

Order

7/ 28 -03-2011 The petitioner has invoked the inherent jurisdiction of this Court under section 482 Code of Criminal Procedure for quashment of the order dated 6.10.2010 passed by the SDJM Ranchi in Complaint Case No. 772 of 2010 by which preliminary objection raised on the point of maintainability by the petitioner accused.

2. The prosecution story in short as per the complaint petition filed by the complainant-opposite party No.2 on 6.5.2010 in the court of CJM Ranchi under section 12 of the Protection of Women from Domestic Violence Act, 2005 was that she was a Muslim woman by faith whereas the petitioner Ayushman Pandey was a Brahmin (Hindu) and both solemnized love marriage on 8.12.2008 itself before the Marriage Officer under the Act XLIII of 1954 at Neturis Block, Purulia (West Bengal), to which a certificate of marriage was granted to both spouse. It was alleged that the husband- petitioner started torturing since the very day of marriage over telephone and in person in connivance with his relatives and coerced her as well as her father to deliver ₹ Twenty lakhs to enable him to set up his own consultancy service. The father of the complainant was holding a senior managerial post in the State Bank of India. She alleged that her father was picked up from the bank in which he was working at Ramgarh and was put under confinement illegally at Jamshedpur by putting pressure to impress upon the complainant to agree for annulment of marriage for the reasons that the parents of Ayushman Pandey had selected another girl of their own caste which could fetch a sum of ₹ One crore as dowry. The petitioner was compelled to leave Jamshedpur where she was undergoing intership at the Mahatma Gandhi Memorial Medical College, and was keen to get employment in the said hospital as a House Surgeon. Humiliation, insults and threats to cause hurt continued to the complainant by the accused petitioner.

It was further stated that such threats were made every day in person or telephone till 31st March, 2009 when he left for Singapore to work and to pursue higher studies at S.P. Jain Centre for management. The petitioner failed to take care of the complainant, misutilized his position and had been constantly inflicting mental and physical abuses on the complainant and thereby he committed an offence as described under section 3 of the Act, as such liable for punishment. She claimed relief under sections 18 to 22 of the Act, particularly for monetary relief, residence and protection as also compensation. She

further requested that interim ex-parte relief may be granted to her under the provision of Section 23 of the Act.

3. The complainant sought for her residence of at least two bedrooms flat near her parental house at P.P Compound with security guard for her protection and also sought for ₹ 23,000/- to meet out personal expenses with one time compensation to the extent of ₹ 8,60,000/- under the provision of section 19 of the said Act .She further demanded ₹ 50 lakhs as compensation under section 22 of the said Act and additional payment of ₹ 82,000/- by the respondent as monitory relief under section 20 of the Act. Enquiry was initiated on the complaint of the complainant by the Protection Officer.

4. The learned counsel appearing for the petitioner submitted that the acknowledgement of filing of Title suit No. 35 of 2009 by the husband-petitioner would clearly indicate that complaint filed by the complainant was a counter blast to the suit which was filed on 30.3. 2009 before the Civil Judge (Junior Division) Raghunathpur, Distt. Purulia (W.B) by which the validity of so-called marriage was challenged as she had fraudulently procured marriage certificate. The husband-petitioner had prayed in the suit for annulment of the so-called marriage by passing a decree of nullity. As a matter of fact, signature of the respondent-petitioner was obtained by putting him under intoxication by mixing intoxicant in the cold drink and subsequently the petitioner discovered that his signature was used by the complainant and her friends in procuring marriage certificate illegally from the marriage officer of the Purulia district and for that suit was filed under section 25 of the Special Marriage Act 1954. However,the said suit was transferred to the court of Principal Judge Family Court Ranchi where it was renumbered as M.T.S. No. 156 of 2010.The petitioner appeared in the complaint filed under Protection of Women from Domestic Violence Act, 2005 before the SDJM Ranchi as respondent on 13.9.2010 and filed his preliminary objection on the point of maintainability of the complaint case on the ground that the complaint, which was filed, did not project a prima facie case that she was an aggrieved person as defined in Section 2(a) of the said Act. A rejoinder to the preliminary objection was filed on behalf of the complainant. The learned SDJM rejected the preliminary objection of the petitioner by observing that complaint of the complainant was maintainable.

5. Raising the point of law Mr.Anil Kumar, the learned counsel submitted that the learned SDJM failed to appreciate that the complaint case would be maintainable only if it could reflect a prima facie case in favour of the complainant that she was an aggrieved person in domestic relationship between the complainant and the respondent and fulfilled the requirement of 'shared household'. The petition was rejected merely on the ground of pendency of matrimonial title suit and existence of the marriage certificate which did not draw inference to presume that in the given allegation, an offence could be made

out under the Protection of Women from Domestic Violence Act, 2005. As a matter of fact, the complainant could not be stated to be an aggrieved person as defined under Section 2(a) of the d Act as she never lived with the petitioner-husband in domestic relationship as defined in Section 2(f) or in a shared household as defined in Section 2(s) of the Act, as such, complaint of the complainant was liable to be rejected on the point of maintainability . Mr. Anil Kumar further asserted that it would be evident from perusal of the complaint petition and domestic incident report that neither the marriage of the complainant with the respondent was solemnized according to the customary rites nor the same was consummated at any point of time as the respondent-husband had deserted the complainant soon after registration of the marriage on 8.12.2008 which was registered by playing fraud. The certificate of the marriage was obtained from Purulia district where none of the parties ordinarily resided, an essential ingredient under the provision of Section 25 of the Special Marriage Act.

6. Mr. Delip Zerath, the learned counsel appearing for the O.P. No.2 strongly controverted that marriage between parties cannot be denied which finds support from the admission of the husband - petitioner that he filed petition under section 25 of the Special Marriage Act for annulment of the marriage but no judgment has been passed and that the matter is still subjudice. Mr. Zerath asserted that unless marriage between the parties is declared nullity it would be presumed that there was a valid marriage under the Special Marriage Act. The report of Protection Officer dated 28.5.2010 would indicate that there was love marriage between the parties and that no money was provided for her maintenance and that she was driven out from her matrimonial home as per column 15 and 17 of the report.

7. Having regard to the facts and circumstances of the case and arguments advanced on behalf of the parties I find that preliminary objection which was raised on behalf of the petitioner-husband on the point of maintainability of the complaint petition filed by the complainant-opposite party no.2 under section 12 of the Protection of Women From Domestic Violence Act, 2005 was turned down by the SDJM Ranchi on the ground that the marriage between the parties was not disputed though same has been challenged under section 25 of the Special Marriage Act and that she was driven out from her matrimonial home and therefore, he found that complaint as brought about by the complainant under section 12 of the said Act was maintainable and the learned counsel appearing for the petitioner failed to satisfy this court so as to call for interference in the order impugned recorded by the SDJM on 6.10.2010 in Complaint Case no. 772 of 2010. There being no merit, this petition is dismissed.

Thanseel v. Sini, WP(C) No. 7450 of 2007 (J) (Kerala H.C.) (06.03.2007)

Judge: R. Basant

Judgment

1. The petitioner is aggrieved by Ext.P6 order passed by the Judicial Magistrate of the First Class, Varkala. Before the learned Magistrate, the respondent herein initiated proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the D.V Act'). She asserted that she was the wife of the petitioner. She asserted that there was domestic violence against her. The respondent prayed for a protection order as also a monetary order under Sections 18and 20 of the D.V Act. The petitioner entered appearance before the learned Magistrate. He raised various contentions. It would appear that the petitioner insisted that certain preliminary points may be decided. The learned Magistrate by the impugned order Ext.P6 considered some of the objections raised and ruled that the petition was liable to be proceeded with and appropriate order passed. The objection raised to maintainability was turned down by the learned Magistrate.

2. The petitioner has rushed to this Court with this petition under Article 227 of the Constitution. The petitioner contends that his plea that there was no marriage subsisting was not considered by the learned Magistrate as a preliminary issue. That issue regarding maintainability must have been raised as a preliminary issue and decision rendered on that.

3. I am afraid that this contention cannot be accepted. The learned Magistrate, under the provisions of the D.V Act, is expected to give life to a piece of civil law administered through the structure created under the Code of Criminal Procedure. The nature of the relief which can be granted, the target group to which such relief can be granted, the circumstances under which such relief is to be granted must all impress on the functionaries under the statute the need for expedition in the disposal of a petition filed under Section 12 of the D.V Act. I am unable to agree that the provisions of the D.V Act contemplates different tiers of proceedings in the disposal of a petition under Section 12 of the D.V Act. The request to decide questions as preliminary issues based on disputed facts cannot obviously be entertained by the Magistrate. He has to consider the entire question and give decision as mandated under Section 12(5) of the D.V Act within a period of 60 days from the date of the first hearing. Of course, in an appropriate and exceptional case, where on admitted facts the petition is not maintainable, the Court will not be without jurisdiction to decide the issue of maintainability. Here the dispute raised is about subsistence

or not of marriage. That question would certainly call for evidence to be adduced. I am certainly of the opinion that the learned Magistrate committed no error in not accepting the request of the petitioner to decide that question as a preliminary issue. In fact the impugned order does not at all show that the said question was raised when the objection to maintainability was canvassed before the learned Magistrate. Be that as it may, I am satisfied that there is absolutely no necessity for this Court to invoke the powers under Article 227 of the Constitution or Section 482 Cr.P.C. I would observe that it was not necessary for the learned Magistrate even to consider the question of maintainability as a preliminary issue as done by him in Ext.P6. I am satisfied that the learned Magistrate must consider all contentions raised and dispose of the application under Section 12 of the D.V Act as expeditiously as possible - at any rate, within the stipulated period of 60 days.

4. This Writ Petition is, in these circumstances, dismissed with a direction to the learned Magistrate to dispose of the application under Section 12 of the D.V Act expeditiously. The Registry shall communicate this order to the learned Magistrate forthwith.

Relationships in the nature of marriage and live in relationships

Velusamy v. Patchaiammal, II (2010) DMC 677 (SC), 2011 Cr.L.J. 320, AIR 2011 SC 479 (Supreme Court) (21.10.2010)

Judges: Markandey Katju

Judgment

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 ₹ 10000/- per month. Hence it was prayed that the respondent (appellant herein) be directed to pay ₹ 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 marriage 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.

Indra Sarma v. V.K.V. Sarma, AIR 2014 SC 309, III (2013) DMC 830 (Supreme Court) (26.11.2013)

See page 116 for full text of judgment.

Manda R. Thaore v. Ramaji Ghanshyam Thaore, Criminal Revision Application No. 317/2006 (Bombay H.C.) (20.04.2010)

Judge: A.B. Chaudhari

Judgment

1. Being aggrieved by the judgment and order dated 9.8.2006, passed by the Family Court No. 4, Nagpur passed in Petition No. E - 154/2005, dismissing the petition filed by the revision applicant wife for grant of maintenance from the respondent -husband, the present revision application was filed.

2. In support of the revision application, learned Counsel or the applicant vehemently argued that the present applicant is the first legally married wife of the respondent - husband and there is admission to that effect given by Ramaji the husband. Admission being the best piece of evidence, the Family Court could not have ignored the same as has been done by it and therefore, holding the applicant to be first legally wedded wife she should be granted maintenance. Learned Counsel for the applicant then invited my attention to the finding recorded by the Family Court that the applicant should be allowed maintenance @ ₹ 1,000/- per month from the amount of pension of ₹ 3,000/- p.m. earned by the respondent after his retirement. According to her, having recorded this finding, the Family Court should not have dismissed her claim for maintenance.

3. Per contra, learned Counsel for the respondent - husband opposed the revision application and argued that the applicant was the second wife in the absence of any divorce from the first wife Prabha and therefore, in the light of the decision of the Supreme Court in the case of Smt. Yamunabai Anantrao Adhay v. Anantrao Shivram Adhav reported in AIR 1988 Supreme Court 644 and other decisions of the Supreme Court, second wife is not entitled to maintenance since the second marriage is nullity and it is settled under Section 125 of the Code of Criminal Procedure, maintenance can be awarded only to legally wedded wife and therefore, no fault can be found out with the Family Court judgment, refusing to award maintenance to the applicant.

4. I have heard learned Counsel for the rival parties and I have also gone through the evidence as well as judgment recoded by the Family Court. At the outset, I find that the Family court has carefully discussed the entire evidence oral as well as documentary. The Family Court has recorded a finding of fact that the first marriage of the respondent took place with Prabha way back in the year 1965 and that is why the children born out of the said wedlock were born on 1.7.1966 and 6.6.1968. The Family Court categorically found that it is true that the respondent - husband treated applicant - Manda as his wife but fact remains that she cannot be said to be legally wedded wife in view of the existence of marriage with Prabha way back in the year 1965 and the children born out of the said wedlock, who were eventually married. As against that the marriage with applicant took place somewhere in the year 1983 and the children were born thereafter on 10.8.1984 and 1.10.1986. These findings are based on oral as well as documentary evidence and instead of quoting the evidence etc., I would prefer to quote paragraph Nos. 8 to 10 from the judgment of the Family Court as under.

8. The respondent examined himself vide Exh.34. According to him, his marriage with one Prabhabai has been taken place 40 years back. He has three daughters from Prabha i.e. Sulkshnana, Ranjana, Vandana. All her daughters are married. The respondent produced the marriage card of Pradnya which at Exh.35. From this marriage card, it is seen that the marriage between the Yogesh and Pradnya has taken place on 16-5-04 at Nagpur. The respondent has been as a father of the said Pradnya. The respondent also produced school living certificate of Pradnya vide Exh.36. From this school living certificate, it is seen that Pradnya born on 1-10-86. Her father has been shown as Ramaji Thaore. The respondent produced copies of identity card of election commission of India vide Exh.37 to 38. Exh.37 is identity card of respondent while Exh.38 identity card of Prabha. The respondent has been shown as her husband. The respondent also produced copy of the ration card in the name of Prabha. In this card, the respondent has been shown as her husband. The Exh.40 is the copy of school living certificate of Sulakshana. The respondent has been shown as her father. Her date of birth is shown as 1-7-66. Exh 41 is copy of school living certificate Ranjana. Her date of birth is shown as 6-6-68. The respondent has been shown

as her father. Exh.42 is copy of school living certificate of Vandana. The respondent has been shown as her father. The date of birth is shown as 19-2-82. Exh. 44 is the wedding card of Prafulla. The respondent has been shown as his father while Prabhabai shown as his mother in this wedding card.

9. According to the respondent Ramaji (Exh 34) when he was serving at Selsura, Distt. Wardha, the petitioner used to wash utensils in his house. Hence, physical relations established between them. Out of this relations, they have one son namely Prafulla. Now, Prafulla is married. In the cross examination, the respondent admitted that the petitioner was living with him like his wife. Out of this relationship, they have one son and one daughter. Later on, he married with Prabha.

10.It is to be noted that from the documentary evidence, it is clear that the children of Prabha are elder than the children of the petitioner. The dates of birth of children Prafull and Pradnya are 10-8-84 and 1-10-86, while the dates of birth of children of Prabha are - Sulakshana 1-7-66, Ranjana 6-6-68 and Vandana 19-2-82. Therefore, the admission of the respondent Ramaji (Exh 34) that after the birth of son and daughter of the petitioner, he married with Prabha is a stray admission. Hence, this admission cannot be considered.

5. In the light of the above findings, to my mind, it is clear that the respondent - husband has treated the applicant - Manda as if she was his wife but then it is amply established on record that the first marriage of respondent had taken place with Prabha way back in the year 1965 and there is no evidence to show from the applicant - Manda that the respondent - husband had divorced Prabha and had married thereafter with Manda. It is no doubt true that respondent - husband had cheated the applicant - Manda and had kept sexual relationship with her resulting in the birth of two children but then as has been held by the Hon'ble Supreme Court, no estoppel can operate against the Law and therefore, despite holding that there has been close relationship between applicant and respondent and he treated her like wife and produced children, unfortunately, this Court cannot help applicant - Manda for providing her maintenance. It is for some other authority to take care of the situation in such type of unfortunate cases as this Court is unable to do anything in the matter. However, this is a fit case for the applicant - Manda to have recourse to the provisions of the new beneficial Act, namely, the Protection of Women From Domestic Violence Act, 2005 and proceed against the respondent - husband under the said Act for claiming accommodation, maintenance etc. etc.

6. In view of the peculiar facts of the case and the cheating made by the respondent, this is a fit case for awarding suitable compensatory costs to the applicant - wife with a view to help her in prosecuting the respondent in the appropriate Court under the Protection of Women From Domestic Violence Act. In the result, I make the following order.

Order

(i) Criminal Revision Application No. 317/2006 is dismissed.

(ii) Respondent is directed to pay costs of ₹ 15,000/- (Rupees Fifteen Thousand Only) to the applicant - Manda within a period of four weeks from today, failing which the same shall be recovered by the Family Court by adopting procedure for recovery of fines.

Second wives

Pratibha v. Bapusaheb s/o Bhimrao Andhare, I (2013) DMC 530 (Bombay H.C.) (2.11.2012)

Judge: T.V. Nalawade

Judgment

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The petition is filed under Articles 226 and 227 of the Constitution of India, to challenge the judgment and order of Criminal Appeal No. 35/2009, which was pending in the Court of Additional Sessions Judge, Osmanabad. The appeal challenging the order made by J.M.F.C., Bhoom in Criminal Mis. Application No. C 141/2008 filed under section 12 of the Domestic Violence Act, 2005 [hereinafter referred as the "Act" for short] is allowed by the Sessions Court. The protection order and maintenance order made by J.M.F.C. in favour of the petitioner are set aside by the Sessions Court.

3. It is the case of the petitioner that she is the second wife of respondent. She cohabited with respondent for 4-5 years after the marriage in his house, where he was living with first wife. It is her case that the respondent and his first wife drove her out of the matrimonial house on 1.11.2007 after giving severe illtreatment to her. It is her case that, respondent was asking her to bring money and gold ornaments from her parents and was compelling her to do hard labour work. It is her case that she was mentally and physically harassed by the respondent and his first wife and they were demanding ₹ 50,000/- from her parents for purchasing the motorcycle.

It is the case of wife that she has no source of income and she is unable to maintain herself and the husband has refused and neglected to maintain her. It is her case that she is living in a rented house. She had claimed relief like protection order, allowance for making payment of rent and compensation amount. It is her case that the husband is in a position to give such allowance as he owns 20 acres of agricultural land and as he is in service.

4. The respondent has denied the relationship. He has denied that there was cohabitation with the petitioner. He has admitted that he is in service. It is the case of respondent that due to the contention of the petitioner that she is the second wife, the proceeding under section 12 of the Act is not tenable.

5. Before J.M.F.C. the petitioner examined herself, her father, one priest of marriage and one Chagan to give evidence on the factum of marriage. She has examined one Dr. Yadav to show that the respondent had taken her to the dispensary of this lady doctor for medical check up and there was the cohabitation between her and the respondent.

6. The respondent did not examine himself to give evidence in rebuttal. No evidence at all is given in defence by the present respondent. The tenor of cross examination of the witnesses shows that the respondent has no issue from first wife. The tenor shows that the petitioner is a relative of respondent and defence is taken that the petitioner and her father were insisting the respondent to perform marriage with the petitioner as the respondent had no issue from first wife. From the evidence given, it can be said that the petitioner also did not conceive, though there was cohabitation of 4-5 years.

7. The evidence of Dr. Yadav, Gynecologist, examined by the petitioner shows that the respondent had taken the petitioner to this lady doctor for medical check up. The circumstance that the respondent is not having any issue from the first wife needs to be kept in mind while appreciating the evidence given against him. There was no reason for the lady doctor to create false record of case papers or to give false evidence in favour of the present petitioner. The proceeding under section 12 of the Act needs to be decided in summary manner and so the Court should look for the nature and extent of proof accordingly.

8. The petitioner has given evidence that her marriage with the respondent was performed on 20.11.1999. She has deposed that there was the total cohabitation of around 6 years and during last 2 years of the cohabitation, illtreatment was given to her. She has deposed that she cohabited with the respondent in the same house, where the first wife of the respondent was living. She has given evidence that the respondent was asking her to bring ₹ 50,000/- from her parents as he wanted to purchase a motorcycle. She has deposed that the respondent was compelling her to do hard work in the field and he was harassing her mentally also. She has given evidence that as the demand of money was not met with, illtreatment was given to her and so she is living separate in a rented room. The evidence is given about filing of a case for offence punishable under section 498-A of Indian Penal Code also.

9. Masu, father of petitioner, has given evidence that the respondent married with the petitioner as he had no issue from the first wife. He has given evidence that the first wife of respondent had given consent for this second marriage of the respondent and all rites and customs were followed and ceremonies were performed at the time of marriage. He

has deposed that illtreatment was started to the petitioner as she also did not conceive after many years of the marriage. He has given evidence that the respondent then started making demand of money and then respondent deserted petitioner.

10. Chagan Andhare is resident of village of respondent. He has given evidence on marriage between petitioner and respondent and also on the cohabitation. Nothing is brought on the record to show that he is interested witness or he has some enmity against the respondent.

11. Dilip Kulkarni, the priest, who solemnized the marriage, has given evidence on the ceremonies of the marriage. He has given evidence that all the rites and ceremonies were performed. He is from the village of father of petitioner, but only due to this circumstance, he cannot be disbelieved. The evidence shows that it was known to him that it was the second marriage of respondent.

12. The evidence of Dr. Yadav is more specific and it shows that on 28.6.2001 the respondent and the petitioner had come to her dispensary. In her evidence, the prescription and record of treatment is proved as Exhs. 32 and 33. This record shows that not only the petitioner, but the respondent was also examined. She is a gynecologist and in view of the aforesaid circumstances, her evidence needs to be given due weight. All this evidence has created a probability that the respondent married with the petitioner as he was not having issue from the first wife, but the petitioner did not conceive and so the dispute started. This Court holds that there is sufficient evidence on the factum of marriage and also on the cohabitation between the parties. The denial of the relationship by the husband and the absence of evidence in rebuttal is sufficient to infer that it is a case of domestic violence. It does not look probable that only to get some amount from the respondent, false allegations are made by the petitioner, when respondent was already related with her from prior to the date of marriage.

13. In the cross examination of the petitioner, it is brought on the record that grandmother of petitioner is a sister of respondent. In cross examination of Masu, father of petitioner, it is brought on the record that there is no practice of marriage

between descendants of the same person in his community. However, it needs to be kept in mind that in this region there is a practice of marriage of a person with a relative from maternal side. This Court holds that it was necessary to bring specific admission or evidence on record to show that the marriage between the petitioner and respondent is prohibited due to customs of the community. So not much weight can be given to this isolated admission at least for the present matter.

14. In view of the aforesaid evidence, the J.M.F.C. held that the relationship as required under section 2(f) of the Act is proved. As against this decision, the Sessions Court has relied on the case reported as AIR 2011 SC 479 [D. Velusamy Vs. D. Patchaiammal]. The Sessions

Court has relied on the observations made by the Apex Court at para No. 33, which are as under :

"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'."

15. This Court has gone through the facts of the aforesaid reported case. The petition was filed under section 125 of Criminal Procedure Code and there was the contention of marriage in the year 1986. The husband had taken defence that he had already married with other lady and his marriage had taken place in the year 1980. It is observed by the Apex Court that behind the back of the first wife Lakshmi, the Court ought not to have held that there was no marriage between Lakshmi and the respondent of the proceeding. By making such observation, the matter was remanded back. The Apex Court directed the Court to give finding on points like:-

(i) Whether Lakshmi had married with applicant, the man involved in the proceeding? (ii) Whether the petitioner of 125 proceeding had married with the same person? and (iii) Whether the petitioner had lived with this man in a relationship which was in the nature of marriage? This case was decided by the Apex Court on 21.10.2010.

16. For present petitioner, wife, reliance was placed on the case reported as 2011 CRI.L.J. 1996 Supreme Court [Chanmuniya Vs. Virendra Kumar Singh Kushwaha and Anr.]. This was again a proceeding under section 125 of Cr.P.C. In view of the provision of the Act and change in social attitude and values, the Supreme Court has expressed a view that a broad and expansive interpretation should be given to the term 'wife' used in section 125 of Cr.P.C. It is observed that the term 'wife' need to include even those cases where a man and a woman have been living together as husband and wife for reasonably long period of time and strict proof of marriage should not be pre-condition for granting maintenance under section 125 of Cr.P.C. In view of the previous conflicting decisions of Supreme Court on the interpretation of term 'wife' used in section 125 of Cr.P.C., in this case, the Apex Court made request to Hon'ble the Chief Justice of India to refer few points to larger bench for interpretation of the provision of section 125 of Cr.P.C. having regard to

the provisions of the Act. At paragraph No. 45, there are the points which are referred to larger bench.

"1. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 Cr.P.C?

2. Whether strict proof of marriage is essential for a claim of maintenance under Section 125 Cr.P.C. having regard to the provisions of Domestic Violence Act, 2005?

3. Whether a marriage performed according to customary rites and ceremonies, without strictly fulfilling the requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 Cr.P.C.?"

17. At paragraph Nos. 41 and 42 in the case cited supra following observations are made by the Apex Court.

"41. Most significantly, the Act gives a very wide interpretation to the term 'domestic relationship' as to take it outside the confines of a marital relationship, and even includes live-in relationship in the nature of marriage within the definition of 'domestic relationship' under Section 2 (f) of the Act.

42. Therefore, women in live-in relationships are also entitled to all the reliefs given in the said Act." This case was decided by the Apex Court on 7.10.2010, prior to the decision given in D. Velusamy's case cited supra. In D. Velusamy's case, the previously decided case of Chanmuniya was not shown to the Apex Court probably as the Chanmuniya's case was decided just 15 days prior to the decision of D. Velusamy's case. The case of D. Velusamy's case was decided by other bench of the Apex Court.

18. If the observations made by the Apex Court in the two cases cited supra are considered, it can be said that in both cases (different benches), the Court was considering the effects of provisions of the Act on the right of maintenance, which can be claimed by a lady under section 125 of Cr.P.C. It can also be said that the Apex Court was considering the proceeding filed under section 125 of Cr.P.C. and those cases were not filed under the provisions of the Act. The case in which reference is made to the larger Bench shows that the Apex Court has formed an opinion that the provisions of section 125 of Cr.P.C. also need to be looked into from a different angle now.

19. Section 26 of the Act shows that the reliefs under sections 18 to 22 of the Act can be claimed in 'any legal proceeding' pending before the Civil or Criminal Court. It can be said that in view of this liberty given to the parties, in a proceeding filed under section 125 of Cr.P.C., application can be filed under section 12 of the Act and relief of maintenance can be claimed under the Act. Even if the interpretation of term 'wife' is not changed for

the purpose of section 125 of Cr.P.C. and the claimant in a proceeding filed under section 125 of Cr.P.C. fails to establish that she is 'wife' as required for section 125 of Cr.P.C., she can establish that she falls under the definition of 'domestic relationship' given in section 2 (f) of the Act. In that case, if there is the application filed under section 12 of the Act, she can get the relief of maintenance in view of the provisions of the Act. Thus, at present, in a case like present one, it is sufficient for the claimant to establish her relationship with the respondent as defined in section 2 (f) of the Act. The Sessions Court has picked up some observations made by the Apex Court in the case of D. Velusamy for setting aside the order made by the J.M.F.C. This Court has no hesitation to hold that the Sessions Court has committed error in doing so.

20. The provisions of section 12 (4) and 12 (5) of the Act show that the proceeding is expected to be disposed of as expeditiously as possible and endeavour of Magistrate should be to see that such proceeding is disposed of within 60 days from the date of first hearing. The provision of section 28 of the Act shows that the proceeding for the reliefs under the Act shall be governed by the provisions of Cr.P.C., but section 28 (2) of the Act shows that wide powers are given to Magistrate to lay down its own procedure for disposal of the proceeding filed under section 12 and 23 (2) of the Act. These provisions show that the Magistrate is expected to deal with the proceedings filed under section 12 and 23 of the Act in a summary manner, so that the proceeding is disposed of expeditiously. Considering the purpose behind the Act, which is discussed in the case of Chanmuniya cited supra, the detail examination of rival cases like Civil Court is not expected.

21. For getting the reliefs under sections 18 to 22 of the Act, the application is required to be moved under section 12 of the Act. Such proceeding can be filed by 'aggrieved person'. The definition of the term 'aggrieved person' is given in section 2 (a) of the Act and it is as under :-

"(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; "The term 'domestic relationship' is defined in section 2 (f) of the Act and it is as under :-"(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; "In the definition of 'domestic relationship' it is provided that relationship by marriage or relationship in the nature of marriage need to be proved.

Thus, it can be said that the factum of marriage is not expected to be proved for getting reliefs and the claimant may lead evidence only on the relationship in the nature of

marriage. In view of the procedure, which the Magistrate is expected to follow, this Court holds that such relationship can be proved to the satisfaction of the Magistrate.

22. Sections 2 (a), 3 and 12 of the Act show that for getting the reliefs, the person like the present petitioner is required to prove that she had lived together with the respondent in a 'shared household'. Such evidence is given by petitioner in this case and there is nothing in rebuttal. When the respondent like the husband from the present case denies the relationship itself, it can be used as one of the circumstances against him for the proof of 'domestic violence' as defined in section 3 of the Act. This Court has no hesitation to hold that in the present case, there is evidence on the factum of marriage and there is evidence on cohabitation and so the wife has proved that she falls under section 2 (f) of the Act. Thus, the J.M.F.C. had not committed any error in granting the relief of maintenance allowance to the petitioner. In view of the facts and circumstances of the present case, the observations made in the case of D. Velusamy cited supra cannot come in the way of the petitioner to get relief of maintenance under the Act. No argument was advanced on the quantum of allowance in this proceeding. So, the order.

Order

(i) The petition is allowed. (ii) The judgment and order of Criminal Appeal No. 35/2009 delivered by the Sessions Court, Osmanabad is hereby quashed and set aside. (iii) The judgment and order of J.M.F.C. Bhoom in Criminal Misc. Application No. 141/2008 is hereby restored. (iv) Rule is made absolute in aforesaid terms.

Manda R. Thaore v. Ramaji Ghanshyam Thaore, (Bombay H.C.) (20.04.2010)

See page 216 for full text of judgment.

Divorced women

Sunil Kumar v. Sumitra Panda, 2014 Cr.L.J. 1293 (Orissa H.C.) (06.01.2014)

Judge: S.K. Mishra

Judgment

The following questions arise for determination in this case: (i) Whether a divorced wife can maintain an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred as the "Act" for brevity, and seek relief under the Act?

(ii) Whether a divorced wife, who has sought some relief before this Court in a pending proceeding in view of Section 26 of the Act, can pray for identical relief before a Magistrate under Section 27 of the Act?

2. The opposite party is the divorced wife of the petitioner. Their marriage was solemnized on 16.03.1998 and out of the wedlock twin sons were born on 03.03.2000. The petitioner and the opposite party were serving in the Indian Railways and they are living separately since September, 2010. The opposite party-wife filed Civil Proceeding No.989 of 2010 before the Judge, Family Court, Cuttack for a decree of divorce and judicial separation. She has also filed another petition bearing Civil Proceeding No.990 of 2010 before the Judge, Family Court, Cuttack for custody of minor twin sons.

3. The learned Judge, Family Court, Cuttack allowed the divorce petition i.e. Civil Proceeding No.989 of 2010 filed by the opposite party-wife on 20.10.2011 and dissolved the marriage between the parties by a decree of divorce. By the common order dated 29.10.2011, the Civil Proceeding No.990 of 2010 filed by the opposite party-wife was dismissed and direction was given to the opposite party-wife to hand over the minor son Luv Kumar to the petitioner.

4. In the Civil Proceeding bearing No.989 of 2010, the Judge, Family court, Cuttack, inter alia, held that the opposite party-wife was leading an adulterous life and, therefore, she has challenged the finding before this Court in MATA No. 99 of 2011, which is subjudiced. Similarly, she has filed another appeal i.e. MATA No. 98 of 2011 against the judgment and order passed by the learned Judge, Family Court, Cuttack in Civil Proceeding No. 990 of 2010 and for a direction for custody of the two minor children in her favour. The second appeal is also subjudiced. When the matter stood thus, the opposite party filed an application before the learned S.D.J.M., Sadar, Cuttack, inter alia, on the ground that the claim of opposite party-wife does not come within the purview of the Act and she has already been divorced and there is non-availability of the report of the Protection Officer.

5. The opposite party-wife filed her objection to the maintainability of the petition filed by the petitioner and the learned S.D.J.M., Sadar, Cuttack, which was dismissed by the learned Sessions Judge, Cuttack in Criminal Appeal No.18 of 2013 The opposite party-wife has filed an application bearing Misc. Case No. 55 of 2012 before this Court in MATA No. 98 of 2012 with a prayer to allow her to stay in the Mahanadi Bihar Apartment and also for a direction to the petitioner-husband not to create any disturbance during her stay. Such petition is still pending for adjudication. The petitioner assails the order passed by the learned J.M.F.C., Cuttack in Criminal Misc. Case No. 353 of 2012, which has been confirmed by the learned District Judge, Cuttack in Criminal Appeal No. 18 of 2013 as per his judgment dated 17th July, 2013.

6. In course of hearing, the learned counsel appearing for the petitioner relies upon the reported case of Harbans Lal Malik v. Payal Malik, 2011 (1) Crimes 496; wherein a Single Judge Bench of the High Court of Delhi held that an application under Section 12 of the Act is not maintainable by a divorcee-wife. The learned counsel has also relied upon the reported case of Abdul Haque (MD.) v. Jesmina Begum Choudhury and another, I (2013) 4 DMC 384; wherein a Single Judge Bench of the Gauhati High Court has taken the same view as that of the Delhi High Court.

7. The Delhi High Court in the case of Harbans Lal Malik v. Payal Malik (supra) has held that the definition of domestic relationship as defined under Section 2(f) of the Act 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 learned Single Judge of the Delhi High Court further held that the domestic relationship between the aggrieved person and the respondent must be present and alive at the time when complaint under the 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. At paragraph 19 of the judgment, the learned Single Judge of the Delhi High Court held that the definition of "wife" as available under Section 125 of the Code of Criminal Procedure, 1973, hereinafter referred as the "Code" for brevity, could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 of the Code and if Legislature intended, it would have defined "wife" as in Section 125 of the Code in Domestic Violence Act as well. On such grounds the Delhi High Court held that a divorced wife cannot claim maintenance under Section 12 of the Act.

8. In Abdul Haque (MD.) v. Jesmina Begum Choudhury and another (supra), the Single Bench of Gauhati High Court held that the definition of "aggrieved person" is couched in present-indefinite tense in perfect infinitive sense. Unlike Section 125 of the Code, it does not admit a 'divorcee' within the meaning of "aggrieved person". It is further held that in this way most of the reliefs that can be granted on the basis of an application under Section 12 of the Act can be granted only if an "aggrieved person" is in domestic relationship with the respondent. Though the definition of "domestic relationship" gives an indication that to obtain certain reliefs under Chapter IV of the Act, the "aggrieved person" need not be in continuing relationship with her husband and in-laws it also does not admit a divorcee. The learned Single Judge further held that however, a wife or a woman in "domestic relationship" can seek reliefs provided under Chapter-IV though she may be living separately at the time of filing of application under Section 12 of the Act. It is further held that keeping in mind the definition of "aggrieved person" and domestic

relationship", it can be held that though the Act is prospective, reliefs can still be granted to the "aggrieved person" if the domestic relationship between the aggrieved person and the respondent continues to exist. The learned Single Judge has, therefore, held that an application under Section 12 of the Act of a divorcee is not maintainable.

9. A similar question arose before the Bombay High Court. A Single Judge of Goa Bench of the Bombay High Court in Smt. Bharati Naik v. Ravi Ramnath Halarnkar and another, 2011 Crl. Law Journal 3572 has held as follows :

"8. In my view, the definition of the "aggrieved person" and the "Respondent" are the defining definitions in so far as the issue that arises for consideration in the present petition is concerned. The definition of "aggrieved person" postulates a woman who is, or "has been" in a domestic relationship with the Respondent and the Respondent means any adult male person who is, or "has been" in a domestic relationship with the aggrieved person. Since a domestic relationship is a sine qua non for invoking the provisions of the said Act. Section 2(f) also becomes material, Section 2(f) as can be seen from a reading of the said provision means a domestic 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. Therefore, the aforesaid three definitions take in their sweep even a past relationship as the words "has been" or "have lived" have been used in the said definitions. The said words therefore have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the Act cannot be invoked. The words "has been" and the words "have lived" have been used for the purpose of showing the past relationship or experience between the concerned parties. To interpret the said provisions so as to mean that only subsisting domestic relationship are covered would result in turning the provisions of the said Act otiose. As is well settled by the judgments of the Apex Court in cases of beneficent Legislations, an interpretation which furthers its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Reference could be made to the judgment of the Apex Court reported in (2009) 14 SCC 546: (AIR 2010 SC 1253: 2010 Lab IC 1104) the matter of Union of India v. De- vendra Kumar Pant and others. Apart from that a literal construction of the provisions would show that even if the woman was in the past in a relationship she would be entitled to invoke the provisions of the said Act. The words "has been" or "have lived" appearing in the definitions are plain and clear and therefore effect would have to be given to them. In the instant case, the petitioner who is the aggrieved person and the Respondent no.1 had lived together in the shared household when they were related by marriage. The petitioner though divorced

continued to stay in the shared household till she was allegedly forcefully evicted by the Respondent no.1, she would therefore be entitled to invoke the provisions of the said Act, as the petitioner and the Respondent no.1 are squarely covered by the provisions of the said Act."

10. Observing thus, the Single Judge of Goa Bench of the Bombay High Court held that in so far as the application filed by the divorcee for residing in the shared household on an interpretation of the provisions of the said Act, it would have to be held that even a divorced wife is entitled to invoke the provisions of the said Act, whether she is entitled to protection or not in a given fact situation, would be for the concerned Court to decide.

11. Similar question arose before a Division Bench of the Rajasthan High Court in the case of Smt. Sabana @ Chand Bai and another v. Mohd. Talib Ali and another, in Criminal Revision Petition No. 362 of 2011. The specific question that arose for determination in that case is as hereunder. "Whether the Protection of Women from Domestic Violence Act, 2005 can be applied retrospectively specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force on October 26, 2006 or not ?"

12. Thus, there are two questions which have been decided in the said unreported case. The first question is, whether the Act is to be applied retrospectively and secondly, whether a divorcee-wife can claim relief under Section 12 of the Act. After discussing various provisions of the Act, the Division Bench of the Rajasthan High Court held that it is not necessary that an applicant- woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under Section 12 of the Act before the Magistrate for one or more reliefs as provided for under the Act. In other words, the aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act. It, therefore, appears on the face of the two cases that there is conflicting views on the point. However, the view taken by the Division Bench of the Rajasthan High Court at Jodhpur appears to be more acceptable than the other views.

13. Section 2(a) of the Act provides as follows : "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;"

14. Learned counsel for the petitioner emphasizing on the expression "or has been" appearing in Sub-clause (a) of Section 2 of the Act, argues that it is in the present perfect continuous tense. Therefore, there has to be a continuing relationship between the parties. However,

an examination of the definition on domestic relationship indicates otherwise. It 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;" (emphasis supplied) This expression, "who live or have, at any point of time, lived together in a shared household is a domestic relationship" shows that subsisting relationship between the parties, i.e. the aggrieved person and a respondent is not a sign qua non for filing an application for seeking relief under Section 12 of the Act. This view is supported by decision rendered by the Division Bench of the Rajasthan High Court. In that view of the matter, this Court comes to the conclusion that the view taken by the Rajasthan High Court and the Goa Bench of the Bombay High Court is the correct approach and an application is maintainable even by a divorced wife.

15. As far as the second question is concerned, it is admitted that the maintainability of the application before the Magistrate in view of the provision of sub-section 26 of the Act has not been raised before the learned Magistrate or before the learned Sessions Judge. So, this Court refrains from taking into consideration any point not agitated before the original and appellate court. Hence, no decision is rendered on the same.

16. On the basis of the aforesaid reasoning, this Court comes to the conclusion that the order passed by the learned Magistrate in rejecting the petition filed by the petitioner, which has been confirmed by the learned District Judge, Cuttack in Appeal is correct. Hence, the Revision Application is dismissed at the stage of admission.

Bharti Naik v. Ravi Ramnath Halarnkar, 2011 Cr.L.J. 3572, III (2011) DMC 747 (Bombay H.C.) (17.02.2010)

Judge: R.M. Savant

Order

1. Leave to amend so as to annex a copy of the order dated 9.2.2007 passed in Criminal Misc. Application No. 84/2006/A.

2. The above Petitions raise a common issue as to whether a divorced woman can file an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to for brevity sake as 'the said Act')- Insofar as Writ Petition No. 18/2009 is concerned, the said Writ Petition challenges the order dated 9.2.2007 passed in Criminal Misc. Application No. 84/2006/A by the learned J.M.F.C, Mapusa

and the order dated 2.7.2007 passed by the learned Additional Sessions Judge, Mapusa, in Criminal Appeal No. 14/2007 whereby the order dated 9.2.2007 came to be confirmed. Insofar as Writ Petition No. 64/2009 is concerned, the said Writ Petition challenges the order dated 17.10.2008 passed by the learned Sessions Judge, Panaji, by which order the order dated 30.9.2008 passed by the learned J.M.F.C., Mapusa, rejecting the application filed by the Respondent No. 1 under Section 258 of Criminal Procedure Code came to be set aside. The said application resultantly came to be allowed and the Respondent No. 1 came to be discharged from the proceedings in question.

3. The facts necessary to be stated for the adjudication of the issue concerned are stated thus:

The Petitioner in the above two Petitions was married to the Respondent No. 1 herein, which marriage came to be annulled in view of the Decree dated 19.9.1998 passed in Special Civil Suit No. 70/95/A. The Petitioner though divorced was staying in the matrimonial house from which she was ousted by the Respondent No. 1 allegedly by force. The Petitioner claims to be suffering from a heart ailment as a result of which she has under gone Angiography. On the Petitioner being evicted from the matrimonial house, she had started residing with her parents at Kasarpal, Bicholim. The brothers of the Petitioner are interested in demolishing the said house and, therefore, in the event of demolition the Petitioner would be left shelterless. The Petitioner is working as a Nurse and she used to come to her work place from the said matrimonial house. In view of the fact that the Petitioner was forced out of the matrimonial house, the Petitioner sought to invoke the provisions of the said Act and especially Section 17 thereof claiming right to reside in the shared household. The said application of the Petitioner came to be numbered as Criminal Misc. Application No. 84/2006/ A. The said application came to be dismissed by the learned J.M.F.C, principally on the ground that there was no subsisting relationship between the aggrieved parties i.e. the Petitioner and the Respondent No. 1 on the date of the application and, therefore, the Petitioner could not seek the protection under Section 17 of the said Act. Aggrieved by the said order passed by the learned J.M.F.C, the Petitioner carried the matter in Appeal by filing Criminal Appeal No. 14/2007 in the Sessions Court, Mapusa. The learned Additional Sessions Judge, by his order dated 2.7.2007 dismissed the said Appeal on the self-same ground as the learned J.M.F.C, namely that there was no subsisting relationship between the Petitioner and the Respondent No. 1 on the date of the application and since the Petitioner is a divorced wife she could not avail of the remedies available under the said Act. The matter rested there for some time as the Petitioner did not have the necessary wherewithal to challenge the said orders, but has now challenged them by filing the above Writ Petition No. 18 of 2009.

4. On the Petitioner again facing domestic violence, the Petitioner reported the matter to the Protection Officer under the said Act. The Protection Officer called upon the Petitioner to

fill up two forms which are statutory forms for declaring the nature of the violence faced by an aggrieved party. The Petitioner accordingly filled the said two forms. The Protection Officer thereafter sent the said two forms along with her report to the learned J.M.F.C, for taking necessary cognizance. The said proceedings came to be numbered as Criminal Misc. Application No. 92/2008/E. In the said proceedings the Respondent No. 1 herein filed an application under Section 258 of Criminal Procedure Code for being discharged and for stopping the proceedings. The learned J.M.F.C. considered the various provisions of the said Act, and reached the conclusion that the relationship need not be a subsistent relationship but could be a relationship which existed in the past and, therefore, on an interpretation of the said provisions came to a conclusion that the Petitioner was entitled to invoke the provisions of the said Act and rejected the application for discharge filed by the Respondent No. 1 by his order dated 30.9.2008.

5. The Respondent No. 1 aggrieved by the said order dated 30.9.2008 passed by the learned J.M.F.C, preferred an Appeal before the Sessions Court which Appeal came to be numbered as Criminal Appeal No. 74/2008. The learned Sessions Judge, by the order dated 17,10.2008 allowed the said Appeal and set aside the order passed by the learned J.M.F.C. rejecting the application for discharge filed by the Respondent No. 1 and resultantly discharged the Respondent No. 1 from the proceedings. The sum and substance of the reasoning of the learned Sessions Judge was that the definitions of the various terms in the said Act indicate that in order to seek a residence order under the provisions of the said Act, the aggrieved person and the Respondent must either be living in a shared household or must have at any point of time, in the past lived together therein but in both the conditions, they are bound to have an existing relationship by consanguinity, marriage, etc. as the case may be and if such a relationship does not exist, then merely because the Petitioner was living in the past in the shared household or was presently living would not serve the purpose of the provisions of the said Act. As indicated above, the aforesaid orders are the subject matter of the above two Petitions.

6. I have heard Ms. Caroline Collasso, the learned Counsel for the Petitioner appointed under the Legal Aid Scheme and Ms. Winnie Coutinho, learned Public Prosecutor for the State/Respondent No. 2. Respondent No. 1 is absent though served. It would be relevant at this stage to slightly digress from the main issue so as to see what was the background in which the said Act was framed. The statement of objects and reasons are an indicia as to why the need was felt for enacting the Act of the nature in question. The statement of objects and reasons are reproduced herein under:

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 Conven-

tion 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 498-A of the Indian Penal Code (45 of 1860). 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.

7. A reading of the statement of objects therefore indicates that the State felt the need to enact a law so as to curb the cruelty which a woman may face in the household. The said Act was enacted considering the mandate of Articles 14, 15 and 21 of the Constitution so as to provide for a remedy under the civil law to protect the woman from domestic violence and to prevent the occurrence of the domestic violence in the society. The Act therefore would have to be interpreted so as to give effect to the intent and purpose of the said Act. In that context, it would be necessary to refer to the relevant provisions of the said Act. Under Section 8 of the said Act, the Protection Officers can be appointed. Under Section 9 of the said Act, the duties and functions of the Protection Officers have been prescribed. From the point of view of the present Petitions, Clause (b) of Section 9 is material. Clause (b) provides for the Protection Officers to make a domestic 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. The said section also casts duty upon the Protection Officer to ensure that the aggrieved person is provided aid under the Legal Services Authorities. Section 12 of the said Act, which is in Chapter IV provides for the procedure for obtaining orders of reliefs. The said section provides that 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 the Act. Section 17 of the said Act provides that every woman in domestic relationship shall have the right to reside in a shared household whether or not she has any right, title, or beneficial interest in the same. Section 18 of the said Act, provides for the various types of protection orders that can be passed under the said Act. From the point of view of the present petitions, it would be necessary to advert to the various terms defined in the said Act. Section 2(a), Section 2(f), Section 2(q) and Section 2(s) are material and are reproduced herein under:

Section 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) "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) "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.

Section 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.

8. In my view, the definition of the "aggrieved person" and the "Respondent" are the defining definitions insofar as the issue that arises for consideration in the present Petitions is concerned. The definition of "aggrieved person" postulates a woman who is, or "has been" in a domestic relationship with the Respondent and the Respondent means any adult male person who is, or "has been", in a domestic relationship with the aggrieved person. Since a domestic relationship is a sine qua non for invoking the provisions of the said Act, Section 2(f) also becomes material. Section 2(f) as can be seen from a reading of the said provision means a domestic 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. Therefore, the aforesaid three definitions take in their sweep even a past relationship as the words "has been" or "have lived" have been used in the said definitions. The said words therefore have been used purposefully as the said Act has been enacted to protect a woman from domestic violence and, therefore, there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the said Act cannot be invoked. The words "has been" and the words "have lived" have been used for the purpose of showing the past relationship or experience between the concerned parties. To interpret the said provisions so as to mean that only subsisting domestic relationship are covered would result in turning the provisions of the

said Act otiose. As is well settled by the judgments of the Apex Court in cases of beneficent Legislations, an interpretation which furthers its purpose must be preferred to the one which obstructs the object and paralyses the purpose of the Act. Reference could be made to the judgment of the Apex Court reported in (2009) 14 SCC 546 the matter of Union of India v. Devendra Kumar Pant and Others. Apart from that a literal construction of the provisions would show that even if the woman was in the past in a relationship she would be entitled to invoke the provisions of the said Act. The words "has been" or "have lived" appearing in the definitions are plain and clear and therefore effect would have to be given to them. In the instant case, the Petitioner who is the aggrieved person and the Respondent No, 1 had lived together in the shared household when they were related by marriage. The Petitioner though divorced continued to stay in the shared household till she was allegedly forcefully evicted by the Respondent No. 1, she would therefore be entitled to invoke the provisions of the said Act, as the Petitioner and the Respondent No. 1 are squarely covered by the provisions of the said Act.

9. The learned Sessions Judge having accepted the position that the requirement for invoking the provisions of the said Act is that the aggrieved person and the Respondent must either be living in the shared household or must have, at any point of time, in the past, lived together therein but has thereafter misdirected himself by holding that in both the conditions, they are bound to be having existing relationship by consanguinity, marriage, etc. In my view, the relationship by consanguinity, marriage, etc. would be applicable to both the existing relationship as well as the past relationship and cannot be restricted to only the existing relationship as otherwise the very intent and purpose of enacting the said Act would be lost as it then would protect only an aggrieved person who is having an existing relationship by consanguinity, marriage, etc. The interpretation given by the learned Sessions Judge, would have the effect of reading in to the said provisions the existence of the present status as a wife which in my view is impermissible looking to the purport and intent of the said Act.

10. In the instant case, the Petitioner it appears has filed an application by way of Inventory Proceedings for division of the communion of assets in terms of the local law applicable to her. It is the case of the Petitioner that she is entitled to 50% of the assets in terms of the communion of assets. Therefore, the Petitioner has applied for asserting her right in respect of the communion of assets before the appropriate Forum. However, insofar as the application filed by her for residing in the shared household on an interpretation of the provisions of the said Act, it would have to be held that even a divorced wife is entitled to invoke the provisions of the said Act. Whether she is entitled to protection or not in a given fact situation would be for the concerned Court to decide. Resultantly, the impugned orders passed by the learned J.M.F.C. dated 9.2.2007 in Criminal Misc. Application No. 84/2006/A, judgment and order dated 2.7.2007 passed by the learned

Additional Sessions Judge in Criminal Appeal No. 14/2007, the subject matter of Writ Petition No. 18/2009 and the order dated 17.10.2008 passed by the learned Sessions Judge in Criminal Appeal No. 74/2008 are hereby quashed and set aside and the said Criminal Misc. Application Nos. 84/2006/A and 92/2008/E are restored to file. It would be open to the Petitioner to elect one, out of the above two applications which she desires to prosecute. The order discharging the Respondent No. 1 is also set aside. The concerned Court would consider as to whether the Petitioner is entitled to the relief as sought for in the applications filed by her in the facts and circumstances of her case and up to what time the said relief is to be continued. This is in the light of the fact that the Petitioner has filed an application in the nature of Inventory Proceedings/Separation of assets for seeking her share in the assets. Needless to state that the application which the Petitioner elects to prosecute would be decided on its own merits and in accordance with law.

11. Rule is accordingly made absolute in the aforesaid terms in both the petitions with parties to bear their respective costs.

A. Ashok Vardhan Reddy v. P. Savitha, 2012 Cr.L.J. 3462 (Andhra H.C.) (29.02.2012)

Judge: G. Bhavani Prasad

Judgment

The petitioners in Criminal Petition No.7063 of 2008 are accused 1 to 3 in C.C. No. 48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District.

2. The Woman Sub-Inspector of Police, Saroornagar women police station filed the charge-sheet in the said case alleging that P. Krishna Reddy and P. Kalavathi are the parents of Saritha, the 1st respondent in Criminal Petition No.7063 of 2008. Saritha was married to the 1st accused on 27-08-2005 and on the same day the 1st accused and Saritha left for the United States of America, as Saritha had to report at West Virginia University on 29-08-2005. Soon after arriving at the United States of America, the 1st accused demanded Saritha for money and took away 35 tulas of gold from her. The parents of Saritha visited the United States of America from 12-10-2005 to 07-11-2005 and still the 1st accused harassed Saritha physically and mentally and threatened her and her parents. Saritha gave a complaint to West Virginia University police and requested her father to give a complaint to the police in India. Accordingly, P. Krishna Reddy gave a complaint on 30-10-2006 stating the above facts and further stating that he met all the expenses demanded by accused 1 to 3 at the time of the marriage and the demand of the 1st accused to Saritha

was to give ₹ 4,00,000/-. Her gold was sold away by the 1st accused and the sale proceeds were appropriated by him. The 1st accused was using the credit cards of Saritha being unemployed. The complaint was registered as Crime No.1098 of 2006 under Section 498A of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act and was investigated into. The 2nd and 3rd accused surrendered before the Court on 20-12-2007 and were released on bail, while the 1st accused was absconding. Hence, the charge.

3. Accused 1 to 3 claimed in the criminal petition that when the couple left for the United States of America on the date of marriage itself, it was impossible to presume any demand for money and though the 1st accused returned to India on 09-03-2006, Saritha/1st respondent stayed back in the United States of America, filed a petition for divorce before the Family Court of Monongalia County, West Virginia, United States of America and was granted a decree of divorce by an order, dated 12-03-2007, which had become final. The 1st respondent is working in the United States of America after obtaining divorce. The police initially submitted a final report on the complaint of Krishna Reddy, referring the case as lacking in jurisdiction on 18-09-2007 and again at the request of the 1st respondent on 22-10-2007, the case was reopened and further investigated. The petitioners contended that the 1st petitioner and the 1st respondent never led their marital life in India and they are no longer wife and husband having lived together in the United States of America only for 5 months and 10 days. Hence, they desired quashing of further proceedings in C.C. No.48 of 2008.

4. The 1st respondent in her affidavit in Criminal M.P. No.28 of 2009 claimed that the petition should have been filed against P. Krishna Reddy, her father, who gave the complaint to the police. She was misdescribed as Savitha, while she is Saritha. The criminal proceedings are independent of the civil proceedings and even the air ticket for the 1st accused for the travel on 27-08- 2005 was purchased by Krishna Reddy. The 1st accused was demanding an additional dowry of ₹ 30,00,000/- to repay the loans he incurred at Singapore and India. His parents also followed up the demand through telephone calls to her and her father. The 1st accused severely beat her in the presence of her parents in the United States of America. The 1st accused was spending money for alcoholic drinks while residing with her in her hostel room. The 2nd accused met Krishna Reddy at Hyderabad on 30-03-2006 and 8-10-2006 and the 1st accused met him on 27-08-2006 when the demand for ₹ 30,00,000/- was reiterated and the 1st respondent was also in India on 27-08-2006. Krishna Reddy was authorized by the 1st respondent through Internet on 09-09-2006 to give a complaint to the police. The divorce case was subsequent. Both the 1st respondent and the 1st accused are Indian citizens and so are their parents. The 1st accused and the 1st respondent resided in both the countries and the divorce was granted on the basis of cruel and inhumane treatment. The 1st accused returned to India in March, 2007 to avoid action by the United States police. The 1st respondent returned

to India after completion of her M.S. and is unemployed and unmarried. There was no compromise between the parties and the 1st respondent is suffering from mental agony and shock, while the 1st accused got remarried immediately. Hence, the 1st respondent desired that the interim stay granted be vacated and the criminal petition be dismissed.

5. While so, the petitioners in Criminal Petition No.7063 of 2008 filed Criminal Petition No.2539 of 2009 to quash the proceedings in D.V.C. No.4 of 2009 on the file of XI Metropolitan Magistrate, Cyberabad initiated against them by Saritha who is impleaded as the 2nd respondent in Criminal Petition No.2539 of 2009.

6. In the domestic violence case, Saritha, the 2nd respondent in Criminal Petition No.2539 of 2009, sought for protection orders, return of 'Sthridhana', monetary relief, compensation, damages and other appropriate reliefs under the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") against the petitioners in Criminal Petition No.2539 of 2009. She also desired for cancellation of the passport of the 1st petitioner, and the total amount claimed by her was ₹ 48.80 lakhs. She also alleged the petitioners herein to have committed other offences covered by another crime and alleged in her affidavit that her residence with the respondents to the case at Hyderabad and the United States of America was from 28-08-2005 to 12-03-2006. She alleged being threatened with adverse publicity, character assassination and personal vilification. She claimed to have been subjected to beating, abusing, misbehaving, demanding money and mental and bodily injury by all the respondents to the case and she claimed that by the memorandum of understanding dated 11-05-2007, the 2nd petitioner admitted that he and his son took amounts to a tune of ₹ 8,00,000/- from Krishna Reddy, which he promised to return. She claimed that the 1st petitioner herein already got married to somebody else and that she returned to India in September, 2007.

7. The petitioners in Criminal Petition No.2539 of 2009 contended that the 1st petitioner and the 2nd respondent lived together only for two months, while the 2nd respondent lived separately for about four months in the United States of America for pursuing her studies in M.S. There were differences between the couple since the date of marriage and the husband was subjected to mental and physical cruelty leading to separate living. The petitioners claimed that the XI Metropolitan Magistrate, Cyberabad took cognizance of the complaint by the 2nd respondent in D.V.C. No.4 of 2009 concerning the alleged domestic violence prior to the statute coming into force with effect from 26-10-2006. The domestic violence case could not have been pursued against a woman, the 3rd petitioner, in view of Section 2(q) of the Act. The Act is not applicable to a divorced woman, as an aggrieved person under Section 2 (a) has to be a woman who is or has been in a domestic relationship with the respondent. There was no domestic incident report from the protection officer or service provider and a direct complaint is not contemplated by the Act.

After C.C. No.48 of 2008, filing of the domestic violence case is invoking parallel jurisdiction of Courts and hence, the petitioners desired the further proceedings in D.V.C. No.4 of 2009 to be quashed.

8. In the affidavit of the 2nd respondent in Criminal M.P. No.3330 of 2009, the 2nd respondent stated that she and the 1st petitioner resided on the date of the marriage at the residence of the petitioners at Champapet, Hyderabad. The petitioners received ₹ 5.25 lakhs at the time of the marriage and a total of ₹ 17.25 lakhs was appropriated by the 1st petitioner through gold, credit cards and bank account of the 2nd respondent. The 2nd respondent was even hospitalized in the United States of America due to beating. The 1st petitioner was necked out of the hostel on 12-03-2006 due to his unbearable behaviour. But still he was harassing the 2nd respondent through telephone, e-mail and entering the hostel, etc. The 2nd petitioner approached P. Krishna Reddy and signed a memorandum of understanding on 11-05-2007 with the intervention of some elders agreeing to pay back ₹ 8,00,000/- and the same was deposited in a joint account in HDCCB, Vanasthalipuram. Again the entire amount was withdrawn on 18-06-2007 by impersonation resulting in crime No.171 of 2008 of Vanasthalipuram police station. The VII Metropolitan Magistrate, Hayathnagar, Cyberabad ordered on 04-09-2008 reinvestigation by the police, but the petitioners are unlawfully influencing the police. D.V.C. No.4 of 2009 is, hence, in continuation of the earlier proceedings and an application under Section 12 of the Act need not be routed through police or the protection officer. The petitioners are only respondents in the case and not accused, as the case is civil in nature. A criminal petition to quash the proceedings is, hence, not maintainable in view of the very statement of objects and reasons of the Act. As the divorce was only on 12-03-2007 and as the harassment and cruelty were continued by the 1st petitioner and cheating by the 2nd petitioner after the memorandum of understanding on 11-05-2007 was subsequent to 26-10-2006 when the Act came into force, the case is maintainable. The provisions of the Act are retrospective, as Section 2(a) refers to a 'woman' who has been in a domestic relationship and Section 2(f) refers to two persons who have lived together in a shared household at any point of time. The acts of the petitioners amount to domestic violence in a series of events, concerning which no question of limitation arises. The Proviso to Section 2(q) makes the 3rd petitioner also liable and in view of Section 36 of the Act, which makes the Act not in derogation of any other law, the domestic violence case and the criminal case are independent of each other, more so, in view of Section 26 of the Act. Hence, the 2nd respondent sought for vacating the interim stay granted and desired this criminal petition also to be dismissed.

9. While the interim stay granted in Criminal Petition No.7063 of 2008 was made absolute on 26-12-2008, the interim stay granted in Criminal Petition No.2539 of 2009 did not appear to have any specific order of extension after 14- 07-2009.

10. Heard Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008, Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 and Sri P. Krishna Reddy, learned counsel representing the 1st respondent in Criminal Petition No.7063 of 2008/the 2nd respondent in Criminal Petition No.2539 of 2009.

11. On the material placed on record by both the parties, the following factual background emerges. P. Saritha and A. Ashok Vardhan Reddy, daughter of P. Krishna Reddy and P. Kalavathi and son of A. Jani Reddy and A. Vijayamma respectively, were married at Hyderabad on 27-08-2005 and both are Indian citizens with visas of the United States of America. The couple left for the United States of America on the same day. A decree of divorce was granted by the Family Court of Monongalia County, West Virginia, United States of America on 12-03-2007 on the basis of cruel and inhumane treatment with liberty to distribution of marital estate and alimony. In the meanwhile, P. Krishna Reddy gave a complaint to Saroornagar police on 30-10-2006, which was registered in Crime No.1098 of 2006 and was charge-sheeted against A. Ashok Vardhan Reddy and his parents in C.C. No.48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. While so, Saritha filed an application under Section 12 of the Act against A. Ashok Vardhan Reddy and his parents, taken cognizance by the XI Metropolitan Magistrate, Cyberabad in D.V.C. No.4 of 2009. Both the criminal petitions are with a request to quash the respective proceedings.

12. Apart from the above admitted background, the claims of P. Saritha in her affidavit and the contents of the copies of documents filed by her allege that the moment the couple reached the United States of America, the 1st accused demanded for a sum of ₹ 4,00,000/- and then an additional dowry of ₹ 30,00,000/, which demands were also supported by his parents through telephone calls to Saritha and Krishna Reddy. The parents of Saritha were claimed to be in the United States of America from 12-10-2005 to 07-11-2005, even in whose presence there were demands for money and physical and mental violence. The 1st petitioner was claimed to be unemployed and to be an alcoholic, spending gold, money and funds in the bank account of Saritha for such purpose. The demands for money were claimed to have been made by the 2nd petitioner on 30-03-2006 and 08-10-2006 and by both the 1st and 2nd petitioners on 27-08-2006 at Hyderabad, while Saritha was also at Hyderabad on 27-08-2006. The copies of the report of the West Virginia University Health Services, dated 27-03-2006, the statement of Saritha dated 23-03-2006, the case reports of the West Virginia Department of Public Safety, dated 23-03-2006 and 19-05-2006 and the final divorce decree granted by the Family Court of Monongalia County, West Virginia, dated 12-03-2007 indicate Saritha to be complaining of domestic abuse and violence and the Family Court to have granted an ex parte decree on the finding

of the parties cohabiting together till 09-03-2006 and Saritha to be entitled to absolute divorce on the basis of cruel and inhumane treatment. Subsequently, a memorandum of understanding was claimed to have been executed by the 2nd petitioner in favour of Krishna Reddy with the intervention of some elders on 11-05-2007 agreeing to pay ₹ 8, 00,000/-. The amount was claimed to have been withdrawn by impersonation from the joint account resulting in crime No.171 of 2008 on the file of Vanasthalipuram police station. The documents accompanying Criminal M.P. No.3330 of 2009 in Criminal Petition No.2539 of 2009 further show the break up of ₹ 17,70,000/- said to have been spent by Krishna Reddy at the time of marriage, a copy of memorandum of understanding between the 2nd petitioner and Krishna Reddy, dated 11-05-2007, a report by the son of Krishna Reddy to the police about withdrawal of ₹ 8,00,000/-, the order of the Magistrate's Court directing investigation in Criminal M.P. No.3155 of 2008, etc. A copy of e-mail message of the 1st petitioner to the family of Saritha about the divorce proceedings and copies of documents relating to C.C. No.1954 of 2000 on the file of the Additional Judicial Magistrate of First Class, Hyderabad East and North, Ranga Reddy District against Krishna Reddy and two others were also filed during hearing. A copy of passport of Saritha was also filed during hearing in corroboration of her alleged movement from and to India. In so far as C.C. No.1954 of 2000 is concerned, any conduct of Krishna Reddy leading to his prosecution by his wife is an irrelevant factor for consideration of these two criminal petitions on merits and the nature or conduct of Krishna Reddy is no probablising factor or proof of the probable conduct of Saritha or the 1st petitioner herein vis--vis their matrimonial relationship.

13. Even regarding the truth or otherwise of the various allegations made by the opposing parties concerning the sequence of events that ultimately led to these two criminal petitions, in a restricted summary enquiry in the petitions under Section 482 of the Code of Criminal Procedure invoking the inherent powers of this Court, the High Court will not convert itself into a fact finding Court and it will not indulge in an elaborate trial and conclusive findings of fact regarding the questions in controversy between the parties. The examination of the issues of fact and law raised and adjudication of the same will be confined to the extent of considering any justification for invocation of the inherent powers of the High Court to interfere with the proceedings before the trial Courts in question.

14. The well settled parameters governing the exercise of the inherent power under Section 482 of the Code of Criminal Procedure should be kept in mind while examining the questions in issue. Illustratively, in Venkateswara Rao v. Venkateswarlu, 1992 (3) ALT 468, it was held that when the very conduct of the petitioner led to criminal proceedings, it will be an abuse of process of Court for him to seek quashing of the proceedings under Section 482 of the Code of Criminal Procedure. In Papa Rao v. State, 2002 (1) ALT (Crl.) 300 (D.B.) (A.P.), a Division Bench of this Court laid down that the power under Section

482 of the Code of Criminal Procedure has to be used very sparingly and in exceptional circumstances very cautiously.

15. With this caveat, the first question that arises is the maintainability of the domestic violence case against a woman/the 3rd petitioner in Criminal Petition No.2539 of 2009.

16. The petitioners relied on Uma Narayanan v. Priya Krishna Prasad, 2008 (TLS) 1227198, wherein Ajay Kant v. Alka Sharma, 2008(2) Crimes 235 (M.P.), was relied on for the principle that an application under Section 12 of the Act against persons, who are not adult male persons, is not maintainable. The learned Judge agreed with the view and held that an application under Section 12 of the Act is not maintainable as against a woman in view of Section 2(q) read with Sections 19, 31 and 33. S.R. Batra v. Taruna Batra, 2006 (TLS) 43393, was also relied, but the Supreme Court was dealing with the question whether the daughter-in-law can claim any right of residence in the house belonging to the mother-in-law and not the husband, and not the question as to whether a domestic violence case is maintainable against a woman as a respondent. However, in Criminal Petition No.4106 of 2008, dated 22-10-2008, a learned Judge of this Court followed Ajay Kant v. Alka Sharma (4 supra) to hold that female members cannot be made as respondents in the proceedings under the Act. Thereafter, a Division Bench of this Court considered in Afzalunnisa Begum v. State of Andhra Pradesh, 2009 (2) ALD (Crl.) 155 (AP), the entire issue with reference to Sections 2(f), 2(q), 3, 12, 18, 19, 21 and 31 of the Act and the Statement of objects and reasons for the Bill. The Division Bench opined that giving effect to all the provisions in the Statute, the Act does not exclude 'woman' altogether in a proceeding initiated under the Act and the 'respondent' as defined in Section 2(q) of the Act includes a female relative of the husband depending upon the nature of the reliefs claimed against the respondent in the domestic violence case.

17. The matter is set at rest beyond controversy by the decision of the Apex Court in Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, 2011 (2) MLJ (Cri) 429, wherein the Court of Session and the High Court held females to be not included in the definition of 'respondent' in Section 2(q) of the Act. The Supreme Court held that the Proviso to Section 2(q) widens the scope of the definition of a 'respondent' by including a relative of the husband or male partner and as no restrictive meaning has been given to the expression 'relative' nor has the said expression been specifically defined in the Act, 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 Act. A.N. Sehgal v. Raje Ram Sheoram, AIR 1991 SC 1406, relied on by the petitioners for guiding the interpretation of Proviso to Section 2 (q) needs no further reference in view of the binding precedent from the Apex Court on Section 2 (q) Proviso itself. As the female relatives of the husband or male partner are, thus, not excluded from the applicability of the Act, if

it is otherwise applicable, the domestic violence case against the 3rd petitioner cannot, therefore, fail on the ground of her sex.

18. The decision in Chandra Rekha v. State of Andhra Pradesh, 2010(2) ALD (Crl.) 689 (AP), is to the effect that mere impleadment of petitioners in domestic violence case does not give rise to criminal offence to quash the proceedings at the initial stage. The decision incidentally, thus, casts doubts on the maintainability of a petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings at the initial stage before any respondent can be punished for any offence under the Act or has been facing proceedings calling for such punishment.

19. The decision in Mohammad Maqueenuddin Ahmed v. State of A.P., 2007 Crl.L.J. 3361 = 2007(2) ALD (Crl.) 248, may not be of any assistance, as the question of liability of any of the petitioners 2 and 3 to the reliefs claimed in the domestic violence case cannot be considered to have crystallized even at the initial stage when the reliefs sought for were directed against all the three petitioners and Saritha cannot be considered, ex facie, to be disentitled to such reliefs, if she is able to prove her allegations during the enquiry. The sufficiency or otherwise of the allegations made is for the trial Court to determine and not for this Court to go into.

20. The next question raised is about the events leading to the domestic violence case happening much prior to 26-10-2006 when the Act came into force and the Act having no retrospective effect.

21. The petitioners relied on Anil Kumar Goel v. Kishan Chand Kaura, AIR 2008 SC 899, wherein the Apex Court held that all laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. It was, hence, pointed out that the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. Similar is the principle laid down in State of M.P. v. Rameshwar Rathod, AIR 1990 SC 1849, wherein the normal rule of construction is stated to be that a provision in a statute is prospective but not retrospective. In that case, not only there are no specific words to indicate the provisions of retrospective effect, but the positive provisions are to the effect that the amendment must be deemed to have come into effect on a particular date.

22. General principles apart, a learned Judge of this Court held in U.U. Thimmanna v. U.U. Sandhya, 2009(1) ALT (Crl.) 285 (A.P.), that it is a fundamental principle of law that any penal provision has no retrospective operation, only prospective and as there was no allegation in that case either in the report or in the statement or in the complaint of the 1st respondent therein with regard to the acts of domestic violence that took place on or

after 26-10-2006 when the Act came into force, the continuation of the proceedings in the domestic violence case was held to be an abuse of process of Court.

23. The above decision was cited before the Court in K. Ramaraju v. K. Lakshmi Pratima, 2008(2) ALD (Crl.) 1 (AP), wherein it was consequently noted that it is true that Section 1(3) of the Act made the statute come into force from the appointed date as per Gazette Notification, which notification brought the Act into force from 26-10- 2006. It was also noted that neither Section 1 nor any other provision directly or indirectly indicates any retrospective effect to the provisions of the statute. However, without going into the question whether the provisions of the Act can be retroactive in relation to any continuing events amounting to domestic violence as defined under Section 3 of the Act, it was opined that irrespective of any retrospective or retroactive effect to the provisions of the Act, the continuing state of affairs since the date of the Act coming into force, ex facie, make the petitioner have the required cause of action for pursuing a remedy under Section 12 of the Act for obtaining necessary orders or reliefs. The reliefs claimed were opined to be in present time and not past.

24. Hon'ble Sri Justice K.C. Bhanu, who decided U.U. Thimmanna v. U.U. Sandhya (13 supra), was again considering the question in Mohit Yadam v. State of Andhra Pradesh, 2010 (1) ALD (Cri.) 1 (AP), and made it clear that the object of the Act is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. His Lordship after an exhaustive reference to the principles of statutory interpretation, had also noted that no specific finding was given in K. Ramaraju v. K. Lakshmi Pratima (14 supra) as to whether the Act is retrospective or prospective in operation. The learned Judge noted that none of the provisions of the Act has direct penal consequences and as seen from the provisions of the Act, some new remedies are provided to the women with regard to existing rights. The remedies did not alter the contract or right nor had it taken away any vested right. The learned Judge also pointed out that the words 'at any point of time' and 'lived together' cannot be understood in narrow sense so as to mean that such living together is only after the Act came into force. The learned Judge concluded that in its sweep, shared household between two persons by relationship as defined in Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family. Making it clear that in deciding the question of applicability of particular remedial statute to past events, the language used is no doubt most important factor to be taken into account, the learned Judge stated the same to be not positively stated as an inflexible rule but use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. Referring to the words 'who is' or 'has been' in Clause (a), 'who live or have' in Clause (f), 'who is, or has been' in Clause (q) of Section 2 of the Act, the learned Judge opined that they may denote the events happened before

or after the Act came into force. The learned Judge also noted that there cannot be any dispute that present perfect tense is used to denote the action beginning at some time in the past and continue up to the present moment. Holding that the definition clause must be read in the context of the subject matter and the scene of the Act and consistent with the objects and other provisions of the Act, it was noted that Section 26 of the Act refers to legal proceedings before other Courts before or after the commencement of the Act, which will not be so, if the Act is prospective in nature. Unambiguously noting that if the remedies provided under Sections 18 to 22 of the Act are applicable prospectively to acts or omissions of domestic violence that occurred prior to 26-10-2006, then the aggrieved person who suffered violence prior to that date would be deprived of claiming any relief under the Act, the learned Judge found no justification or reason to deny certain remedies available to women who suffered domestic violence prior to 26-10-2006 as such a narrow interpretation will defeat the object and purpose of enacting the Act. As the Act is no criminal law with any direct penal consequences, the learned Judge concluded that acts of violence that occurred prior to 25-10-2006 would come within the meaning of domestic violence as defined under the Act and hence, the Act is retrospective in operation.

25. Grasim Industries Ltd. v. Collector of Customs, Bombay, (2002) 4 SCC 297, laid down that in matters of interpretation, every provision and every word must be looked at generally and in the context in which it is used and not in isolation whenever the language is clear, the intention of the Legislature is to be gathered from the language used. In Garikapati Veeraya v. N. Subbaiah Choudhry, AIR 1957 SC 540 (1), a five Judge Bench of the Supreme Court laid down the golden rule of construction that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be construed also to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. Herein it has to be noted that the Act itself showed from the various provisions the retrospectivity or retroactivity of its operation to the consequences of acts or omissions that took place prior to the Act coming into force, which amount to an act of domestic violence as governed by the Act. Similarly in Banwari Dass v. Summer Chand, AIR 1974 SC 1032, the words 'have been' have been interpreted as immediately prior to a specific time. The justifiable period which can be considered to be immediately prior to the specific time under the Act, will be essentially one depending on the facts and circumstances of each case and the same cannot be defined with mathematical precision for universal application without any elasticity in matters governing basic human relations, more particularly matrimonial and family relations. It is true that in Secretary, Regional Transport Authority v. D.P. Sharma, AIR 1989 SC 509 , the words 'has been' were interpreted stating that whether the expression 'has been' occurring in a provision of a statute denotes a transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of

the Legislature to be gathered from the provision, in which the said expression occurs or from the other provisions of the statute. In P. Jeevan v. Chief Secretary to Government of A.P., 1997 (1) ALD 73, the phrase 'has been' received consideration, but the question was not probed fully on the facts and circumstances of the case. In Mohit Yadam v. State of Andhra Pradesh (15 supra) every relevant provision of the Act was analysed to understand the import of the words 'has been' used in relation to living in domestic relationship.

26. Mohit Yadam v. State of Andhra Pradesh (15 supra) continues to hold the field and if the Act is retrospective in operation, the domestic violence case cannot fail on the ground of the sequence of events involved herein being prior to the Act coming into force, while the question whether such events amounted to domestic violence and were probablised to have so happened is a question to be gone into on merits and decided by the trial Court and not herein.

27. Then comes the question as to the need for the aggrieved person being a wife by the time of initiating and prosecuting the domestic violence case. The petitioners referred to the passage on Domestic Violence from Halsbury's laws stating the provisions relating to matrimonial injunctions in a County Court to be applicable to a man and a woman who are living with each other in the same household as husband and wife. Sivakami Ammal v. Bangaruswami Reddi, AIR 1954 Madras 1039, interpreting the word 'wife' with reference to the Madras Hindu Bigamy Prevention and Divorce Act, 1949 was also referred to, wherein the word 'wife' was held to mean a person who would have been a wife but for the decree of divorce or dissolution passed in the trial Court. The decision of the Apex Court in Chand Dhawan v. Jawaharlal Dhawan, (1993) 3 Supreme Court Cases 406, was also relied on, wherein after an exhaustive reference to the case law, the Apex Court was primarily looking at the words 'at the time of passing any decree' or 'at any time subsequent thereto' used in Section 25 of the Hindu Marriage Act, 1956 vis--vis the request for permanent alimony or maintenance. S.R. Batra v. Taruna Batra (5 supra) was also again referred to about 'living at any stage in a domestic relationship'.

28. The decision by a learned Single Judge of this Court in A. Sreenivasa Rao v. State of Andhra Pradesh, 2011 (2) ALD (Crl.) 191 (AP), also needs to be referred to, in which it was opined that when there was no jural relationship of man and wife between the 1st petitioner and 2nd respondent therein by the date of filing of D.V.A. No.18 of 2007, the case in D.V.A. No.18 of 2007, prima facie, is not maintainable. It was also noted that the dates when the alleged violations under the Act have occurred, were also not stated, due to which the 2nd respondent therein was not entitled to proceed against the petitioners therein under the provisions of the Act.

29. With great respect, the principle laid down in Mohit Yadam v. State of Andhra Pradesh (15 supra) did not appear to have been placed before His Lordship and the elaborate rea-

soning given in Mohit Yadam v. State of Andhra Pradesh clearly showed the existence of any jural relationship of a man and wife between the aggrieved person and the respondent by the date of filing of the domestic violence case, is not a sine qua non for the maintainability of the domestic violence case nor is it necessary that the acts of domestic violence need to happen only after the Act came into force. The decision in A. Sreenivasa Rao v. State of Andhra Pradesh (23 supra) appeared to have mainly revolved round the facts in issue therein and no principle of law appears to have been laid down to be considered as a precedent. Hence, following Mohit Yadam v. State of Andhra Pradesh (15 supra), in which the question was discussed from every conceivable angle with which reasoning I am in total respectful agreement, the fact that divorce was granted by a foreign Court between Saritha and the 1st petitioner, will have no effect on the maintainability of the domestic violence case, if the allegations made therein otherwise bring the dispute within the province of the Act, the entitlement to the reliefs claimed being, of course, dependent on the ultimate proof of such allegations.

30. That such an understanding and interpretation is to be adopted, is also clear from the view taken by another learned Judge of this Court in Sikakollu Chandra Mohan v. Sikakollu Saraswathi Devi, 2010 (2) ALD (Crl.) 391 (AP), wherein separation between the parties was prior to the Act, but it was seen whether the cause of action arose or cause of action continued to exist even after the Act coming into force. The learned Judge observed that even though separation between the parties was prior to the Act coming into force, still economic abuse by way of deprivation of the aggrieved person of right to residence and right to maintenance etc., would continue both before and after the Act coming into force and hence, it cannot be said that the mother has no cause of action to maintain the domestic violence case after the Act coming into force.

31. In fact in D. Velusamy v. D. Patchaiammal, 2010 (4) Kerala Law Times 384, the Supreme Court examined the provisions of the Act and noted that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage' to be akin to common law marriage and directed the Family Court to decide whether the man and woman had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The Supreme Court specifically noted the term 'wife' to be including, under Section 125 of the Code of Criminal Procedure, a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. A woman not having the legal status of a wife was noted to have been, thus, brought within the inclusive definition of the term 'wife' consistent with the objective. The principles laid down by the Apex Court also may be in tune with the understanding of the word 'wife' as inclusive of a woman who has been a wife.

32. The manner in which the application under Section 12 of the Act had been presented direct by Saritha to the Magistrate was also attempted to be interpreted as fatal to the maintainability of the domestic violence case and the decision in M. Palani v. Meenakshi, AIR 2008 Madras 162, was relied on. The learned Judge incidentally also held that Section 2(q) does not say that the aggrieved person and the respondent should have lived together for a particular period and referred to the definition of 'domestic relationship' between two persons as one who live or have at any point of time lived together. That apart, the learned Judge held that before passing an order by the Magistrate, he shall take into consideration the domestic incident report received from the protection officer. The learned Judge observed that a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the protection officer. However, it has to be noted that the issue before His Lordship was more about the necessity for a family Court or a civil Court to have and consider a report from the protection officer before passing an order. It is seen from Milan Kumar Singh v. State of U.P., 2007 Crl.L.J. 4742, that a plain reading of section 10 was held to show that the aggrieved person can file a complaint directly to the Magistrate concerned. The learned Judge pointed out that the word 'or' used in Section 12 of the Act is very material, which provides choice to the aggrieved person to approach and there is no illegality in directly approaching the Magistrate for taking cognizance in the matter. It is for the Magistrate concerned to take the help of the protection officer or service provider after receiving the complaint, provided he feels it necessary for final disposal of the dispute between the parties. Only if the parties concerned or the Magistrate take the help of the protection officer, he will submit a domestic incident report to the Magistrate concerned. This view is in perfect tune with the language of the statute and object and purpose of the Legislation. Therefore, the domestic violence case cannot fail merely on the ground of the 2nd respondent directly approaching the Magistrate with her application.

33. Satya v. Teja Singh, AIR 1975 SC 105, Ramesh Venkat Perumal v. State of A.P., 1998(1) ALD (Crl.) 122 (AP), the decision of Madras High Court, dated 02-04-2008 in Criminal O.P. No.7156 of 2007 and a hard copy relating to the Act from internet relied on by Sri Krishna Reddy, hence, need no further reference being more about the legal consequences on the status of the parties due to a foreign judgment and the applicability of the Act to past events with present consequences.

34. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid, AIR 1963 SC 1, is also about the conclusiveness or effect of a foreign judgment.

35. Concerning prosecution of parallel proceedings simultaneously on the same cause of action, in M. Nirmala v. Dr. Gandla Balakotaiah, 2008(2) ALT 241, the question was the entitlement to interim relief in a suit pending before a family Court with reference to

Section 19 of the Act and the learned Judge pointed out that the law provided different fora for different remedies. Likewise in Lalmuni Devi v. State of Bihar, 2001 (1) ALT (Crl.) 219 (SC), the Apex Court held that mere maintainability of a civil claim does not mean that a criminal complaint cannot be maintained and has to be quashed.

36. The question of multiplicity of proceedings arising out of the same set of facts was considered in depth in Kothamasu Nagavenkata Suresh Babu v. Kothamasu Suneetha, 2009 (3) ALT (Crl.) 242 (A.P.), and it was held that "The very nature of such rights, liabilities and proceedings arising out of relationships in matrimony, blood and adoption as illuminated by the legislative scheme, policy, purpose and object, obligates the Court to adopt an interpretation permitting the pursuit of various alternative remedies simultaneously or successively with the only duty for the respective Courts being to note the scope, content and nature of the other proceedings and to mould the grant of respective reliefs with reference to the reliefs granted in such other proceedings or the change of circumstances brought about on the reliefs granted or the subsequent grant of reliefs in the other proceedings. Hence, in respect of such rights and liabilities, the filing, pendency and pursuit of the proceedings under a different provision under a different law are not per se a disabling factor against the prosecution of the proceedings under another provision under another law simultaneously or successively."

It was also held that the impact of finality of an earlier adjudication of the same issues on the legality and sustainability of such subsequent proceedings may make them amount to an abuse of the process of the Court and interference with such proceedings to secure ends of justice will be on an altogether different legal premise, but not on the mere inconvenience of multiplicity of proceedings with the same factual background, if they are otherwise permissible in law. Such situation did not arise in this case and the maintainability of both the domestic violence case and the criminal case simultaneously, therefore, cannot be in question. In fact, the learned Judge in A. Sreenivasa Rao v. State of Andhra Pradesh (23 supra) was dealing with a domestic violence case and a criminal case simultaneously being pursued and held that the domestic violence case cannot be considered to be a criminal proceeding and the mischief of Article 20 Clause (2) of the Constitution of India or Section 300 of the Code of Criminal Procedure is not applicable in such an event.

37. Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008 relied on Kans Raj v. State of Punjab, AIR 2000 SC 2324 . The Apex Court noted therein that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. The Apex Court noted that a tendency has developed for roping in all relations of the in-laws of the wives, which will ultimately weaken the case of the prosecution even against the real accused. In Sushil

Kumar Sharma, 2005 AIR SCW 3569, also, the Apex Court administered a note of caution about the complaints, which are not bona fide and have been filed with oblique motives and directed the Courts to take care of the situation within the existing framework to avoid a new legal terrorism. The Supreme Court cautioned against following any strait jacket formula or casual dealing with such allegations and the ultimate objective of the legal system should not be lost sight of. Similarly in Neera Singh v. State, I (2007) DMC 545, also, it was noted that exorbitant claims are being made about the amounts spent on marriage, other ceremonies, dowry and gifts due to which the Court should insist on disclosing the source of such funds. It was also stated that vague allegations against every member of the family of the husband cannot be accepted at face value and the allegations have to be scrutinized carefully by the Court before framing the charge. The principles laid down in the three decisions relied on by Sri T. Pradyumna Kumar Reddy should put the trial Court on guard to appreciate the allegations made against the petitioners with reference to such factors, but no deep probe into the acceptability and reliability of the allegations can be indulged herein, more so, in the absence of any clinching proof either way on the material placed before the Court herein. Refraining from expressing any opinion on merits of the rival contentions, the matter has to be, therefore, left to be decided by the trial Court.

38. Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 also referred to T. Venkateshwarlu v. State of A.P., 1998(5) ALD 426, with reference to the question of jurisdiction. In that case, a decree of divorce was granted in Sweden and the offence of bigamy was alleged to have been committed at Nellore in Andhra Pradesh. The cruelty under Section 498A of the Indian Penal Code was also not alleged to be at Hyderabad, but was alleged to be at Nellore and Sweden. Consequently, it was held that the Courts or police at Hyderabad have no jurisdiction to investigate or enquire into the alleged offences. While the question whether the acts alleged against the petitioners amounted to cruelty within the meaning of Section 498A of the Indian Penal Code is one of fact to be probed into by the trial Court, the complaint by Krishna Reddy, the father of the alleged victim set the criminal law in motion and even if the alleged offence was mostly committed outside India within the meaning of Section 188 of the Code of Criminal Procedure, on the allegations made, certain events were claimed to have taken place at Hyderabad through telephonic conversations between the petitioners and Krishna Reddy, through personal meetings between Krishna Reddy and the 1st and 2nd petitioners, through a memorandum of understanding, dated 11-05-2007 at Hyderabad, e-mails received at Hyderabad and withdrawal of ₹ 8,00,000/- within the jurisdiction of the Courts at Hyderabad. Whether a part of the cause of action for prosecuting the petitioners for the offences or domestic violence alleged arose at Hyderabad or not will be a matter of conclusion at the trial and not before hand and hence, the application of Sec-

tion 179 or Section 188 of the Code of Criminal Procedure, 1973 and any consequential requirement of complying with any procedural safeguards will depend upon the factual conclusions that will be arrived at during trial.

39. Thus, neither the domestic violence case nor the criminal case appear to be susceptible to being quashed in exercise of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, which is a rarely exceptional remedy and without expressing any opinion on the merits of the rival contentions, the criminal petitions have to be negatived.

40. In the light of the above discussion, the question of non- maintainability of the criminal petition for quashing the criminal case due to non-impleadment of Sri P. Krishna Reddy, the father of the victim, who gave complaint to the police, needs no further probe.

41. It should also be made clear that none of the observations made herein shall influence the consideration of the domestic violence case or the criminal case on their own merits by the trial Court and the entire discussion herein is purely with reference to examining the sustainability of the request for quashing the proceedings in both the cases.

42. Accordingly, both the criminal petitions are dismissed.

Mohit Yadam v. State of Andhra Pradesh, 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (Andhra H.C.)(13.11.2009)

Judge: K.C. Bhanu

Order

1. The Union Parliament has plenary power of legislation within the field of legislation committed to it, and subject to certain constitutional restrictions, it can legislate an Act to operate prospectively as well as retrospectively. It is, however, a cardinal principle of construction that every statute is prima facie prospective, unless it is expressly or by necessary implication, made to have retrospective operation.

2. The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005) (for short, hereinafter referred to as 'the Domestic Violence Act, 2005') was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India 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. The World Conference of Human Rights held in Vienna in 1993 and the declaration on elimination of violence against women in the same year, concluded that civil society and the Governments have acknowledged that violence against women

is a public health and human rights concern. Therefore, to provide for more effective protection of rights of women, who are victims of violence of any kind occurring within the family, Guaranteed under the Constitution, and for the matters concerned thereto or incidental thereto, the Domestic Violence Act,2005 has been passed. In exercise of powers conferred by Sub-section (3) to Section 1 of the Domestic Violence Act, 2005, the Central Government appointed 26th day of October, 2006 as the date on which the provisions of the said Act came into force. Every modern legislation is initiated with some goals and objectives and speaking broadly has some beneficial purpose and reason. Whether the legislation made by the Parliament is 'prospective' or 'retrospective' in operation, is the question to be decided in these two Criminal Petitions.

3. For sake of convenience, the parties are hereinafter referred to as they are arrayed in the respective D.V.Cs.

4. Criminal Petition No. 346 of 2009 is filed to quash all further proceedings in D.V.C. No. 163 of 2008 on the file of the Principal Judicial Magistrate of First Class, Mancherial, whereas, Criminal Petition No. 7978 of 2009 is filed to quash the proceedings in D.V.C. No. 10 of 2009 on the file of the I Additional Munsif Magistrate, Tenali, Guntur district.

5. Shorn of unnecessary details, the brief facts that are necessary for disposal of Criminal Petition No. 346 of 2009 may be stated as follows:

Petitioner No. 1 married the first Respondent on 29-12-2003, which was registered at Nagpur, and again the marriage ceremony was performed on 28-1-2004 at Hyderabad, and thereafter she was taken to Australia by the Respondent No. 1 on 20-2-2004 and they lived together in Australia for about two months and thereafter she returned to India. Once again, she went back to Australia in September, 2004 and stayed with the Respondent No. 1 till May, 2005 and later she came back to India along with her husband by which time she was pregnant. Again, on 22-6-2005, the couple went to Australia and a baby was born to the Petitioner No. 1 on 29-6-2005. The allegation against the Respondents is that from the beginning of the marriage life, the Petitioner No. I was ill-treated and insulted by the Respondents, demanding to bring more money from her parents and in Australia also, both the Respondents gave physical and mental torture to her and therefore, the Petitioner No. 1 and her child left the house and approached Australian police. Thereafter, the Petitioners filed a petition on 16-12-2008 before the Judicial Magistrate of First Class, Mancherial under Section 12 of the Domestic Violence Act, 2005 to grant certain reliefs as mentioned therein, which was taken on file as D.V.C. No. 163 of 2008.

6. Similarly, the brief facts that are necessary for disposal of Criminal Petition No. 7978 of 2009 may be stated as follows:

Petitioner No. 1 is wife of Respondent No. 1; Respondents 2 and 3 are parents, and Respondents 4 and 5 are elder brother, of Respondent No. 1; Respondent No. 6 is the

wife, and Respondent No. 7 is the sister, of Respondent No. 1; and Respondent No. 8 is husband of Respondent No. 7. It is alleged that, marriage of Petitioner No. 1 with the Respondent No. 1 took place at Gattavari Kalyana Mandapam, Kanyaka Parameswari Devasthanam, Tenali according to Hindu rites and customs. The Petitioner No. 1 married the Respondent No. 1 without taking any dowry and cash. They lived happily for a short period and thereafter the Respondent No. 1, with the instigation of Respondents No. 2 to 8, used to abuse the Petitioner No. 1 in vulgar language and subjecting her to cruelty demanding to bring additional dowry. Further, the Respondent No. 1 was addicted to vices and used to come to house late night, and all the Respondents did not provide food to Petitioners. All the Respondents hatched up a plan and attempted to kill her by releasing gas, and Respondent No. 1, in a drunken state, tried to kill her by pressing her neck. The Respondents have not heeded the advice given by elders. Even after a family counseling, the Respondents did not change their attitude. Hence, the Petitioners filed the complaint under Section 12 of the Domestic Violence Act, 2005, and the same was taken on file as D.V.C. No. 10 of 2009.

7. Sri. K. Sadasiva Reddy, learned Counsel appearing for the Petitioners in Criminal Petition No. 346 of 2009 contended that, the Domestic Violence Act, 2005 came into force with effect from 26-10-2006 and all the allegations with regard to domestic violence alleged in the complaint, were allegedly occurred prior to the Act came into force; that, the language used in the Act would clearly establish that it would apply prospectively and therefore continuation of the proceedings against the Petitioners is nothing but abuse of process of Court.

8. The learned Counsel appearing for the Petitioners in Criminal Petition No. 346 of 2009 placed strong reliance on a decision in K. Ramaraju v. K. Lakshmi Pratima: 2008 (2) ALD (Cri) 1 wherein it is held thus

The same needs no expression of opinion herein, as the first Respondent claims herein to be prohibited from having shelter in the shared household before and after coming into force of the Act and even after filing of the petition. She also claims to be deprived of any economic resources to which she is entitled under law or custom payable even otherwise under the order of the Court by way of liability of the husband to maintain her both before and after the Act up-to-date. Such deprivation and prohibition fall within the meaning of Clauses (a) and (c) respectively of economic abuse as defined in Explanation-I Section 3(iv) of the Act. Section 3 defining domestic violence for the purposes of this Act includes any act or omission or commission or conduct of the Respondent as constituting domestic violence in case of any harm or injury to the aggrieved person including economic abuse. While not going into the truth or otherwise of the allegations made by the first Respondent at different stages, it has to be noted that ex-facie her allegations

constituted allegations of economic abuse amounting to domestic violence committed by the Petitioner and his son before and after commencement of the Act also and continuing up-to-date.

In the above decision, no finding has been given by the learned single Judge of this Court as to whether the Domestic Violence Act, 2005 is retrospective or prospective in operation.

9. Smt. M. S. Tirumala Rani, the learned Counsel appearing for the Petitioners in Criminal Petition No. 7978 of 2009 contended that, the acts of domestic violence allegedly took place long prior to the DomesticViolence Act, 2005 came into force and hence she prays to quash the complaint as it is nothing but abuse of process of Court.

10. The learned Counsel relied on the following decisions in support of her contention.

(a) In Shri Banwari Dass v. Shri Sumer Chand: (1974) 4 SCC 817 : AIR 1974 SC 1032, wherein it is held thus (para 15):

In the instant case also, if the phrase 'found to have been guilty' in Section 9(1) (d) is construed in the context of Clause (a) of Section 17(1), then on the analogy of Re Storie (supra), it will mean 'found to have been guilty at the time of election, and immediately preceding the election.

Because the above interpretation fits in better, in the general scheme of the Corporation Act, the Apex Court interpreted the words 'found to have been guilty',

(b) In Dena Bank v. Bhikhabhai Prabhudas Parekh & Co.: (2000) 5 SCC 694 : AIR 2000 SC 3654 wherein it is held thus:

...The ordinary rule is that a legislative enactment comes into operation only on its enactment. Retrospectivity is not to be inferred unless expressed or necessarily implied in the legislation, specially those dealing with substantive rights and obligations. It is a misnomer to say that Sub-section (2A) of Section 15 of the Karnataka Sales Tax Act is being given retrospective operation. Determining the obligation of the partners to pay the tax assessed against the firm by making them personally liable is not the same thing as giving the amendment a retrospective operation. In Principles of Statutory Interpretation (by Justice G.P. Singh, Seventh Edition, 1999, at page 369) it is stated:

The rule against retrospective construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing". If that were not so, every statute will be presumed to apply only to persons born and things come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date.

(c) In J. Mitra and Company Private Limited v. Assistant Controller of Patents and Designs : (2008) 10 SCC 368 : AIR 2009 SC 405 wherein it is held thus (para 27):

An act cannot be said to commence or to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring it into operation.

11. On the other hand, Smt. S. Vani, learned Counsel appearing for 2nd Respondent in Criminal Petition No. 346 of 2009 contended that, the Domestic Violence Act, 2005 is a remedial statute; that, no new right is created in favour of women, but only speedy and comprehensive remedies are provided under the Act, and therefore it is retrospective in operation.

12. The learned Counsel relief on the following decisions in support of her contention.

a) In Pratap Singh v. State of Jharkhand: AIR 2005 SC 2731 : 2005 Cri LJ 3091, wherein it is held thus:

The legislative intendment underlying Sections 3 and 26 read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof...

b) In S.R. Batra v. Taruna Batra (Smt.) : (2007) 3 SCC 169 : AIR 2007 SC 1118, wherein it is held thus (paras 27 and 30).

It is well settled that any interpretation which leads to absurdity shall not be accepted.

.....

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.

It is also observed by the Apex Court that the definition of shared house hold is not very happily worded.

c) In B.P. Achala Anand v. S. Appi Reddy: AIR 2005 SC 986 wherein it is held thus (para 21):

This indicates that the right of residence is a part of the right to maintenance and in which case in the absence of an order by the matrimonial Court in the proceedings for divorce, she would not be able to set up a claim in respect of the house even as against her husband, leave alone the landlord of her husband.

d) In the Secretary, Regional Transport Authority, Bangalore v. D.P. Sharma: AIR 1989 SC 509, wherein it is held thus:

In that case, the words 'where a date has been proved under the principle Act', came to be construed and it was observed, "But this form of words is often used to refer, not to a past time which preceded the enactment, but to a time which is made past by anticipation a time which will have become a past time only when the event occurs on which the statute is to operate." In our opinion, whether the expression 'has been' occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute.

13. It is not in dispute that there is no express provision under the Domestic Violence Act, 2005 that it applies retrospectively. Unless there are words in the statute sufficient to show the intention of the legislature or by necessary implication made to have retrospective operation, it is deemed to be prospective only. Retrospective legislation is never presumed and therefore a law will only be applied to cases occurring after its date of coming into force, unless it appears from the statute itself that it is intended to have retrospective effect. Similarly, it is also established that one of the cardinal principles of interpretation is that when language of a particular provision is plain and unambiguous, then the same should be read as such without importing foreign words to it. So also, the cardinal rule of construction of a statute is that it should be construed according to the intention expressed in statute itself. Construction of a Section is to be made of all parts together. Different parts of the same Section must be read together. With reference to the rule of construction, the Latin maxim 'verbis standum ubi nulla ambiguitas' which means 'one must abide by the words there is no ambiguity' is relevant. This maxim expresses the rule of construction where the words of statute are ambiguous, it becomes necessary in order to ascertain their meaning and intention to consider the circumstances in which the statute originated, the object of it had in view, the evil it was intended to correct, or the right it had intended to confer and in the light thus afforded an interpretation or construction is put upon the ambiguous words or phrases. But, where there is no ambiguity and the meaning of the words used is plain and distinct, that meaning must be given to them. Further, construction is not permitted where the expression is clear.

14. The statement of objects and reasons should not be used for interpreting the Act, but, it is permissible to refer them to know the historical background and mischief intended to cure. On this aspect, it is pertinent to refer to a decision in State of West Bengal v. Union of India MANU/SC/0086/1962 : AIR 1963 SC 1241, wherein it is held thus:

It is however well settled that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited

purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.

15. The object of interpreting a statute is to ascertain the intention of the legislation enacting it. In Siva Shakti Co-op. Housing Society, Nagpur v. Swaraj Developers : (2003) 6 SCC 659 : AIR 2003 SC 2434 it is held thus (para 19).

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

Words and phrases are symbols that stipulate mental references to reference. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See Institute of Chartered Accountants of India v. Price Waterhouse : (1997) 6 SCC 312 : AIR 1998 SC 74). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection; of words as meaningless has to be avoided. As observed in Crawford v. Spooner, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction take up deficiencies which are left there. (See the State of Gujarat v. Dilipbhai Nathjibhai Paten : (1998) 2 SCR 56 : AIR 1998 SC 1429. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. (1978) 1 All ER 948 . Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself, (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 , quoted in Jamma Masjid, (SIC) v. Kodimanjandra Deviah : AIR 1962 SC 847.

16. In a decision in Doypack Systems P. Ltd. v. Union of India : (1988) 2 SCC 299, 331, 332 : AIR 1988 SC 782 case it is held thus:

The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear, manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary.

It has to be reiterated that the object of interpretation of a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole and in its context. That intention, and, therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand...

17. Similarly, on the aspect of whether the enactment passed by a legislature is prospective or not, it is pertinent to refer to a decision in Zile Singh v. State of Haryana : (2004) 8 SCC 1 : AIR 2004 SC 5100, wherein it is held thus (para 13):

It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis' - a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G. P. Singh, Ninth Edition, 2004 at p. 438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (ibid, p. 440).

Similarly, in para 15, four factors are suggested whether the intention of legislature is to give retrospectively.

Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant : (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what is was the legislature contemplated (p. 388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p. 392).

18. The following statutory provisions of interpretation have to be kept in view while considering whether the main Act as well as its amendment are prospective or retrospective in effect: (1) what was the object of the Act; (2) what was the evil that was intended to be cured by the Act; (3) the establishment of the machinery for achieving the object.

19. Similarly, retrospectivity is liable to be decided on a few touch stones, as laid down in National Agricultural Co-operative Marketing Federation of India Ltd. v. Union of India (UOI) : (2003) 5 SCC 23 : AIR 2003 SC 1329 (para 20).

As has been held in Ujagar Prints v. Union of India (1989) 179 ITR 317 : AIR 1989 SC 516.

A competent legislature can always validate a law which has been declared by Courts to be invalid, provided the infirmities and vitiating in factors noticed in the declaratory judgment are removed or cured. Such a validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature - granting legislative competence - the earlier judgment becomes irrelevant and unenforceable that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the right of which the earlier judgment becomes irrelevant.

20. Similarly, in a decision in S.L. Srinivas Jute Twine Mills P. Ltd. v. Union of India : (2006) 2 SCC 740 : 2006 AIR SCW 1025 it is held thus (para 15):

It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Keshvan Madhavan Memon v. State of Bombay : 1951 Cri LJ 680 : AIR 1951 SC 128. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis'. In the words of LORD BLANESBURG, "provisions which touch a right in existence at the passing of the statute are not to applied retrospectively in the absence of express enactment or necessary intendment." (See Delhi Cloth Mills and General Co. Ltd. v. CIT, Delhi : AIR 1927 PC 242. "Every statute, it has been said", observed Lopes L. J., "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect." (See Amireddi Raja Gopala Rao v. Amireddi Sitharamamma : (1965) 3 SCR 122 : AIR 1965 SC 1970. As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not

to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid (1886) 31 Ch D 402. In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghubir Singh : (1989) 178 ITR 548 : AIR 1989 SC 1933. The above position has been highlighted in "Principles of Statutory Interpretation" by Justice G. P. Singh. (Tenth Edition, 2006) at pp. 474 and 475).

21. The object of the Domestic Violence Act, 2005 is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. The Act only confers right to remedy to the wives and women in, domestic relationship. A machinery is provided for achieving the said object, viz., it is the duty of a Police Officer, Protection Officer, Service Provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, availability of services of Service Provider and Protection Officer, right to avail free legal services. Similarly, a Magistrate is under obligation to fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing. The Domestic Violence Act, 2005provides for comprehensive and speedy relief within a set time frame. Where aggrieved person's right is invaded or destroyed or likely to be destroyed, the Domestic Violence Act, 2005 gives a remedy by interdict to protect it or damages for its loss, etc.

22. If a statute does hot provide an offender liable to any penalty (conviction or sentence) in favour of the state, it can be said that legislation will be classified as remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favour of the class of persons for whose benefit the statute is enacted. Whenever a legislation prescribes a duty or penalty for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it and the penalties prescribed as a sanction for its purpose. None of the provisions of the Domestic Violence-Act, 2005 has direct penal consequences.

23. Under Section 31 of the Domestic Violence Act, 2005, breach of protection order, or of an interim protection order, by the Respondent shall be an offence under the Act. Therefore, all other orders passed under Sections 17, 18, 19, 20 and 22 of the Domestic Violence Act, 2005 have no penal consequences, even if the Respondent committed breach of the order, except as provided under Section 31 of the Act. Therefore, as seen from the provisions of the Act, some new remedies are provided to thewomen with regard to existing rights. Such remedies do not alter the contract or right; it had taken away no vested right, for, the defaulter can have no vested right in the state of law which left the

victim without or with only defective remedy. The Act is passed to stop the pandemic that violence suffered bywomen, with an object to prevent the gender based violence.

24. The learned Counsel for the Petitioners mainly relied on the verb used in the definition of 'aggrieved person' and also in the definition of 'domestic relationship' in Section 2 of the Act.

Section 2(a) of the Act 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) of the Act 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.'

25. The words 'at any point of time', 'lived together' cannot be understood in narrow sense, so as to mean that such living together is only after the Act came into force. In its sweep, shared household between two persons by relationship as defined in Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family.

26. There cannot be any dispute that remedial statutes which are more literally interpreted are sometimes allowed retrospective effect. In other words, close attention must be paid to the language of the statutory provision for determining the scope of retrospectivity intended by the Parliament. In deciding the question of applicability of a particular statute to past events, the language used is no doubt most important factor to be taken into account, but cannot be stated as an inflexible rule mat use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. The words 'who is' or 'has been' in Clause (a), 'who live or have' in Clause (f), 'who is, or has been', in Clause (q), of Section 2 of the Act, may denote the events happened before or after the Act came into force. All that necessary is that the event must have taken place at the time when action on that account is taken under the statute.

27. There cannot be any dispute that present perfect tense is used to denote the action beginning at some time in the past and continue up to the present moment. Simple present is used in vivid narrative as substitute for the simple past. One of the general rules of the Halsbury Laws of England third edition is that the statute is to be regarded as always speaking. On the aspect that language used in the enactment may give retrospectivity, it is useful to refer to a decision in Ahmedabad Mfg. & Calico Printing Co. Ltd. v. S.G. Mehta : AIR 1963 SC 1436 wherein it is held thus:

Under ordinary circumstances, an Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But, this rule is not unalterable. The legislature may affect substantial rights by enacting

laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed.

28. 'Domestic Violence' is any act of physical, mental or sexual violence and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or had family or kinship ties or cohabit or dwell in the same house. It infringes the basic right to feel comfortable within the confines one's house to all domestic violence victims is not a home. A home where one can live without any fear or insecurity. It is with this in mind, the new Protection of Women from Domestic Violence Act was passed.

29. One of the contentions raised by the learned Counsel for the Petitioners is that, if the words used in the Act can be construed as acts or omissions relating to the domestic violence apply retrospectively, it would lead to absurdity and contended that if a woman shared domestic relationship in the household in the year 1970, can she come and say that because of her sharing domestic household with the husband and file a petition under the Domestic Violence Act, 2005? Such an illustration, as pointed by the' learned Counsel for the Petitioners, cannot [b]e accepted, because the absurdity would depend upon the nature of the relief claimed because the definition of the word 'domestic violence' is very clear that two persons who five or have at any point of time lived together in a shared house, the word 'at any point of time' indicates not only after the Act came into force but also prior to it. There cannot be any dispute that the definition clause must be read in the context of the subject matter and the scene of the Act and consistency with the objects and other provisions of the Act.

30. Similarly, Section 26 of the Act reads thus:

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.

The above provision makes it clear that any relief available under the Domestic Violence Act, 2005 may also be sought in any legal proceedings before the civil Court, family Court or criminal Court, whether such proceeding was intended before or after commencement of this Act. If the contention of the learned Counsel for the Petitioners is to be accepted that the Act is prospective in nature, the question of claiming any relief under Sections 18 to 22 of the Act does not arise in a suit instituted prior to commencement of the Act. Similarly, it is also clear from the above provision that any relief which may be granted under the Act may be sought for, in a suit or legal proceedings before a civil Court or criminal Court. Sub-section (3) to Section 26 lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceedings other than under the Domestic Violence Act, 2005.

31. Section 18 of the Domestic Violence Act, 2005 provides that 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, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the Respondent from committing any act of domestic violence or aiding or abetting therein, 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 or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers of bank accounts belonging to both the parties jointly or to the Respondent singly, including her stridhan or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.

32. Section 19 of the Domestic Violence Act, 2005 provides that the Magistrate may on being satisfied that domestic violence has taken place pass a residence order restraining the Respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the Respondent to remove himself from the shared household, restraining the Respondent or his relativesfrom entering the shared household, restraining the Respondent from alienating or disposing of or encumbering the shared household, restraining the Respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or directing the Respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. It is also provided in this section that no order shall be passed against any person who is a woman directing her to remove herself

from the shared household. Sub-section (2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Sub-section (3) provides for execution of a bond by the Respondent for prevention of the domestic violence. Sub-section (5) empowers the Magistrate to pass an order directing the officer-in-charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order. It is also provided in this section that the Magistrate may impose on the Respondent an obligation to discharge rent and other payments and to direct the Respondent to return to the aggrieved person her stridhan or any other property or valuable security to which she is entitled.

33. Section 20 of the Domestic Violence Act, 2005 empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the Respondent to meet the expenses incurred and losses suffered including loss of earning, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition, to Section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Sub-section (2) provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. This section also empowers the Magistrate to order lump sum or monthly payments for maintenance. Sub-section (6) provides that on the failure of the Respondent to make payments of the monetary relief, the Magistrate may direct the employer or a debtor or 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 Respondent.

34. Section 21 of the Domestic Violence Act, 2005 lays down that notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specify the arrangements for visit of such child by the Respondent. However, the Magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interests of the child.

35. Section 22 of the Domestic Violence Act, 2005 lays down that in addition to other reliefs which may be granted under the Act, the Magistrate may, on an application by the aggrieved person, pass an order directing the Respondent to pay compensation or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the Respondent.

36. Section 36 makes it clear that provisions of the Act shall be in addition to and not in derogation of the provisions of any other law.

37. If the remedies provided in the aforesaid mentioned provisions are applicable prospectively to the acts or omissions of domestic violence occurred prior to 26-11-2006, then the aggrieved persons who suffered violence prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies available to the women, who suffered domestic violence prior to 26-11-2006, under the Act, then the aggrieved persons who suffered prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies provided to the women, who suffered domestic violence prior to 26-11-2006, under the Act. The object and purpose of enacting the Act would be defeated if narrow interpretation is given. No doubt, Article 20(1) of the Constitution of India prohibits the making of ex post facto criminal law with regard to conviction and sentence. The Domestic Violence Act, 2005, under no stretch of imagination, can be said to be ex post facto criminal law. Any act or omission under the Domestic Violence Act,2005 performed by the Respondent prior to the Act came into force has no direct penal consequences of conviction or sentence.

38. From the above discussion, it is clear that the intention of the legislation is to provide certain remedies to the victims of domestic violence and also to prevent occurrence of domestic violence in the society. Therefore, the acts of violence occurred prior to 25-10-2006 would come within the meaning of 'domestic violence' as defined under the Act. For the foregoing reasons, this Court is of the opinion that the Domestic Violence Act, 2005 is retrospective in operation.

39. It is not in dispute that in Domestic Violence Case No. 163 of 2008, sought to be quashed in Criminal Petition No. 346 of 2009, there are allegations with regard to domestic violence. Similarly, in Domestic Violence Case No. 10 of 2009, sought to be quashed in Criminal Petition No. 7978 of 2009, there are specific allegations against first Petitioner. The truth or otherwise of those allegations has to be decided during the course of trial only. Correctness or otherwise of those allegations cannot be determined exercising the powers under Section 482 Code of Criminal Procedure.

40. The contention of the learned Counsel for the Petitioners is that no allegation of whatsoever is there against Petitioners 2 to 8 in Criminal Petition No. 7978 of 2009. Since this Criminal Petition is disposed of at the stage of admission, it is not desirable to quash the proceedings against the Petitioners 2 to 8 in Criminal Petition No. 7978 of 2009 behind back of the Respondents 2 and 3 herein. Therefore, liberty is given to the Petitioners 2 to 8 in Criminal Petition No. 7978 of 2009 to challenge the D.V.C. No. 10 of 2009 on the file of the I Additional Munsif Magistrate, Tenali, by separate Criminal Petition, if they are so advised. It is made clear that no finding is given against the Petitioners 2 to 8 on merits of the case. Therefore, there are no grounds to quash the impugned proceedings and both the Criminal Petitions are liable to be dismissed.

41. The Criminal Petitions are, accordingly, dismissed.

Sabana @ Chand Bai v. Mohd. Talib Ali, 2014 Cr.L.J. 866 (Rajasthan H.C.) (30.10.2013)

Judges: Chief Justice Amitava Roy, Justice Sangeet Lodha

Order

1. The legal question that falls for our determination in this reference made by the learned Single Judge of this Court reads as follows:

"Whether the Protection of Women from Domestic Violence Act, 2005 can be applied retrospectively specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force on October 26, 2006 or not?"

2. The Background facts giving rise to the legal issue may be summarized thus: Smt. Sabana @ Chand Bai, the petitioner, and Mr. Mohammed Talib Ali, the respondent, entered into marriage on 15.10.2001 according to the Muslim customs and rites. The petitioner alleges that from the very beginning of the marriage, she was treated with physical and mental cruelty by the respondent and the members of her in-laws family. Even during pregnancy and thereafter, the respondent and the members of his family did not take care of the petitioner. It is alleged that on 15.4.2002, despite her pregnancy, she was not only assaulted but was ousted from matrimonial home and thus, in the compelling circumstances, she left for her paternal home. Out of the wedlock, a son was born on 14.10.2002. On 6.2.2003, after a compromise had been reached between the parties, the petitioner returned to her matrimonial home. While she stayed at her matrimonial home, the respondent repudiated the paternity of the child. As a matter of fact, the petitioner had to undergo an operation for removal of uterus and therefore, the respondent and his family members started harassing her saying that she is no more fit for procreating children. On 13.2.2003, she was again beaten and sent back to her paternal home. On 2.5.2003, the respondent filed an application seeking divorce from the petitioner. On 12.7.2003, the petitioner lodged an FIR with the police against the respondent, alleging commission of the offences under Sections 498A & 406 IPC. Subsequently, on 20.9.2003, she also filed an application seeking maintenance under Section 125 Cr.P.C. before the Family Court, Jodhpur. During the pendency of the litigation between the parties, on 4.9.2004, the parties entered into compromise and the petitioner again returned to the matrimonial home. But, the parties could not live together and on 13.5.2005, the petitioner was again dumped at her paternal place by the respondent. Thereafter, on 26.2.2007, after coming into force of the Protection of Women from Domestic Violence Act, 2005 ("the Act"), the petitioner- Sabana filed an application under Sections 12, 17 to 20 and 23 of the Act before the court of competent jurisdiction i.e. Additional Chief Judicial Magistrate

(Economic Offences), Jodhpur. The application was contested by the respondent by filing a reply thereto. The parties led their evidence. After due consideration of the evidence on record and rival submissions, the trial court arrived at the finding that after coming into force of the Act i.e. with effect from 26.10.2006, the petitioner never resided with the respondent and therefore, the question of her being subjected to domestic violence by the respondent, does not arise. Relying upon a decision of this court dated 7.1.2009 rendered in the matter of "Hema @ Hemlata (Smt.) & Anr. vs. Jitender & Anr." (S.B.Criminal Revision Petition No.804/08) [reported in 2009(1) Cr.L.R.(Raj.), 291], the court held that any act of violence committed prior to coming into force of the Act cannot be made basis for initiating proceedings under the Act and, therefore, the petitioner cannot be said to be an aggrieved person. Accordingly, the petition preferred by the petitioner under Section 12 r/w Sections 17, 18, 19 & 20 of the Act was dismissed by the trial court vide order dated 5.6.2010. Aggrieved thereby, the petitioner preferred an appeal before the Court of Session, which stands dismissed vide order dated 19.4.2011, which is impugned in this revision petition before this Court.

3. During the course of arguments before the learned Single Judge, learned counsel appearing for the petitioner while relying upon yet another decision of this court on the said legal issue in the matter of "Khushi Mohd. & Ors. vs. Smt. Aneesha", [2011(1) Cr.L.R.(Raj.), 593], contended that the Act does not distinguish between a wife and divorced wife and covers the acts of violence committed by the respondent-husband even prior to coming into force of the Act and thus, the Act can be applied retrospectively. However, as noticed above, in Hema @ Hemlata's case (supra), another coordinate Bench of this court categorically held that if the marriage has already been dissolved prior to coming into force of the Act, the person approaching the court under the provisions of the Act cannot be considered to be an 'aggrieved person' as defined by Section 2 (a) of the Act. The court observed that there is no provision in the Act having retrospective effect.

4. After due consideration of the two contradictory views expressed by Co-ordinate Benches of this Court as aforesaid, the learned Single Judge observed:

"It is to be noticed that in the case of Hema @ Hemlata (supra), the question with regard to the retrospective applicability of the Act was singularly raised. However, the said issue was not raised directly in the case of Khushi Mohd. & Ors.(supra). Through its reasoning, the learned Judge, in the case of Khushi Mohd. & Ors. (supra) implies that the Act is applicable retrospective. Hence, two contradictory views have been expressed by this Court on the issue of retrospective applicability of the Act."

5. Accordingly, the aforementioned legal issue has been referred by the learned Single Judge for consideration by a Larger Bench. Hence, this matter is before us for determination of the reference made.

6. Learned counsel appearing for the petitioner Mr.D.N.Yadav and Ms. Purnima Yadav, submitted that the 'aggrieved person' as defined by Section 2(a) of the Act, includes within its ambit a woman who is or has been in a domestic relationship with the respondent and has allegedly been subjected to domestic violence by the respondent. Learned counsel would submit that use of the words 'is or has been in domestic relationship' by the legislature makes it abundantly clear that it is not necessary that the aggrieved person should be living with the respondent on the date of coming into force of the Act. Learned counsel urged that similarly, in Section 2(f) of the Act which defines 'domestic relationship' the words used are 'a relationship between two persons who live or have, at any point of time, lived together in a shared household', which also indicates that two persons shall be deemed to be in a domestic relationship if they had lived together at any point of time, even prior to coming into force of the Act and are not living together after coming into force of the Act. Learned counsel submitted that had the legislature intended to keep a person not living with the respondent at the time of coming into force of the Act out of the purview of the Act, there was no necessity to use the words as noticed above and it would have been sufficient to say that the aggrieved person means any woman who is in a domestic relationship with the respondent. Learned counsel submitted that even Section 2(i) which defines 'Magistrate' competent to exercise jurisdiction, makes reference inter alia to the place where the domestic violence is alleged to have taken place and therefore, it cannot be said that the act of violence committed prior to coming into force of the Act is not within the purview of the remedial measures provided for under the Act. Drawing the attention of this court to proviso to Section 2(q), which defines 'respondent', learned counsel submitted that it stands specifically clarified that an aggrieved wife or female living in relations in the nature of marriage with the respondent may also file a complaint against any relative of the husband or the male partner and therefore, the question of non-applicability of the provisions to the act of violence vis-a-vis wife, who has been divorced prior to the coming into force of the Act, even otherwise does not arise. Learned counsel submitted that even Section 2(s) of the Act, refers to the person aggrieved to be a person who lives or at any stage has lived in a domestic relationship either singly or along with the respondent in the shared household. Accordingly, it is submitted that the conjoint reading of all these definition clauses makes it abundantly clear that a petition under the Act is maintainable even if the act of domestic violence has been committed prior to coming into force of the Act or the parties to the marriage stand separated by a decree of divorce before coming into force of the Act. Learned counsel submitted that Section 12 provides remedy to the aggrieved person, a woman, who is or has been in a domestic relationship with the respondent to seek one or more reliefs by making an application before the Magistrate under the Act and therefore, the question of restricting the applicability of the provisions of the Act, only to cases of subsisting domestic relationship

does not arise. Learned counsel while drawing the attention of this court to the provisions of Section 26 of the Act, submitted that the relief available to the aggrieved person under Section 18, 19, 20, 21 & 22, may also be sought in any legal proceedings 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 the Act and therefore, undoubtedly the relief in terms of the said provisions can always be sought by way of fresh proceedings for an act of violence committed prior to the coming into force of the Act. Learned counsel would submit that as a matter of fact, the legal issue referred for consideration by a Larger Bench is no more res integra inasmuch as, the same stands covered by a decision of the Hon'ble Supreme Court in the matter of "V.D.Bhanot vs. Smt. Savita Bhanot", (2012) 3 SCC 183 whereby a decision rendered by the learned Single Judge of the Delhi High Court on the said issue in the matter of "Mrs. Savita Bhanot vs. Lt. Col. V.D. Bhanot", 2011 Cr.L.J. 2963, has been upheld. Learned counsel submitted that the definition of 'domestic relationship' as set out under Section 2(f) of the Act, includes 'a relationship in the nature of marriage' which is held to be relationship akin to common law marriage by the Hon'ble Supreme Court in the matter of "D.Velusamy v. D.Patchaiammal", AIR 2011 SC 479 and therefore, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act does not arise. Accordingly, learned counsel submitted that the view taken by the learned Single Judge of this court in Khushi Mohd.'s case (supra) is the correct view on the issue involved and the decision rendered by the coordinate Bench in Hema @ Hemlata (Smt.)'s case (supra), without due consideration of the relevant provisions of the Act, laying down that the provisions of the Act are not retrospective and therefore, the person whose marriage already stands dissolved by a decree of divorce prior to coming into force of the Act, cannot be said to be an aggrieved person, deserves to be overruled. In support of the contentions raised as aforesaid, besides the decision of the Hon'ble Supreme Court and Delhi High Court in Savita Bhanot's case (supra) learned counsel has also relied upon the decisions of the Hon'ble Supreme Court in the matters of "Deoki Panjhiyara v. Shashi Bhushan Narayan Azad & Anr.", 2013 Cr.L.J. 684 (SC), "Chanmuniya vs. Virendra Kumar Singh Kushwaha", 2011 Cr.L.J. 96 (SC), "Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade", 2011 Cr.L.J. 1687 (SC), "D.Velusamy v. D.Patchaiammal", AIR 2011 SC 479, "Jovita Olga Ignesia Mascarenhas e v. Rajan Maria Coutinho", 2011 Cr.L.J. 745 (Bom.) and "Bharati Naik v. Ravi Ramnath Halarnkar", 2011 Cr.L.J. 3572 (Bom.).

7. Mr. Dipesh Beniwal, learned counsel submitted that the Act is a remedial statute enacted with an object to cure some immediate mischief and to bring into effect social reforms by ameliorating the conditions of women and to provide for redress and compensation to the persons aggrieved and therefore, it has to be construed liberally. Learned counsel

submitted that in a remedial statute, if any doubt exists then it has to be resolved in favour of the class of persons for whose benefit the statute is enacted.

8. Mr. S.D.Purohit, learned counsel submitted that under the provisions of the Act, the violation of the protection order passed in favour of the aggrieved person is made punishable under Section 31 of the Act and it does not provide for penal consequences for the act of domestic violence as such and therefore, the provisions incorporated in the Act providing for remedy to the persons subjected to the domestic violence, in no manner could be construed as penal provisions, sought to be given retrospective effect contravening the provisions of Article 20(1) of the Constitution. Relying upon a decision of the Madras High Court in the matter of "Dennison Paulraj & Ors. vs. Mrs. Mayawinola", II(2009) DMC 252, learned counsel submitted that under the provisions of the Act, the court is competent to take cognizance of the act of domestic violence committed even prior to coming into force of the Act and pass necessary protection orders. Learned counsel submitted that as per provisions of Section 28, the proceedings under Sections 12, 18, 19, 20, 21, 22 & 23 shall be governed by the provisions of the Code of Criminal Procedure, 1973 but merely on account of the procedure laid down under the Cr.P.C. being made applicable, the proceedings under the said provisions of the Act, which are remedial in the nature, cannot be considered to be criminal proceedings. That apart, learned counsel submitted that the protection of women against domestic violence is a human right issue, which is always a subsisting right and enforcement thereof, cannot be restricted only in respect of the act of violence committed after coming into force of the Act.

9. On the other hand, counsel appearing for the respondent Mr. Neel Kamal Bohra submitted that as per the provisions of Section 1(3), the Act enacted by the Parliament was to come into force on such date as Central Government may by notification in the Official Gazette appoint and therefore, the Act which has come into force on 26.10.2006, vide notification dated 17.10.2006, issued by the Central Government, cannot be made operative retrospectively so as to provide the remedy for the act of domestic violence alleged to have been committed prior to coming into force of the Act. Learned counsel submitted that as per provisions of Section 28, the proceedings before the Magistrate under the Act are to be governed by the procedure laid down under the Criminal Procedure Code and therefore, for all intent and purposes, such proceedings have to be treated to be criminal proceedings and therefore, no action can be initiated under the said provisions for the grant of relief in respect of the acts of domestic violence committed prior to coming into force of the Act. Learned counsel submitted that if the act of domestic violence alleged to have been committed prior to coming into force of the Act are taken cognizance of for grant of the relief to the aggrieved person, then, the provisions incorporated shall be in violation of the provisions of Article 20(1) of the Constitution. Learned counsel submitted that all statutes are treated to be prospective unless specifically provided for or by necessary

implication, the same are made operative with retrospective effect. Accordingly, learned counsel submitted that the view taken by this court in Hema @ Hemlata's case (supra) deserves to be upheld.

10. Mr. M.K.Trivedi, learned counsel submitted that though the provisions of Section 2(f) which defines 'domestic relationship' includes the relationship between two persons who have lived together in a shared household at any point of time but since no period is specified, the same has to be considered to be prospective in nature. Learned counsel submitted that the provisions of Cr.P.C. are made applicable to the proceedings under the Act and, therefore, by virtue of the provisions of Section 468 Cr.P.C., the complaint could be filed only within a period of one year from the date of incident. Relying upon the decision of the Hon'ble Supreme Court in the matter of "Inderjit Singh Grewal vs. State of Punjab & Anr.", 2012 Cr.L.J. 309 learned counsel submitted that the provisions of the Act are not applicable where the marriage between the parties stood dissolved by a decree of divorce passed by the court of competent jurisdiction.

11. Mr. Anuj Kala, learned counsel submitted that a bare perusal of Section 31 makes it abundantly clear that the violation of the protection order passed by the Magistrate is punishable and it is well settled that the penalty and punishment for an offence can never be awarded in circumstances when such punishment and penalty for that offence are not already available at the time of commission of the offence. Therefore, the act of violence committed prior to the coming into force of the Act cannot be the subject matter of proceedings to be initiated under the Act. Learned counsel submitted that the Act does not create any conclusive right in favour of a woman and it being a penal statute has to be made operative prospectively. Learned counsel submitted that it is cardinal principle of interpretation of statutes that all statutes are prospective unless the language of the statutes makes them retrospective either expressly or by necessary implication but the penal statute which create new offences are always prospective. Learned counsel submitted that any other view of the matter would render the provisions incorporated in the Act violative of Article 20 (1) of the Constitution of India. In support of the contentions raised as aforesaid, learned counsel has relied upon the decision of the Hon'ble Supreme Court in the matters of "Keshavan Madhava Menon Vs. The State of Bombay", "Income Tax Officer Tuticorin Vs. T.S. Devinatha Nadar", AIR 1968 SC 623 and "Darshan Singh Vs. Ram Pal Singh & Anr." AIR 1991 SC 1654.

12. We have given our thoughtful consideration to the arguments advanced by the counsel for the parties and the counsel appearing to assist the court, the statutory provisions and the decisions cited at the bar.

13. Before we proceed to examine the legal questions arising in the matter, it would be appropriate to refer to the background leading to the enactment of the Act by the Parliament.

14. The status of women in India has undergone many changes over the course of past few millennia. The development and advent of modern day women emancipation in India can be traced to the pre-independence period when many reformers such as Raja Ram Mohan Rai, Ishwar Chand Vidhyasagar, Jyotirba Phule fought for the upliftment of the women. Raja Ram Mohan Rai's efforts led to abolition of the 'sati' practice in 1829. Ishwar Chand Vidhyasagar's crusade for improvement in condition of widows led to the Widow Re-marriage Act of 1856. In 1929, the Child Marriage Restraint Act was passed stipulating fourteen as the minimum age of marriage for girls. The Constitutional Reforms of 1929 allowed the provincial legislature to decide on the issue of right to vote for women, as a result of which the Madras Province became the first province to allow women to vote. In 1926, women were also given right to represent in the legislature.

15. Post independence, India has embibed within its Constitution several Articles to further the cause of women empowerment and ensure gender equality. Article 14 of the Constitution guarantees equality before the law and equal protection of law to any person within the territory of India. Article 15 (1) of the Constitution mandates that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. However, Article 15 (3) makes an exception to the Rule against discrimination as provided inter alia under Article 15 (1) and confers a discretionary power on the State to make special provisions for women and children. Obviously, Article 15 (3) recognizes the fact that the women in India have been socially and economically handicapped for centuries and therefore, so as to bring effective equality between the men and women, the special laws for the protection and upliftment of the women will be necessary.

16. After coming into force of the Constitution of India, the first movements for women's rights revolved around pressing problems such as infant marriages, reinforced widowhood and property rights for women. Several women activists focused attention on the gender based oppression of women. The Hindu Succession Act, 1956, The Dowry Prohibition Act, 1961, the Maternity Benefit Act, 1961, The Medical Termination of Pregnancy Act, 1971, Equal Remuneration Act, 1976, Criminal Law (Second Amendment)Act, 1983 , Commission of Sati (Prevention) Act, 1989, The Immoral Traffic (Prevention)Act, 1956, the Indecent Representation of Women (Prohibition) Act, 1986, are few legislation enacted with a view to uplift the status of women in the society.

17. Undoubtedly, various issues relating to women emancipation had received the attention of the Legislature, but the vital issue of violence towards women within the family, which was widely prevalent and all pervasive, remained invisible in public domain. The Vienna Accord of 1994 and Beijing Declaration and the Platform for Action, 1995 acknowledged that the 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. Taking into consideration the fact that the domestic violence in India is widely prevalent and the existing civil law does not address this phenomenon in its entirety, in order to provide a remedy in the civil law for protection of women from being victims of domestic violence and to prevent the occurrence of the domestic violence in the society, the Act was enacted by the Parliament.

18. Precisely, the object of the Act is to provide for various reliefs to those women who are or have been in domestic relationships with the abuser, where both the parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or through adoption. Besides, relationships with family members living together as a joint family are also included within the ambit of the Act. The definition of domestic violence as set out in the Act is very wide and includes any act of physical, sexual, verbal, emotional or economic abuse or threat of such abuse. The Act provides for various remedies including right of a woman to reside in the matrimonial home or shared household whether or not she has any title or rights in such home or household; protection orders to prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering the work place frequented by the aggrieved person attempting to communicate with her etc. That apart, it also provides for monetary reliefs to meet the expenses incurred or losses suffered by the aggrieved person as a result of such domestic violence. Besides the aforesaid remedies in civil law, the breach of the protection order by the abuser and failure on the part of protection officer in discharging the duties assigned are made punishable offences under the Act.

19. In this backdrop, the first question that comes for our consideration is whether the proceedings under the Act are criminal in nature and therefore, the various provisions incorporated in the Act providing for reliefs to an aggrieved person shall fall foul of Article 20 (1) of the Constitution of India, if the acts of violence committed prior to the commencement of the Act are made basis for grant of reliefs enumerated therein?

20. In order to appreciate the question raised in correct perspective, it will be apposite to glance over various provisions of the Act providing for remedial measures to a woman victim of domestic violence.

21. Section 12 of the Act entitles an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to present an application to the Magistrate seeking one or other reliefs specified under the Act. Section 18 of the Act 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

acts entering the place of employment, or school in case of child of aggrieved person, attempting to communicate the aggrieved person, alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties or singly by the respondent, causing violence to the dependents or other relatives of the aggrieved person. The list of prohibition orders which the Magistrate is empowered to pass as enumerated under Clauses (a) to (f) of Section 18 is not exhaustive, rather by virtue of Clause (g) of Section 18, the Magistrate is empowered to prohibit the respondent from committing any other act to be specified in the protection order. Section 19 of the Act provides for rights of women to secure housing. The said section empowers the Magistrate to pass the Residence order on being satisfied that domestic violence has taken place. The Magistrate is empowered to restrain the respondent from dispossessing or in any other manner disturbing the possession SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) of the aggrieved person from shared household, whether or not the respondent has legal or equitable interest in the shared household. The Magistrate may also direct the respondent to remove himself from the shared household and the respondent and any of his relatives may be restrained from entering any portion of the shared household in which the aggrieved person resides. The Magistrate is empowered to pass an order restraining the respondent from alienating or disposing off the shared household or encumbering the same and further to restrain the respondent from renouncing his rights in the shared household except with the leave of the Magistrate and may also direct the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay the rent of the same if the circumstances so require. As per Section 20 of the Act, while disposing of an application preferred under Section 12 of the Act, the Magistrate may direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control. The order may also provide for maintenance for the aggrieved person as well as for her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) Procedure or any other law for the time being in force. Section 21 provides for grant of temporary custody of any child or children to the aggrieved person or the person making an application on her behalf. Under Section 22, the Magistrate has power to award compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent. Section 23 empowers the Magistrate to pass such interim order as he deems just and proper during pendency of the proceedings under the Act. Section 26 mandates that any relief available under Section 18, 19, 20, 21 & 22 may also be sought

in any legal proceedings before a Civil Court, Family Court or Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act and any relief referred to in sub- section (1) of Section 26 may also be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a Civil or Criminal Court.

22. Undoubtedly, the various reliefs that may be extended by the Magistrate to a woman victim of domestic violence within the ambit of the Act are remedial in nature and squarely fall within SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) the arena of civil law and by no stretch of imagination the proceedings under the Act could be construed to be criminal proceedings inasmuch as on occurrence of the domestic violence, the reliefs to be extended in terms of Sections 18 to 23 of the Act in no manner penalise the respondent for any act of violence committed by him or her. Rather it provides for remedial measures to protect the victim of domestic violence and to prevent the occurrence of domestic violence. In other words, the reliefs for which an aggrieved person is entitled against the respondent in terms of the said provisions are provided for as remedial measures and the said provisions, in no manner, could be construed to as providing for penalties for commission of the offences.

23. As a matter of fact, the penal provisions incorporated in the Act are Sections 31 and 33 which provide for penalty for breach of protection order by the respondent and for not discharging duty by the Protection Officer respectively. Obviously, the punishment provided as aforesaid under Sections 31 and 33 are the penalties for an offence committed under the Act and it has no nexus with the act of domestic violence as such which was the subject matter of proceedings before the Magistrate wherein the protection orders were passed. Suffice it SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) to say that neither the reliefs to be extended to the aggrieved person in terms of provisions of Sections 18 to 23, nor the proceedings under Sections 31 and 33 make an act of domestic violence committed prior to commencement of the Act punishable and therefore, the provisions of Article 20(1) are not attracted in the matter. In this view of the matter, the contention raised by the counsel for the respondent that if the petition under the Act in respect of the act of domestic violence committed prior to coming into force of the Act are held to be maintainable and the respondent is convicted for the same, it will contravene Article 20 (1) of the Constitution of India is absolutely devoid of any merit.

24. Coming to the core question placed for determination by this Court i.e whether the Act can be applied retrospectively in respect of the act of domestic violence committed prior to coming into force of the Act specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force?

25. For determination of the issue raised, it is quint essential to have a look at various provisions incorporated in the Act indicating towards the ambit and scope of the remedies provided SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) under Sections 12, 18 to 23 of the Act, as also the objects sought to be achieved.

26. As noticed above, as per Section 12 of the Act, an aggrieved person or any other person on behalf of the aggrieved person is entitled to seek one or more reliefs under various provisions of the Act.

27. "Aggrieved person" has been defined under Section 2 (a) of the Act which reads as under:

"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;"

A plain reading of the definition of "aggrieved person"

spells out that the intended beneficiary of the protection as provided for under the Act, is not only a woman who "is" in domestic relationship with the respondent but also the woman who "has been" in a domestic relationship with the respondent. Thus, the complainant/ applicant invoking the provisions of Section 12 of the Act must be a woman who is at the moment or has been at a prior point in time in a domestic relationship with the respondent and alleges to have been subjected to domestic violence by the respondent. SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011)

28. The words "domestic relationship" used in the definition of "aggrieved person" and other provisions of the Act, also stands defined by Section 2 (f) of the Act which may also be beneficially quoted:

"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;"

29. The contours of a domestic relationship, which is a sine- qua-non for definition of "aggrieved person" as laid down in Section 2 (f) make it abundantly clear that the legislature in its wisdom has given a wide definition to domestic relationship to include any relationship between two persons who either live at the present moment or have at any point of time in the past lived together in a shared household. The relationship between the two persons can be by consanguinity, marriage, a relationship in the nature of marriage, adoption or as family members living together as a joint family. It is pertinent to note that the domestic relationship as envisaged by Section 2 (f) of the Act is not confined to the relationship as husband and wife or a relationship in the nature of marriage, but

it includes other relationship as well such as sisters, mother etc. Thus, merely SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) because the husband and wife or a person living in a relationship in the nature of marriage or the two persons living together in any other domestic relationship as envisaged under Section 2 (f) subjected to domestic violence, such a victim of domestic violence shall not cease to be the "aggrieved person" so as to disentitle her from invoking the provisions of the Act. As a matter of fact, since there cannot be a legal divorce between the persons living in the relationship in the nature of marriage, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act and not to apply the said provisions to the aggrieved person whose marriage stands dissolved by a decree of divorce prior to coming into force of the Act will run contrary to the objects sought to be achieved by the Act. A fortiorari, if it was intended by the legislature to provide for the remedy only in respect of the act of domestic violence committed prior to the coming into force of the Act during the subsisting domestic relationship, the expression "have, at any point of time, lived together" was not required to be used in the definition of "domestic relationship" as incorporated under Section 2 (f) of the Act.

30. Section 2 (q) of the Act defines "respondent" as under:

SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) "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."

The definition of "respondent" incorporated in the Act as aforesaid makes it manifestly clear that a woman victim of domestic violence, an aggrieved person, is entitled to lodge proceedings for various reliefs provided for against the person who is or has been in a domestic relationship with her. That apart, the proviso to Section 2 (q) clarifies that the aggrieved wife or a female living in relationship in the nature of marriage may also file a complaint against the relatives of the husband or the male partner which obviously includes the female members of the husband or male partner's family. But from the definition in no manner can it be inferred that the existence of subsisting domestic relationship between the aggrieved person and the respondent is condition precedent for invoking the various remedial measures provided under the Act.

31. "Shared household" stands defined under Section 2 (s) of the Act as:

"2 (s)"shared household" means a household where SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR.

(S.B.CRIMINAL REVISION PETITION NO.362/2011) 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.

32. Once again, the definition of "shared household" like that of "aggrieved person" and "domestic relationship" is wide in its scope and includes not just the household where person aggrieved lives at present but also the household where the person aggrieved has at any stage lived in domestic relationship either singally or along with respondent.

33. Coming to the definition of "domestic violence" as set out under Section 3 of the Act which is vital and germane to issue raised herein, it is to be noticed that "domestic violence" includes within its ambit all kind of violence occurring within the family and the Explanation-I attached thereto enumerates the various kinds of domestic abuse widely prevalent in our country and explains the scope and ambit thereof. The definition of the "domestic violence" as set out in Section 3 of the Act may be SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) beneficially quoted:

"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, SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) 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."

34. Even a fleeting glimpse at Section 3 as reproduced above reflects that "domestic violence" has been widely defined and it covers within its ambit any act, omission or commission or conduct of the respondent resulting in physical, sexual, psychological and economic abuse or threat of such abuse being inflicted upon a woman who is or has been in domestic relationship with him. Undoubtedly, while the physical or sexual abuse caused by the respondent may be time specific, the emotional abuse caused cannot be time specific and its effects may persist even after the actual occurrence of the act of SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) violence. Rather, the physical or sexual abuse may be the cause of subsequent psychological and emotional effects. Similarly, the "economic

abuse" caused by depriving the aggrieved person from all or any economic and financial resources at any point of time or prohibiting or restricting the aggrieved person continued access to resources or facilities for which she is entitled will be in lot many cases a persisting domestic violence which cannot be restricted to a specific point in time and on that account the aggrieved person may be entitled to claim the reliefs under various provisions incorporated in the Act, pleading recurring cause of action. It is pertinent to note that as per Explanation I

(iv), the deprivation of maintenance payable to the aggrieved person also falls within the definition of "economic abuse" for which the subsisting domestic relationship cannot be considered to be condition precedent for initiating the action inasmuch as even the divorced wife or the woman not in subsisting domestic relationship are also entitled for the maintenance under the law.

35. Further, the Explanation II attached to Section 3 of the Act which provides that for the purpose of determining whether any act, omission or conduct of the respondent constitutes "domestic violence" under the said Section, the overall facts and circumstances of the case shall be taken into consideration. In SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) this view of the matter, in the considered opinion of this Court, where the act of domestic violence on the part of the respondent is specifically pleaded by the aggrieved person, the petition seeking the relief under the Act cannot be dismissed at the initial stage and the matter needs to be examined and determined by the Magistrate as mandated under the provisions of the Act.

36. The matter needs to be viewed from yet another angle. Indisputably, so as to make a woman entitled to invoke the jurisdiction of the court under Section 12 of the Act for the reliefs specified under Section 18 to 23 she must fall within the definition of 'aggrieved person' in terms of provisions of Section 2(a) of the Act but then, the particular act of domestic violence pleaded may not have any direct bearing on or nexus with the reliefs which could be granted by the court under the provisions of the Act. Similarly, the absence of subsisting domestic relationship in no manner prevents the court from granting certain reliefs specified under the Act. For example, even after dissolution of marriage between the parties, a divorcee husband may attempt to commit the act of violence such as entering the place of employment of the aggrieved person, attempting to communicate in any form with the aggrieved person, cause violence to dependents or other relatives or any person etc. and SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) in that case, the aggrieved person is not precluded from seeking protection orders from the Magistrate as provided for under Section 18 of the Act. Likewise, if the divorcee husband attempts

to dispossess the divorcee wife from the shared household or attempt to dispossess the divorcee wife from the property jointly owned, she is not precluded from invoking the jurisdiction of the court seeking restrain order under Section 19 of the Act. Besides, even after the dissolution of marriage, if the husband refuses to return the aggrieved person her 'Stridhan' or any other property or valuable security, she is not precluded from invoking the jurisdiction of the Magistrate under sub- section (8) of Section 19 seeking direction to the respondent- husband to return the same. That apart, Section 20 empowers the Magistrate to pass appropriate orders extending monetary relief to the aggrieved person or any child of the aggrieved person to meet the expenses incurred or any losses suffered as a result of domestic violence. Needless to say that even if the domestic violence was committed prior to the coming into force of the Act, the cause of action accrued to the aggrieved person to seek the relief under Section 20 of the Act, may persist. Coming to Section 21 which deals with custody orders of the child or children to the aggrieved person or the person making application on her behalf, obviously presupposes non-existence SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) of the domestic relationship between the parties and therefore, if the interpretation of the provisions sought to be given by the respondent is accepted, the very purpose of incorporating the provisions regarding the custody of the child or children shall render otiose. It is pertinent to note that Section 22 makes the provision for grant of compensation and damages to the aggrieved person for injuries including torture and emotional distress caused by the act of domestic violence by the respondent. As observed hereinabove, any physical or sexual abuse may be the cause of torture and emotional distress and that apart, the emotional abuse may give rise to a recurring cause of action to the aggrieved person, for the reliefs specified and therefore, the actual act of domestic violence being committed before or after the coming into force of the Act and the subsisting domestic relationship between the parties, are hardly of any relevance so far as grant of the relief as specified under Section 22 of the Act is concerned.

37. In view of the discussion above, in our considered opinion, a combined reading of Sections 2 (a), 2 (f), 2(q), 2 (s) 3, 12 & 18 to 23 of the Act leads to an irresistible and definite conclusion that the remedy as provided for under Section 12 covers the act of violence committed even prior to coming into force of the Act SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) and the subsistence of marriage or domestic relationship is not a condition precedent for an aggrieved person to invoke the protection orders and other reliefs under the provisions of the Act. If the aggrieved person had been in domestic relationship at any point of time even prior to coming into the force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.

38. At this stage, we must proceed to consider the various decisions cited by the learned counsel for the parties.

39. The most instructive decision cited by the counsel for the petitioner is the decision of the Delhi High Court in Savita Bhanot's case, wherein the identical issue has been aptly dealt with by the learned Judge taking into consideration all relevant aspects of the matter and which stands upheld by the Hon'ble Supreme Court.

40. In Savita Bhanot's case, the question which came up for consideration of the court was whether a petition under provisions of the Act is maintainable by a woman who had stopped living with the respondent or by a woman who alleges to SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR. (S.B.CRIMINAL REVISION PETITION NO.362/2011) have been subjected to any act of domestic violence prior to coming into force of the Act on 26.10.06. The court while considering the entire scheme of the Act with reference to the various provisions of the Act discussed by us hereinabove, held:

"6. The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty. There can be no prosecution of a person under the provisions of this Act, for committing acts of domestic violence, as defined in Section 3 of the Act. No one can be punished under the Act merely because he subjects a woman to violence or harasses, harms or injures her or subjects her to any abuse whether physical, sexual, verbal, emotional or economic. No one can be punished under the provisions of the Act on account of his depriving a woman of her right to reside in the shared household.

7. Article 20(1) of the Constitution provides that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. No provision of the Act makes any act committed prior to coming into force of the Act punishable with any imprisonment, fine or penalty. Since the order, as envisaged in Section 18 or Section 23, as the case may be, can be passed only after coming into force of the Act, it cannot be said that if a person is convicted under Section 31 of the Act, he is convicted for violation of law which was not in force at the time of commission of the act charged as an offence. It has to be appreciated that the act charged as an offence under Section 31 of the Act is not the act of domestic violence committed by a person. It is the breach of or Section 23 of the Act which has been made punishable under the Act. Therefore, it cannot be said that Article 20(1) of the Constitution is contravened if a person is convicted under Section 31 or 33 of the Act. xxxx.....xxxx.....

11. The use of words 'should live or have at any point of time lived together' in the Section is an indicator of the legislative intent and makes it quite explicit that a person will be deemed to be in domestic relationship even if he had lived together with the

respondent at a point of time prior to coming into force of the Act. Had that not been the legislative intent, the words 'or have at any point of time lived' would not have found place in Section 2 (f) of the Act and it would have been sufficient to say that domestic relationship means a relationship between two persons SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR.

(S.B.CRIMINAL REVISION PETITION NO.362/2011) who live together in a shared household.

12. Section 2 (a) of the Act defines 'aggrieved person' as under :-

"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;"

13. If the legislative intent was to keep a person, not living with the respondent at the time of coming into force of the Act, out of the purview of the Act, there was no necessity of using the words 'or has been' in Section 2 (a) of the Act and it would have been sufficient to say that aggrieved person means any woman who is in a domestic relationship with the respondent. xxxx.....xxxx.....

17. If the court takes the interpretation that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 cannot be filed by a woman unless she was living with the respondent, in the shared household, on the date this Act came into force, or a date subsequent thereto or that a petition under the provisions of the Act cannot be filed by a person who has been subjected to domestic violence before coming into force of the Act, that would amount to giving a discriminatory treatment to the woman who despite living with the respondent and having a domestic relationship with him before coming into force of the Act, is later compelled to live separately from him on account of the acts attributable to the respondent and to the woman who was, prior to coming into force of the Act, subjected to domestic violence, viz-a-viz, the women who are living with the respondent or women in respect of whom acts of domestic violence are committed after coming into force of the act. There can be no reasonable classification based upon an intelligible differentia between the women who are living with the respondent on the date of coming into force of the Act or who are subjected to domestic violence after coming into force of the Act on one hand and the women who were living with the respondent or who were subjected to domestic violence prior to coming into force of the Act, on the other hand. Therefore, any discriminatory treatment to women in either category would be violative of their constitution right guaranteed under Article 14 of the Constitution. The court needs to eschew from taking an interpretation which would not only be violative of the rights conferred upon the citizens under Article 14 of the Constitution but would also result in denying the benefit of the beneficial provisions of the Act

to the women who have been subjected to domestic violence and are compelled to live separately from the respondent on account of his own acts of omission or commission. Such an interpretation would at least partly defeat the legislative intent behind enactment of the Protection of Women from Domestic Violence Act, 2005, which was to provide an efficient and expeditious civil remedy to them, in order either to protect them against occurrence of domestic violence, or to give them compensation and other suitable reliefs, in respect of the violence to which they have been subjected.

18. For the reasons given in the preceding paragraphs, I am of the considered view that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 is maintainable even if the acts of the domestic violence have been committed prior to coming into force of the Act or despite her having in the past lived together with the respondent a shared household woman is no more living with him, at the time of coming into force of the Act. It is be open for the Magistrate to pass appropriate order under the provisions of Sections 12, 18, 19, 20, 21, 22 or 23 of the Act on a petition filed by such a woman and the person who commits breach of the protection order or interim protection order passed on an application filed by such a woman will be liable to punishment under Section 31 of the Act."

41. The view taken by the Delhi High Court as aforesaid, has been upheld by the Hon'ble Supreme Court while disposing of a Special Leave Petition preferred against the said decision, in the following terms:

"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 Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who 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."

42. Thus, as a matter of fact, the question with regard to the retrospective applicability of the provisions of the Act in respect of the act of domestic violence committed prior to coming into force of the Act and the entitlement of aggrieved person, who was subjected to domestic violence and stopped living with the respondent before coming into force of the Act, stands set at rest with the Hon'ble Supreme Court upholding the decision of Delhi High Court in Savita Bhanot's case (supra) in the terms indicated above.

43. Coming to the decision of this court in Khushi Mohd.'s case (supra), the learned Judge of this court after due examination of the various provisions of the Act and taking into consideration the statement of objects and reasons, held:

"9. The Domestic Violence Act, 2005 (Act No. 43 of 2005) was enacted by the Parliament 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.

10. From the statement of objects and reasons of said enactment, it is clear that 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 phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. The provisions like Section 498A of the Indian Penal Code to provide protection against cruelty by her husband or his relatives were found to be insufficient law to address this phenomenon of domestic violence in its entirety. Therefore, the Parliament 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 was intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The said enactment 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 adoption. 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 said legislation.

11. Thus, obviously, such enactment was to provide protection to weaker sex or females in the family irrespective of marital relationship and that is why the definition in Clause 2 (a) is of "aggrieved person" is widely worded to including 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. The word "domestic relationship" was also widely worded to mean a relationship between two persons who live or have, at any point of time, lived together in a shared household, whether 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) read with Section 3 of the Act of 2005 defines the words "domestic violence" to mean any act, omission or commission or conduct of the person 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.

xxx.....xxxxx.....

14. From a reading of the provisions of the Act and with understanding of the scheme of the said enactment, it is clear that it is not necessary that the applicant-woman should

have a marriage subsisting and existing with the respondent at the time of filing of such application under Section 12 of the Act. No time period is also prescribed in the said Act as to when the aggrieved person should have been in domestic relationship with the respondent. On the other hand, definition of words "domestic relationship" given in Section 2 (f) of the Act clearly uses the words "at any point of time, lived together in a shared household". In view of this clear provision of the Act covering the aggrieved person or woman in such domestic relationship, the contention of the learned counsel for the petitioner-husband Khushi Mohd. that in view of divorce given by the petitioner-husband to the respondent-wife, which fact is disputed from the opposite side, no relief could be granted to her under the provisions of this Act, falls flat on its face.

Admittedly, the respondent-wife used to live in the shared accommodation with the petitioner-husband for considerable period and out of this wedlock, a female child Asu was also born and the applicant-wife chose to leave or was thrown out of the matrimonial home only about 1½ years prior to the said application under Section 12 of the said Act. In the absence of any period of limitation prescribed in the said Act for approaching the Court, the contention that she left the matrimonial home about 1½ years back and therefore, she is not entitled to any relief under this Act is also devoid of any merit. The period of 1½ years even otherwise is not such a long gap of period to disentitle the wife from claiming relief under this Act, even otherwise. The application under Section 12 of the Act could not be said to be suffering from the vice of delay, laches, acquiescence or estoppels on this ground. The Act of 2005 was enacted around the same period and was brought into force w.e.f. 26.10.2006 even though it received the assent of President on 13.9.2005. In the kind of social background the applicant-wife is living and with the low level of awareness of legal rights under this Act, which can be reasonably presumed for such a lady, this Court is not inclined to uphold the contention of the respondent-husband in this regard." (emphasis added)

44. However, in Hema @ Hemlata's case (supra), the learned Single Judge of this court held:

"5. I have heard the learned counsel for the parties and perused the judgment passed by the Special Judge (SC and ST Cases) Alwar. Admittedly marriage between the petitioner No.1 and non-petitioner was dissolved by a consent divorce on 3.9.2003 and thereafter both of them are residing separately. Provisions of Protection of Women from Domestic Violence Act, 2005 came into force on 17.10.2006 and after enforcement of the Act the petitioners were not residing with the respondent and they were not subjected to any domestic violence by the respondent. There is no provision in the Act having a retrospective effect. Special Judge (SC and ST Cases) Alwar by a detailed order held that there is no question of any violence by the respondent with the petitioner No.1 after dissolution of marriage and there is no question of petitioners being aggrieved person as defined in Section 2A of the Act. It was specifically mentioned by the Special Judge in the

impugned order that on a bare perusal of Section 12 (1) of the Act specifically provided that before passing the order as per the provisions of the Act, the Magistrate has to look into the report of domestic violence. In the instant case, there is no question of any report of domestic violence as is clear from the facts that the divorce between the parties took place in September 2003 and after coming into force of the provisions of the Act the parties cannot be termed as aggrieved person. The Special Judge has given cogent reasons for setting aside the order of the Judicial Magistrate allowing maintenance to the petitioners. The order passed by the Special Judge is perfectly legal and not contrary to law. The Special Judge has not committed any illegality in passing the same. Thus, the impugned order does not call for any interference in the revisional jurisdiction. The revision petition being devoid of merits stands rejected. As the main petition has been dismissed the stay application also stands dismissed."

45. It is pertinent to note that the conclusion arrived at by the learned Single Judge in Hema's case (supra) in terms that the marriage between the parties having been dissolved prior to coming into force of the Act on 17.10.06 and thereafter, the petitioners were not residing with the respondent and were not subjected to domestic violence and therefore, they cannot be termed as 'aggrieved person', is not supported by the consideration of the various provisions incorporated in the Act indicating that subsistence of marriage or the domestic relationship as on the date of coming into force of the Act is not a condition precedent for invoking the remedial measures under the provisions of Section 12 of the Act. The learned Single Judge has arrived at the conclusion as aforesaid merely on the ground that there is no specific provision in the Act having retrospective effect. In view of the discussion made hereinabove, with utmost respect, we are not in agreement with the view taken by the learned Single Judge in Hema's case (supra). In our considered opinion, it does not lay down the correct law and therefore, deserves to be overruled.

46. The various decisions cited at the bar in support of the contention that all statutes are prospective unless the language of statutes makes them retrospective either expressly or by necessary implication but the penal statute which create new offences are always prospective, need not be dealt with by us in detail in view of the conclusions arrived at by us as aforesaid, after detailed discussion of the provisions incorporated under the Act providing for various remedial measures to the aggrieved person, a woman, victim of domestic violence. As discussed above, the Act is essentially a remedial statute and it is trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed. Undoubtedly, a woman subjected to domestic violence even after coming into force of the Act has to be treated a victim of domestic violence requiring protection of her rights and therefore, merely because on account of compelling circumstances, may be on account of some act, omission or commission on the part of the respondent constituting domestic

violence, she started living separately cannot be picked up for a different treatment being given vis-a-vis a woman who continues to live with the respondent in a domestic relationship in a shared household even after coming into force of the Act or who started living separately but in respect of whom the act of violence was committed after coming into force of the Act. We are firmly of the opinion that any such interpretation of the provisions incorporated creating to different classes of victims subjected to domestic violence based on fortuitous circumstances shall be discriminatory and fall foul of Article 14 of the Constitution of India.

47. Coming to the decision of the Hon'ble Supreme Court in Inderjit Singh Grewal's case (supra), relied upon by the counsel appearing for the respondents, it is to be noticed that in that case, the marriage between the parties was dissolved by a decree of divorce under Section 13B of Hindu Marriage Act, 1955 on 20.3.08. Thereafter, the wife filed a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 alleging that the decree of divorce obtained by them was sham transaction and she was forced to leave the matrimonial home. Later, the wife filed a complaint under the Act before the Magistrate on 12.6.09. The Magistrate issued the summons to the husband, aggrieved thereby, he preferred a petition under Section 482 Cr.P.C. before the Punjab & Haryana High Court. The petition was dismissed by the High Court on 9.8.10. Precisely, the case of the wife was that the decree of divorce by mutual consent was obtained as they wanted to settle in USA and therefore, they had decided to get divorce on paper so that the husband may go to USA and get American citizenship by negoitating marriage of convenience with some U.S. citizen and divorce her and again re-marry to the complainant wife. It was alleged in the complaint by the wife that even after decree of divorce, she had been living with her husband till 7.2.09 and continual cohabition with him. It was alleged that the child had been forcibly snatched from her by the appellant. The contention advanced on behalf of the wife that even after decree of divorce they continued to be together as husband and wife and therefore, the complaint under the Act is maintainable was not found worth acceptance by the court and accordingly, observing that permitting the Magistrate to proceed further with the complaint under the Act is not compatible and consonance with the decree of divorce which shall subsist and thus, the process amounts to abuse of the process of the court and accordingly, the complaint was quashed.

48. A perusal of the decision in Inderjit Singh Grewal's case (supra), reveals that the question with regard to the right of the divorcee wife to maintain the petition under Section 12 of the Act, keeping in view various provisions of the Act indicating that subsistence of the marriage is not condition precedent for maintaining the petition under Section 12 did not arise for consideration of the Court inasmuch as the complainant wife proceeded on the premise that since the divorce obtained was a sham transaction and she continued to live with the respondent- husband even thereafter and therefore, marital relationship contin-

ued, which was not accepted by the Court holding 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 and no such declaration can be obtained in collateral proceedings. As a matter of fact, in the said case the aggrieved person a divorcee wife sought the relief under the Act on the basis of the act of violence alleged to have been committed subsequent to the domestic relationship having come to an end. Thus, on the fact situation obtaining in the said case, the decision of the Hon'ble Supreme Court in the matter of D. Velusamy's case was also distinguished by the Court saying that the said case relates to live in relationship without marriage. Suffice it to say that the question whether a woman who was in domestic relationship with the respondent and was subjected to domestic violence prior to coming into force of the Act falls within the definition of "aggrieved person" so as to make her entitle to invoke the jurisdiction of the Court under Section 12 of the Act for various reliefs provided for under the Act did not come for consideration of the Hon'ble Supreme Court in Inderjit Singh's case (supra), whereas, the said question has been specifically dealt with by the Hon'ble Supreme Court in Savita Bhanot's case (supra), while upholding the view taken by the Delhi High Court in the matter. Thus, in our opinion, the decision of the Hon'ble Supreme Court in Inderjit Singh Grewal's case (supra) also does not help the respondent in any manner.

49. Lastly, coming to the contention of the learned counsel for the respondent that as per provisions of Section 28, the proceedings under the Act are governed by the provisions of Criminal Procedure Code and therefore, the same has to be treated to be criminal proceedings. It is pertinent to note that the Act has been enacted by the legislature with the sole object to provide a remedy in the civil law for protection of women from being victims of domestic violence and to prevent the occurrence of the domestic violence in the society. As noticed above, the proceedings before the Magistrate under Section 12 of the Act for the reliefs as provided for under Section 18 to 22 of the Act are remedial in nature which fall in the realm of civil law and by no stretch of imagination, the proceedings under Section 12 of the Act could be considered to be criminal proceedings. Of course, the provisions of Cr.P.C. are made applicable to the proceedings under the Act, but a bare perusal of Section 28 reveals that a clear distinction has been drawn in the proceedings under Section 12 and Sub-Section (2) of Section 23 and the proceedings for offences under Section 31 & 33 of the Act, obviously, for the reason that the remedy as provided under Section 12 for the reliefs to be claimed in terms of Section 18 to 23 are not the penal proceedings whereas, the proceedings initiated under Section 31 & 33 are penal proceedings inasmuch as, the breach of protection order and failure on the part of Protection Officer in discharging the duties as directed by the Magistrate in the protection order without any sufficient cause, are the offences entailing penal consequences in terms of the said provisions. It is also pertinent to note that apart from the applicability of the

provisions of Cr.P.C., by virtue of sub-section (2) of Section 28, for the disposal of an application under Section 12 or under sub-section (2) of Section 23, the provisions of Section 28 shall not prevent the court from laying down its own procedure. In this view of the matter, in our considered opinion, the proceedings under the provisions of Section 12 and 18 to 23 cannot be considered to be the proceedings in criminal law.

50. For the aforementioned reasons, we hold that the remedy under Section 12 of the Act covers the act of violence committed even prior to coming into force of the Act and could be taken into consideration by the Magistrate while passing the orders extending the reliefs to the aggrieved person under Sections 18, 19, 20, 21, 22 and 23 of the Act. That apart, it is not necessary that the applicant-woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under Section 12 of the Act before the Magistrate for one or more reliefs as provided for under the Act. In other words, the aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.

51. In the ordinary course, the question having been answered as aforesaid, we would have sent the matter back to the learned Single Judge for decision of the revision petition on merits but since, the order impugned in the revision petition passed by the Appellate Court, affirming the order passed by the trial court holding that the act of violence committed prior to coming into force of the Act cannot be made basis for initiating proceedings under the Act and therefore, the petitioner cannot be said to be an aggrieved person, is solely based on the decision of this court in Hema @ Hemlata's case (supra), which stands over ruled by us, therefore, no fruitful purpose will be served in sending the matter back to the learned Single Judge for disposal.

52. In the result, the revision petition succeeds, it is hereby allowed. The order impugned dated 19.4.11 passed by the court of Session i.e. Special Judge, S.C./S.T. (Prevention of Atrocities) Cases, Jodhpur in Criminal Appeal No.53/2010 and order dated 5.6.2010 passed by the Additional Chief Judicial Magistrate (Economic Offence), Jodhpur in Criminal Misc. Case No. 350/09 are set aside. The matter is remanded to the court of Additional Chief Judicial Magistrate (Economic Offence), Jodhpur for disposal afresh on merits, in accordance with law.

Harbans Lal Malik v. Payal Malik, II (2010) DMC 202 (Delhi H.C.) (29.07.2010)

See page 145 for full text of judgment.

Syed Md. Nadeem @ Mohsin v. State, W.P. (Crl.) 887/2011 and Crl. M.A. No. 7238/2011 (for stay) (Delhi H.C.) (15.06.2011)

Judge: Rajiv Sahai Endlaw

Order

1. The Petitioners seek quashing of, a) the complaint preferred by the Respondent No. 2 (stated to be ex-wife of the Petitioner No. 1) under the Protection of Women from Domestic Violence Act, 2005; b) the order dated 1st March, 2011 under Section 23 of the Act in the said complaint proceeding, directing the Petitioner No. 1 to pay interim maintenance of ₹ 8,000/- per month to the Respondent No. 2; and, c) as well as the order dated 23rd May, 2011 of dismissal of the first appeal under Section 29 of the Act against the order dated 1st March, 2011 (supra).

2. The counsel for the Petitioners has inter alia contended that the provisions of the Act and at least of Section 23 qua maintenance would not be applicable to Mohammedans owing to Sections 3 & 4 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It is also contended that the parties having divorced, cannot be said to be in a domestic relationship for the Act to be attracted. Reliance is placed on A.Sreenivasa Rao v. The State of Andhra Pradesh.

3. As far as the latter of the aforesaid contentions is concerned, I do not find any merit therein. The definition of "aggrieved person" in Clause (a) and (f) respectively of Section 2 of the Domestic Violence Act uses the expression "is, or has been, in a domestic relationship and "who live or have, at any point of time, lived together in a shared household". The said words are wide enough to cover even divorced couples. As far as the judgment of the Andhra Pradesh High Court is concerned, the same is an ex-parte order and without considering the aforesaid provisions.

4. However I find certain observations in Adil v. State and in Harbans Lal Malik v. Payal Malik to be holding to the contrary.

5. Prima facie it also appears that Muslim Women Act would not come in the way of applicability of the provisions of the Domestic Violence Act to Mohammedans; if it were to be so held, owing to the Hindu Marriage Act, 1955 also containing provisions qua maintenance, Domestic Violence Act would not apply to Hindus also, making the same otiose.

6. However, the said aspect also requires further consideration.

7. Issue notice. Notice is accepted by the Ld. APP for the state. The Petitioner to serve the Respondent No. 2 by all modes including dasti, returnable on 18th July, 2011.

8. No case for granting interim stay is made out. The counsel for the Petitioners however states that in terms of the orders impugned, a payment of approximately ₹ 1,50,000/- towards arrears is to be made by 20th June, 2011. He states that the Petitioners shall pay a sum of ₹ 75,000/- on or before 20th June, 2011 and the balance remaining amount before the next date of hearing.

9. The orders impugned are modified to that extent only. The Petitioners are permitted to make the payment as aforesaid. Crl.M.A. No. 7238/2011 is disposed of.

Cr. M.A. No. 7239/2011 (for exemption)

Allowed, subject to just exceptions.

Divorced muslim women

Syed Md. Nadeem @ Mohsin v. State, W.P. (Crl.) 887/2011 and Crl. M.A. No. 7238/2011 (for stay) (Delhi H.C.) (15.06.2011)

See page 291 for full text of judgment.

Razzak Khan v. Shahnaz Khan, 2008 (4) MPHT 413 (Madhya Pradesh H.C.)(25.03.2008)

Judge: S.C. Sinho

Judgment

1. These two revisions against the order passed in Criminal Appeal No. 501/07 (Razzak Khan and 2 Ors. v. Smt. Shahnaz Khan) and Criminal Appeal No. 595/07 (Smt. Shahnaz Khan v. Razzak Khan and 2 Ors.) dated 19-12-2007, passed by 6th Additional Sessions Judge, Jabalpur arising out of the order passed in Complaint Case No. 23/2007 order dated 29-9-2007 by learned JMFC Jabalpur in proceeding under Section 9(b), 37(2)(c) of Protection of Women from Domestic Violence Act, 2005 (in short "Act 2005") whereby these revisions have been filed before this Court.

2. This is undisputed that Ramzan Khan and Smt. Shahnaz Khan had taken divorce on 3-5-2007 in presence of witnesses. Razzak Khan, Rehman Khan and Ramzan Khan are real brothers and Smt. Shahnaz Khan is the daughter of real sister of the applicants whose first marriage has been performed with Musarraf Khan and out of first wedlock Master Shoaib was born who is presently 16 years of age. After lapse of 12 years of the death of her first husband, Shahnaz Khan has performed Nikah with Ramzan Khan on 19-3-2003

and both of them were living in a rented house. Ramzan Khan after the death of his father Rasool Khan, on 7-2-2006 started living in ancestral house with his two brothers along with his wife Shahnaz Khan.

3. The Shahnaz Khan filed a complaint under Section 9(b), 37(2)(C) of the "Act 2005" for claiming relief under Section 18 to 20 before JMFC Jabalpur. The JMFC vide order dated 29-9-2007 granted following reliefs to Smt. Shahnaz Khan.

1. Smt. Shahnaz Khan is entitled for sum of ₹ 16,439/- as expense of delivery and medicines from Ramzan Khan.

2. Ramzan Khan shall not restrain Smt. Shahnaz Khan for going to service (work place) nor he will snatched her salary.

3. Ramzan Khan shall give ₹ 2000/- per month towards the maintenance to Smt. Shahnaz Khan and son Gazi Khan.

4. Ramzan Khan shall not assault and abuse the applicant (Smt. Shahnaz Khan)

5. Shri Ramzan Khan shall pay necessary medical expenses in relation to newly born baby.

6. Protection Officer was directed to ensure the delivery of the Stridhan as per annexed to the complaint in his presence.

4. In Criminal Appeal No. 595/07, learned 6th Additional Sessions Judge modified relief to Smt. Shahnaz Khan and directed Protection Officer for providing accommodation in the ancestral house of husband under Section 19(1)(f) of the "Act 2005" and further granted ₹ 500/- per month maintenance in favour of the foster son Shoaib Khan.

5. Learned Advocate of Shri Razzak Khan, Rahman Khan and Ramzan Khan argued in detailed that Smt. Shahnaz Khan is working as a Clerk in MPSRTC and comfortably living in her parental house with her sons. She is in a better financial position whereas Ramzan Khan is a photocopy mechanic and living with brothers and hardly able to maintain himself. However, Shri Usmani has conceded that even now he is prepared to pay 500/- per month to Smt. Shahnaz Khan and children. Learned Advocate has further argued that it will not be proper in view of the fact that Shahnaz Khan after divorce will live in the shared house with Ramzan Khan and she is living very comfortably in her ancestral house with her parents and brothers.

6. However, in Criminal Revision No. 112/2008, Smt. Shahnaz Khan has demanded enhancement of the quantum of maintenance regarding Gazi Khan from ₹ 1000/- to ₹ 2000/- and regarding foster son Shoaib Khan from ₹ 500/-to ₹ 1000/- per month from the date of application and also demanded adequate compensation in terms of Section 20 and 22 of "Act 2005". Shri Imtiaz Hussain learned Counsel for Smt. Shahnaz Khan has argued that looking to the price index meager relief is granted to her and children. Therefore, this amount should be enhanced.

7. Both the learned Counsels were heard at length.

8. It is admitted position that Ramzan Khan has given divorce to Smt. Shahnaz Khan on 3-5-2007. Smt. Shahnaz Khan is working as a clerk in the MPSTRC at Jabalpur and living in her parental house.

9. Learned Advocate of Razzak Khan and others Shri Ahdullaha Usmani argued that because Smt. Shahnaz Khan is working as a clerk, therefore, her financial position is much better than her husband who is casually working as a photocopy mechanic and suffering from heart problem. The learned Appellate Court after considering the evidence produced by both the parties held that Smt. Shahnaz Khan and her children are entitled for ₹ 2500/- per month relief. Shri Usmani, learned Counsel argued that applicant Smt. Shahnaz Khan did not refer name of her foster son Shoaib Khan in original application before JMFC therefore, learned Appellate Court without any cause granted ₹ 500/- maintenance to Gazi Khan. It is admitted position that Gazi Khan is foster son of Smt. Shahnaz Khan and Razzak Khan and strict rule of pleadings are not applicable in proceedings under the "Act 2005". Shri Imtiaz Hussain, learned Advocate of Shahnaz Khan has argued at length that looking to the present price index quantum of monthly maintenance of ₹ 1000/- to Gazi Khan and ₹ 500/- to Shoaib Khan should be enhanced and further adequate compensation be granted to Smt. Shahnaz Khan.

10. It is admitted position that Smt. Shahnaz Khan is working as a clerk in MPSRTC, Jabalpur whereas her husband Ramzan Khan is a photocopy mechanic and not getting regular salary, he is also suffering from heart ailment. In these circumstances, both the Courts below after appreciation of evidence has given findings of income, regarding financial status of the parties. This Court is of the view that the monthly maintenance granted by learned Appellate Court is justified.

11. Shri Ahdullaha Usmani learned Advocate for Razzak Khan and others has vehemently argued that if divorcee wife Smt. Shahnaz Khan will stay in the shared house with applicant then it will create many problems. Further Smt. Shahnaz Khan is living comfortably with her brother in her parental house and therefore, the Revisional Court has committed a grave mistake in ordering for providing accommodation to her in the house of husband and brothers. He has further argued that because Ramzan Khan has given divorce to Smt. Shahnaz Khan therefore, jurisdiction under "Act 2005" is not attracted.

12. It is clear that applicant and his two brother are staying in a three-storied house at Jabalpur. In this regard it will be proper to reproduce Section 17(1) of the Act of 2005.

17. (1) Right to reside in a shared household.

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 house hold, whether or not she has any right, title or beneficial interest in the same.

This Section lays down that irrespective of any contrary proviso in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law. Further Section 2 of "Act 2005" defines "aggrieved persons" and "domestic relationship" and "shared household" as given below:

2. Definitions.-

(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;

(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.

13. Thus, it is clear that every women in a domestic relationship shall have the right to reside in the shared house except in accordance with the procedure established by law therefore, this argument of applicant has no force that divorcee wife Shahnaz Khan has no right to reside in an ancestral house of husband or such living will amount to 'Haram'.

14. Further as held by Apex Court in S.R. Batra v. Smt. Tarun Batra Civil Appeal No. 5837/06 (SC), decided on 15-12-2006, it is made clear that the claim for alternative accommodation can only be made against husband Ramzan Khan and she is entitled a right to residence in a shared house would only mean house belonging to husband Ramzan Khan or house which belongs to joint family of which husband is a member.

15. If circumstances required so, divorcee wife Shahnaz Khan in view of Section 19(1)(f) of the "Act 2005" in the alternative husband Ramzan Khan is directed to secure same level of alternate accommodation for Shahnaz Khan as enjoyed by her in the shared house with the help of Protection Officer or he will pay ₹ 900/- per month rent to Smt. Shahnaz Khan from date of Trial Court order i.e., 29-9-2007.

16. Suffice it to say that the learned Additional Sessions Judge, Jabalpur, has not committed any error of law and fact in impugned Criminal Appeal No. 501/2007 and 595/2007, dated 19-12-2007. This Court does not find any such illegality, irregularity or perversity in the impugned order to interfere in these revision petitions except modification as provided in Section 19(1)(f) of the "Act 2005".

With this modification, both revisions are dismissed.

Sabana @ Chand Bai v. Mohd. Talib Ali, 2014 Cr.L.J. 866 (Rajasthan H.C.) (30.10.2013)

See page 266 for full text of judgment.

Widows

Gangadhar Pradhan v. Rashimbala Pradhan, W.P.(Crl) No.519 of 2011 (Orissa H.C.)(18.05.2012)

Judges: Shri V. Gopala Gowda and B.N. Mahapatra

Judgment

B.N.Mahapatra

This Writ Petition has been filed challenging correctness of the order dated 16.04.2011 passed by the learned Additional Sessions Judge, Nayagarh in Criminal Appeal No.44 of 2010 whereby the order dated 07.09.2010 passed by the learned S.D.J.M., Nayagarh in CMC No. 116 of 2007 has been modified with a direction to the appellant-petitioner to pay a sum of ₹ 1000/- towards monthly maintenance to the respondent-opposite party keeping all other conditions of the order unaltered.

2. Bereft of unnecessary details, the facts and circumstances giving rise to the present writ petition are as follows: Opposite party-Rashmibala Pradhan had filed an application bearing CMC No.116 of 2007 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "Act, 2005") before the learned S.D.J.M., Nayagarh, who vide order dated 30.01.2008 directed the petitioner to pay monthly maintenance of ₹ 300/- to opposite party until she is given her legitimate share in the joint family properties of the petitioner. Being aggrieved, the petitioner filed Criminal Appeal No.20 of 2008 before the learned Additional Sessions Judge, Nayagarh, who set aside the order of the learned S.D.J.M., Nayagarh with a direction to dispose of the case afresh after giving opportunity to both parties to adduce evidence. After hearing the parties and taking into

consideration the evidence adduced by them, the learned S.D.J.M., Nayagarh vide order dated 07.09.2010 enhanced the monthly maintenance to ₹ 1,500/- in favour of opposite party until there is partition among the co-shares providing definite share to the opposite party in the properties of the petitioner. Being aggrieved by the said order of the learned S.D.J.M., Nayagarh, the petitioner again filed an appeal bearing Crl. Appeal No.44 of 2010 before the learned Additional Sessions Judge, Nayagarh, who after hearing both parties directed the petitioner vide order dated 16.04.2011 to pay a sum of ₹ 1000/- as monthly maintenance to the opposite party keeping all other conditions imposed by the learned S.D.J.M., Nayagarh unaltered. Hence, the present writ petition.

3. Mr. G.S. Mohanty, learned counsel appearing on behalf of the petitioner submitted that the petitioner is the father-in-law of opposite party. The husband of opposite party died on 11.07.2006 due to Brain Fever and Malaria. Opposite party lodged an F.I.R. before the I.I.C., Nayagarh Police Station on 28.09.2006 on the basis of which P.S. Case No. 259 of 2006 corresponding to G.R. Case No. 463 of 2006 under Sections 498-A/506/34 I.P.C read with Section 4 of the D.P. Act was registered against the petitioner and other in-laws. While the said case was pending before the learned S.D.J.M., Nayagarh, the opposite party filed a petition under Section 12 of the Act, 2005. It was submitted that the petitioner is an old man, who does not have any source of income other than cultivation of his ancestral lands. The annual income from the agricultural land is insufficient to maintain his family. Therefore, the direction given by the learned Additional Sessions Judge, Nayagarh to pay monthly maintenance of ₹ 1000/- is not justified and legal. The learned Court below has made an error by awarding maintenance to opposite party even though the opposite party had not made any such prayer in her petition bearing Crl. Misc. Case No.116 of 2007. The application under the provisions of Section 12 of the Act, 2005 is not maintainable against the petitioner and his son as the alleged domestic violence took place prior to 26.10.2006, i.e. on the date on which the Act, 2005 came into force. Despite notice none appeared for opposite party.

4. In the present case, the following questions fall for consideration by this Court:

(i) Whether the application of opposite party under Section 12 of the Act, 2005 is maintainable before the S.D.J.M., Nayagarh as the allegation against the petitioner and his son was made prior to 26.10.2006 on which date the Act, 2005 came into force and the said Act has not been given retrospective effect? (ii) Whether learned Additional Sessions Judge is justified to direct the petitioner to pay monthly maintenance of ₹ 1,000/- to opposite party?

5. Since both the questions are interlinked, they are dealt with together.

6. The Act, 2005 has been enacted 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 matter connected therewith or incidental thereto.

It is very much necessary to know the statements of object and reasons for enactment of the Act, 2005.

"STATEMENT OF OBJECT AND REASONS

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 it's 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 IPC. The Civil Law does not however address this phenomenon in its entirety.

3. It, is therefore, proposed to enact a law keeping in view of 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 or adoption. 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 relative of the husband or the male partner, it does not enable any family 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 for the right of a women 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 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."

7. Now, the question arises as to whether the petition filed under Section 12 of the Act, 2005 is maintainable in respect of cause of action arose prior to the date, i.e., 26.10.2006, when the Act, 2005 came into force. It was argued that G.R. Case No. 463/2006 as well as Criminal Case bearing No. CMC 116 of 2007 arose out of the same cause of action. The opposite party had filed FIR before the IIC, Nayagarh P.S. on 28.09.2006 vide PS Case No. 259/2006 corresponding to G.R. Case No.463/2006 under Sections 498(A)/ 506/34 IPC read with Section 4 of the D.P. Act against the petitioner and other in-laws. The said cases are pending before the learned S.D.J.M., Nayagarh.

Thus, according to the petitioner, since the Act, 2005 came into force with effect from 26.10.2006, the domestic violence, if any occurred prior to that date the opposite party is not entitled to get any relief under the Act, 2005 as the Act, 2005 has no retrospective operation. The Act should be applied prospectively, i.e., from the date of its coming into force on 26th October, 2006. Act of domestic violence prior to 26.10.2006 shall be governed by the provisions of the Indian Penal Code.

8. The term "domestic violence" as defined under Section 3 of the Act, 2005 is extracted below:

"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 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."

9. "Aggrieved person" as defined under Section 2(a) means any woman who is, or has been, in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

10. The definition of "Respondent" as contained in Section 2(q) is that 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 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. Under the Scheme of the Statute if an aggrieved person is subjected to domestic violence she can present an application to the Magistrate seeking one or more reliefs under the Act. Besides, aggrieved person, a Protection Officer or any other person on behalf of the aggrieved person can also present an application to the Magistrate seeking one or more reliefs under the Act.

12. Sub-section (2) of Section 12 provides 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.

13. Section 20 of the Act, 2005 provides (i) 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. 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.

14. Section 22 deals with Compensation orders. It provides, 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.

15. Section 23 provides power to pass interim and ex parte orders.

16. Section 31 of Act, 2005 provides for penalty for breach of protection order by respondent. 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.

17. As it appears from the order dated 30.01.2008, passed in CMC 116/2007 the opposite party in her petition under Section 12 of the Act, 2005 sought for following reliefs:-

(a) direction to the respondent to give return of "Streedhan" properties, viz, a sum of ₹ 45,000/- given as dowry at the time of her marriage, gold ornaments worth ₹ 65,000/- belonging to her,

(b) an order of restraint prohibiting the respondents from alienating the properties, more fully described in Schedule 'A' of the petition; and

(c) a direction to give possession of the said properties to her.

18. Relief claimed in the petition filed under Section 12 of the Act 2005 is civil in nature. Till date of filing of the petition under Section 12, the petitioner (opp. party herein) was not granted any of the reliefs sought for in her petition under Section 12 of the Act, 2005. Therefore, it is a continuous act of deprivation of petitioner's right. Admittedly, she was not given her share in joint family properties by the present petitioner. Thus, it is a continuous cause of action for which the petition filed under Section 12 of Act, 2005 claiming the above reliefs is maintainable and the provisions of Act, 2005 are squarely applicable to the present case.

19. As it appears, the criminal cases referred to above have been filed under the Indian Penal Code and the Dowry Prevention Act. Those 12 cases have nothing to do with the petition filed under Section 12(1) of the Act, 2005.

20. In view of the above, the plea of the petitioner that the petition filed by the opposite party under Section 12 of the Act, 2005 is not maintainable on the ground that the Act, 2005 applies only prospectively, i.e., from the date of coming into force on 26th October, 2006 is totally misconceived and not sustainable in law.

21. Now, the question arises as to whether the courts below are justified to grant monthly maintenance till the present opposite party gets her share in joint family properties. While dealing with the right of maintenance under the Act, 2005, the Hon'ble Supreme Court in the case of Vimlaben Ajitbhai Patelv. Vatslaben Ashokbhai Patel, (2008) 4 SCC 649, held that the Act, 2005 provides for a higher right in favour of the wife, who not only acquires a right to be maintained but also thereunder acquires a right of residence which is a higher right. However, the said right as per the legislation extends only to joint properties in which the husband has a share.

22. In the instant case, admittedly, the husband has a right in the joint family properties. After death of her husband on 11.07.2006 due to Brain Malaria, opposite party has acquired such right. Since she has not been given her share in the joint family properties, the lower courts have rightly granted monthly maintenance to opposite party till she gets a share in the petitioner's properties.

23. As the petitioner has not given to opposite party her share in the joint family properties in question, the opposite party is entitled to get maintenance till she gets her share in the said properties. In absence of getting a share in the ancestral joint family properties, she is deprived of her economic and financial resources to which she is legally entitled to get.

24. In view of the definition of 'domestic violence' given in Section 3 of the Act, 2005 and Explanation (iv) explaining the economic abuse, the Courts below are fully justified to grant monthly maintenance to the respondent (opposite party herein) till she gets her share in the ancestral joint family properties. Considering the present standard of living, award of maintenance @ ₹ 1000/- (rupees one thousand) per month by the Additional Sessions Judge, Nayagarh cannot be said to be on the higher side.

25. In the facts situation, we do not find any infirmity or illegality in the order dated 16.4.2011 passed by the learned Additional Sessions Judge, Nayagarh warranting interference of this Court. Accordingly, the writ petition is dismissed.

Ashish Bhowmik v. Tapasi Bhowmik, C.R. R. No. 10 of 2009 (Calcutta H.C.) (30.06.2010)

Judge: Prasenjit Mandal

Judgment

1. This application under Article 227 of the Constitution of India is at the instance of the husband's brother and his mother against the wife and is directed against the order dated December 4, 2008 passed by the learned Additional Sessions Judge, First Court, Barasat, District - North 24 Parganas in Criminal Appeal No. 13 of 2008 arising out of the order dated August 26, 2008 passed by the learned Chief Judicial Magistrate, Barasat, District - North 24 Parganas in C. Case No. 864 of 2008.

2. The wife/opposite party was married to Debasish Bhowmik, elder brother of the petitioner No. 1 and son of the petitioner No. 2. After marriage, they lived together and one daughter was born in the wedlock. The husband expired on November 20, 2007 and after his demise, the petitioners subjected the wife to torture and ultimately the wife was sent to her father's house along with the minor daughter. The husband was an LIC agent. So after death of the husband, the wife is entitled to get 2/3rd share of the property left by her husband for herself and her minor daughter. The petitioner No. 1 is a service holder and he earns ₹ 16,000/-per month and the petitioner No. 2 earns ₹ 15,000/- per month from her properties. After death of the husband of the wife, her mother had withdrawn ₹ 3,32,000/- on December 5, 2007 behind the back of the wife as service benefits of

the deceased husband. The wife was not given any amount out of the said sum. For that reason, the wife filed a Title Suit before the City Civil Court, Calcutta. On the other hand, the wife has no independent source of income and so she has prayed for protection in accordance with the provisions of the Sections 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005. That application was duly heard before the learned Chief Judicial Magistrate, North 24 Parganas at Barasat. Upon consideration of the materials placed before her along with the report of the protection officer, the learned Chief Judicial Magistrate directed the petitioners to provide residential accommodation to the wife and her daughter in their shared house. Being aggrieved, the wife has preferred an appeal which was disposed of by the learned Additional Sessions Judge, First Court, Barasat by the impugned order directing the petitioners to pay a sum of ₹ 2,000/- per month in favour of the appellant in order to enable her to secure the same level of alternate accommodation. Being aggrieved, the petitioners have preferred this revisional application.

3. After hearing both the sides and on perusing the materials on record, I find that it is not disputed that the wife/opposite party herein was married to Debasish Bhowmik (now deceased) and such marriage was the culmination of love affairs between the two. It is not in dispute that the wife is a non-Bramhin lady. It is also not in dispute that one daughter was born in the wedlock. The learned Chief Judicial Magistrate directed the protection officer to submit a report on the basis of the allegation made by the wife and the protection officer held an enquiry and thereafter he submitted a report. According to such report, though the petitioners did not subject the wife to torture they abused her because she was a non-Bramhin. It reveals that immediately after the death of her husband, the wife was compelled to reside at her father's house. The wife has one daughter and it is also living with its mother. So after death of the husband, the wife and her daughter are entitled to pay 2/3rd share of the properties left by the deceased husband. But, on careful scrutiny of the orders passed by two lower courts, I find that both the courts have held concurrently that the wife was compelled to reside at her father's house along with her minor daughter. The two courts have arrived at such conclusion on the basis of the materials placed in the case. So, such concurrent view of the lower two courts, based on the materials on record, should not be changed or modified by an application under Article 227 of the Constitution of India. The learned Chief Judicial Magistrate, Barasat held that the wife should be accommodated in the house of the petitioners. But in consideration of the attitude of the petitioners towards the wife for being a non-Bramhin lady, the appellate court granted an amount of 2,000/- per month for the alternate accommodation of the wife. When the brother and mother of the deceased have expressed their unwillingness to allow the wife to stay in their house because the wife belongs to a non-Bramhin female, I am of the view that the learned Additional Sessions Judge was justified in passing orders for payment of a

sum of ₹ 2,000/- per month in favour of the wife in order to enable her to secure the same level of alternate accommodation. The wife is also entitled to get her stridhan property.

4. I do not find any illegality in the matter in the given circumstances. So, the order of the learned Additional Sessions Judge should be confirmed. As regards other claims, those are to be decided separately and one litigation is pending as I find from the materials available.

5. Therefore, this application has no merit at all. It is, therefore, dismissed. The order dated 04.12.2008 passed by the learned Additional Sessions Judge, First Court, Barasat in criminal appeal No. 13 of 2008 is hereby confirmed.

6. Considering the circumstances, there will be no order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.

Eveneet Singh v. Prashant Chaudhri, I (2011) DMC 239 (Delhi H.C.) (20.12.2010)

Judge: S. Ravindra Bhat

Judgment

1. This judgment will dispose of applications in two suits. The plaintiff in CS (OS) 505/2010 (hereafter "Kavita", and "eviction suit") seeks mandatory injunction against her son, Prashant and daughter-in-law, Eveneet (referred to hereafter by their names) to prohibit them from occupying the premises located at D-32, South Extension Part II, New Delhi, (referred to as "the suit premises", in the eviction suit, as well as in the other suit CS(OS) 1307/2010, - which would be called "the maintenance suit") on the ground that she is its sole owner and that they are merely licensees. Eveneet instituted the maintenance suit, under the Hindu Adoption and Maintenance Act, 1956 (Hereinafter, "Maintenance Act"), against Prashant and mother-in-law, Kavita Chaudhari seeking maintenance and right of residence in the suit premises.

2. Prashant and Eveneet got married on 27.04.2009. Eveneet alleges that the defendants in the maintenance suit, Prashant and Kavita, were unhappy with the gifts they received and were pressurizing her for a greater amount of dowry. A complaint under the Protection of Women from Domestic Violence Act, 2005 (Hereinafter, "the Domestic Violence Act"), was also filed by Eveneet, against the said defendants, on 17.03.2010. Eveneet contends that suit premises not solely owned by Kavita, and that it is HUF property as per the will of her (Kavita's) deceased father. According to the probate petition too, she only claimed

half of the property. It is also alleged by her that the eviction suit was filed by Kavita in collusion with Prashant, to put up a façade of her ownership, to oust her (Eveneet) from it. She also alleges that Prashant started living in rented premises in Defence Colony, New Delhi in order to show that the suit premises belong solely to Kavita. Eveneet seeks a right of residence in the property, which she states, is the "shared household" under Section 2(s) of the Domestic Violence Act. She also seeks maintenance, including ad-interim maintenance, of ₹ 200000/- (Rupees Two Lakhs) per month, commensurate with the means of Prashant, and the lifestyle she is accustomed to. She asserts that Prashant has concealed his actual means from the Court and that she is actually entitled to a higher amount of compensation.

3. Kavita and Prashant, in their written statement (in the maintenance suit) contend that the suit premises are exclusively owned by the former, and are not HUF or Joint Family property; it was bequeathed to Kavita by her father. They refute allegations of collusion between themselves, in the filing of the eviction suit. It is stated that Eveneet and Prashant stayed in the suit premises, as permissive licensees, and that Prashant was asked to move out with his wife, Eveneet, by Kavita, when their matrimonial relations became acrimonious. This revocation of license was legal and justified, as Kavita is owner of the property, and is aged, infirm and unable to bear the daily acrimony between her son and daughter-in-law. Pursuant to such revocation, Prashant moved out of the property and started living in rented premises in Defence Colony, New Delhi, but Eveneet refused to move in with him. The defendants in the maintenance suit (Kavita and Prashant) also point out that no modification or change was made to the documents pertaining to the title of the property in any way, during or before the proceedings and therefore, taking rented premises does not indicate any collusion on their part. They rely upon the Supreme Court judgment in S.R. Batra v. Taruna Batra, (2007) 3 SCC 169 2006 Indlaw SC 993 (hereinafter "Batra") for the proposition that the plaintiff Eveneet does not have any right to residence in the property, as her mother-in-law, Kavita is its sole owner, and her husband, Prashant, has no right, share, title or interest in it. They further state that the plaintiff has sufficient means and has suppressed facts as to her income and assets from the Court.

4. Kavita contends, besides, that the suit property is not HUF property, as it was bequeathed by her father. It is argued that any reference to joint family was a mistake since it is well-known that a daughter and her father do not constitute an HUF. It is submitted that the suit, to the extent it alleges that the property is HUF property is with a view to enable Eveneet to get a toe-hold in the premises, over which she has no right under the circumstances of the case. Kavita and Prashant urge through their counsel that once the latter moved out of the premises and set-up house independently, Eveneet could not claim the suit property to be her matrimonial home or shared household as it ceased to be so. Besides reliance on Batra, they also cited the decision in Neetu Mittal v. Kanta Mittal and Ors., AIR 2009

(Del) 72 2008 Indlaw DEL 1359. Similarly, reliance is placed on the judgment Umesh Sharma v. State, 2010 (115) DRJ 88 2010 Indlaw DEL 291.

5. Eveneet, in her arguments, refers to the affidavit of Prashant, filed in these proceedings on 18.11.2010. It discloses that till 2008, Prashant was working in the United States as an Analyst Developer, and later as Commodities Trader. Prashant has deposed about his income which was US$ 74418/- in 2005; US$ 88108/- in 2006; US$ 116142/- in 2007 and US$ 106676/- in 2008. He also alleges to having paid annual rent of approximately US$ 16,000/-, US$ 25,000/- and US$ 32,000/- for three corresponding years of 2005 to 2007, and mentions about high cost of living in New York, which was in the range of US$ 20,000/- to US$ 30,000/-; he mentions having purchased a flat on 155, East 38th Street, New York for total cost of almost US$ 800,000/- (including brokerage), of which he paid US$ 159,000/-. It is stated that the monthly outgoings towards interest and maintenance are to the tune of US$ 4,000/- and that other costs work-out to almost US$ 500/- per month. He mentions that there is a shortfall of US$ 1,300/- per month, which he has to bear and refers to savings valued at ₹ 19,44,458.79/- as on 31.03.2010. Prashant had deposed about spending around ₹ 27,000/- per month as rental towards premises and furnishing, of which he was entitled to 50% deduction towards office expenses. It is submitted that these facts lead one to safely assume that Prashant is earning not less than ₹ 5,00,000/- a month and that he has concealed these facts from the Court. It is stated that in these circumstances, the Court ought to grant both an appropriate order directing suitable maintenance, (having regard to Eveneet's status), as well as the right to reside in the suit property.

6. Besides the above facts and contentions, it was highlighted on behalf of Kavita that she is suffering from an acute heart condition and that if Eveneet is permitted to continue in the premises, it would tell adversely upon her health. During the course of hearing, learned counsel for Prashant had offered that having regard to the circumstances, a sum of ₹ 20,000/- per month could be paid to Eveneet towards rent, and that the trial in the suits could go on expeditiously.

7. This Court is concerned with two applications by Eveneet - one for ad interim maintenance where she claims a monthly amount of ₹ 2,00,000/- and the other a restraint order against Prashant and Kavita, directing them not to disturb her continued possession of part of the suit premises, where she is residing. This Court has noticed the rival contentions of the parties, as well as the other facts. It may be noted that the materials on record show that Eveneet is a post- graduate in Business Studies (MBA), and claims to be drawing monthly take-home salary of approximately ₹ 50,000/- and that her outgoings are to the tune of ₹ 30,000/- to 35,000/- per month, thus leaving her with ₹ 15,000/- for fulfilling her basic needs.

8. The documentary evidence by way of probate petition of the Will of late Dr. Kishori Lal Choudhary, Kavita's father, would disclose that the suit property was bequeathed to Kavita. Undoubtedly, the probate petition claims a half-share of the property. However, neither the probate granted by the Court nor any other material would disclose the existence of any other heir of the said Dr. Kishori Lal Choudhary. In the circumstances, prima facie, the suit property is owned by Kavita. The first question in these circumstances is whether, in the light of the suit filed by her, and the surrounding circumstances, Eveneet can claim a right to continue in the said property on the ground that it is a shared household. At this stage, it would be relevant to notice a few provisions of the Domestic Violence Act. These are as follows:

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Section 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;

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(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;

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(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.

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(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.

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Section 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.

Section 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.

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9. The primary intention in enacting the Act apparently was to secure to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship, various rights. Domestic violence, interestingly is, per se, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move the Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, the right to residence, compensation etc. or even move the Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section 26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The enactment being a beneficial one, the approach of the Court always has to be to uphold the parliamentary intention and give it a liberal interpretation rather than confining it, which would inevitably lead to defeating the object of the law. Significantly, as noticed earlier, domestic violence is per se not an offence but its incidence or occurrence enables a woman to approach the Court for multifarious reliefs. Now the Court is empowered to grant ex-parte relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc. If such an order is violated, by the respondent (which is defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.

10. The facts narrated previously do not show any dispute that Eveneet married Prashant; the latter claims to have given-up his job in the United States sometime in 2008-09 and he moved into the suit property. The couple got married on 27.04.2009; Prashant claims that on account of his mother's ill health and her wishes that they ought to move out, he took-up separate residence in January 2010. The kingpin of Kavita's arguments - as also of Prashant, and indeed the entire basis for Suit No. 505/2010 is that the suit premises are exclusively owned by Kavita and that it is not a shared household. The further argument is that Prashant and consequently Eveneet being mere licensees, (although related to Kavita,

as son and daughter-in-law), have no legal right to live in the premises even though it might have been their matrimonial home at some point of time but was never their shared household. Heavy reliance is placed upon Batra 2006 Indlaw SC 993 (supra); it would be, therefore, first necessary to analyze that ruling and then proceed to see whether Eveneet has any rights under the Act, as claimed by her and to what extent she would be entitled.

In Batra the marriage between the parties had been solemnized in April 2000; somewhere in 2002-03, the husband filed a divorce petition; the wife claimed to have been treated cruelly by him and complained of offence having been committed under Section 498A IPC. She also filed a suit in 2003 for mandatory injunction to enable her to enter the house, which was allegedly locked.

In a temporary injunction application, the trial Court held that the wife was in possession of a portion of the property, and restrained the husband and the mother-in-law from interfering with the possession. In the interlocutory appeal, the appellate Court held that the wife was not residing in the premises and that the husband too was not living in the property. He further held that the wife could not claim any right in the property. The wife further petitioned under Article 227 to the High Court; its judgment was appealed against by the mother-in-law. This much is evident from a reading of paras 4 to 10 of the judgment.

It is evident, therefore, that the wife had never claimed that the parties rights were regulated by the Domestic Violence Act, which was not enacted at the time when the cause of action had arisen. The Court went to observe that the wife, under the circumstances, could not claim possession since the ownership was of her mother-in- law, in paras 11 to 14 of the judgment. The ratio of the judgment is discernable in para 13 which states that there is no law in India, like the British Matrimonial Homes Act, 1967, enabling the wife to claim rights in the property belonging to the property of another.

The analysis of various provisions of the Domestic Violence Act, therefore, did not arise for consideration for judgment by the Supreme Court. Nevertheless, at the invitation of wife's counsel and on the basis of submissions, the Court proceeded to analyze the provisions and observed as it did, particularly in the context of Sections 2(s) and 17 and 19, that mere sharing of a household in the sense of the parties living together in same premises would not constitute such property as a shared household. The observations of the Supreme Court in Batra 2006 Indlaw SC 993 (supra) to the extent relevant are extracted below:

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15. 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.

16. 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.

17. 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.

19. Learned Counsel for the respondent Smt. Taruna Batra 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.

20. 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.

21. 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.

22. 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'.

23. 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.

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11. The key to an understanding of the rights flowing from the Domestic Violence Act, are concepts such as 'domestic relationship' - which inter alia, is "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..."; who is a 'respondent' - a term not confined only to males who had lived with the aggrieved person, i.e. the complainant female, but also - by virtue of proviso to Section 2(q) to "a relative of the husband..." (in the case where the domestic relationship is or was a marriage).

This aspect has been noticed, and clarified in several rulings by various High Courts (Ref Afzalunnisa Begum v. The State of A.P., 2009 Cri.L.J. 4191 2009 Indlaw AP 281; Archana Hemant Naik v. Urmilaben Naik, 2010 Cri.L.J. 751 2009 Indlaw MUM 1332 and Varsha Kapoor v. Union of India 2010 Indlaw DEL 1526, WP (Crl.) No. 638 of 2010, Decided on: 03.06.2010, by a Division Bench of this High Court). It has been held that when a law uses the same word in different parts of the same statute, there is a presumption that that it is used in the same sense throughout (Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593 1990 Indlaw SC 684), unless the context indicates otherwise (Bhogilal Chunnilal Pandya v. State of Bombay, 1959 Supp (1) SCC 593 1958 Indlaw SC 169). Now, the relevant part of Section 19 reads as follows:

"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...."

(Emphasis Supplied)

The broad and expansive nature of the Court's power to make a residence order is also underlined by the amplitude of the definition of "shared household", which is "where the person aggrieved lives or at any stage has lived

(i) in a domestic relationship

(ii) either singly or along with the respondent and includes such a household

(a) whether owned or tenanted either jointly by the aggrieved person and the respondent, or

(b) owned or tenanted by either of them

(iii) 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

(iv) 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."

It is thus apparent that Parliamentary intention was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the respondent (including relative of the husband) or in respect of which the respondent had jointly or singly any right, title, interest, or "equity." For instance, a widow living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship"; even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity.

It may, however, be noticed here that Section 19, while referring to a 'respondent', lays down a limited exception under the proviso to 19(1)(b), exempting women from being directed to remove themselves from the shared household. However, no such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Clearly, if the legislature had wanted to create another exception in favor of women, it could have done so. The omission here, seems deliberate and in consonance with the rest of the scheme of the Act. Another instance of a domestic relationship may be an orphaned sister, or widowed mother, living in her brother's or son's house; it falls within the definition of domestic relationship, (which is one where the parties are related by consanguinity, or marriage) constitutes a shared household, as the brother is clearly a respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property, by the son or brother. Thus, excluding the right of residence against properties

where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence. This was noted by the Bombay High Court in Archana Hemant Naik 2009 Indlaw MUM 1332 (supra) in the following terms:

"If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household." (Emphasis Supplied)

12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.

13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a 'joint family' similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.

14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HUFs (and therefore Hindus) would have more security, by reason of their professing

the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra - would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "respondent" to the "shared household", a protection order can be made under Section 19 (1) (a).

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (S. Prabhakaran v State of Kerala, 2009 (2) RCR (Civil) 883). It states that "...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" (Emphasis Supplied).

16. It would not be out of place to notice here that the use of the term "respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of 'respondent' under Section 2(q).

17. Decisions of the Supreme Court are authoritative, more so when High Courts have to deal with the same statute. Equally, it is settled law that a decision is authority for what it says, and the contextual setting, as well as the statutory provisions, and their interpretation, as emerging from the ruling, which invests it with precedential value. For this reason, it has been ruled by the Supreme Court, in several judgments, that a judgment is not to be read as a statute, since the factual matrix is also important (Ref. to Sarat Chandra Mishra v State of Orissa, (2006) 1 SCC 638 2006 Indlaw SC 2, Ramesh Chand Daga v Rameshwari Bai, (2005) 4 SCC 772 2005 Indlaw SC 192, P.S. Sathappan v Andhra Bank Ltd., (2004) 11 SCC 672 2004 Indlaw SC 857).

In Batra, the dispute did not emerge or emanate from any provisions of the Domestic Violence Act; indeed, the cause of action preceded the coming into force of the enactment. Secondly, the wife was not in possession or an occupant of the property, which is a crucial factual aspect that distinguishes it from the facts of this case. Thirdly, the Court did not have the benefit (or the occasion) to consider the definition of "respondent";

"domestic relationship" and explore the link between those two vital concepts, on the one hand, and the definition of "shared household", as well as the remedy under Section 19 - both of which reinforce the irrelevance of the respondent's title or interest in the shared household property (in Section 2(s) it is "irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household..."; in Section 19 it is articulated as "whether or not the respondent has a legal or equitable interest in the shared household...."

18. This Court notices further that Batra has been distinguished by the Madras High Court in P. Babu Venkatesh v. Rani, (Crl. R.C. Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008, Decided On: 25.03.2008, Madras High Court); the petitioner there alienated his property, in which the aggrieved person had sought residence, in favor of his mother, in order to fall within the ambit of the Batra dictum.

19. In the present case, Eveneet and Prashant were living together. No doubt, the suit premises are not owned by either of them; the documents on record prima facie disclose that exclusive title and right is of Kavita, the mother-in-law. Yet, having regard to the previous discussion, Kavita is undoubtedly a "respondent" in whose household, the couple lived together. The Court here cannot be oblivious of the circumstance that Prashant moved out when the relationship became stormy; the possibility of the eviction suit having been filed as a pre-emptive move, to bring it within the Batra formulation cannot be ruled out at this stage.

In the context, the Court holds that what cannot be done directly, cannot be achieved indirectly through stratagem. If the Court can look beyond the facts, and in a given case, conclude that the overall conspectus of circumstances, suggests manipulation by the husband or his relatives, to defeat a right inhering in the wife, to any order under Section 19, such "lifting of the veil" should be resorted to. Therefore, the plaintiff indeed has a right of residence under the Domestic Violence Act.

20. Now the question is what should be the order that the Court should make. As held earlier, though Eveneet has made a complaint under the Domestic Violence Act, in which orders have not been made, yet this Court also has concurrent jurisdiction under Section 26 to make appropriate orders in this regard, and mould the relief. The documentary evidence also suggests that Kavita is suffering from an acute cardiac condition; though Eveneet's counsel submitted that the illness has been exaggerated, the Court cannot rule out aggravation, if the daughter-in-law continues in the premises, under a Court order, or the Court mandate. In this context, it has been observed by a division bench of this Court in Shumita Didi Sandhu v. Sanjay Singh Sandhu and Ors 2010 Indlaw DEL 2552., (F.A.O. (OS) 341/2007, Decided On: 26.10.2010) that

"the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property."

The above approach is consistent with the power under Section 19 (1) (f), which enables the Court to direct "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...". The plaintiff is thus, entitled to residence in a property commensurate with her lifestyle and her current residence, keeping in mind Kavita's health condition.

21. The documentary evidence and pleadings suggest that Prashant's monthly outgoings - in respect of the New York property are US$ 4500/-, which works out to ₹ 2,05,000/-. He is also paying rent to the tune of ₹ -27,000/- per month. With this expenditure, the Court can safely incur that his personal expenses would not be less than about ₹ 40,000/- per month. In these circumstances, to support this kind of lifestyle, Prashant's average monthly income would not be less than ₹ 450,000/- to ₹ 500,000/-. On the other hand, Eveneet's income is about ₹ 50,000/- per month; Prashant alleges it to be more. Having regard to his offer to pay ₹ 20,000/- per month towards alternative accommodation, the Court is of opinion that she should be entitled to an amount of ₹ 30,000/- per month towards rent, for alternative accommodation, and an amount of ₹ 45,000/- per month maintenance.

In order to facilitate and effectuate this order, the parties are directed to appear before the Court handling the complaint under the Domestic Violence Act, on 4th January, 2011, which shall oversee that Prashant complies with Section 19 (1)(f), within ten weeks from today. Till such alternative accommodation is made available, Eveneet would be entitled to continue in the suit premises, and also entitled to receive ₹ 45,000/- per month. The application for maintenance is allowed with effect from the date it was filed; arrears shall be paid within six weeks.

22. IA Nos. 8479/2010, 8480/2010 in CS (OS) 1307/2010 are allowed in the above terms and I.A. No.3577/2010 in CS (OS) 505/2010 is disposed of in the above terms. In the circumstances, there shall be no order as to costs.

CS(OS) Nos.1307/2010 and 505/2010

List before Joint Registrar on 15.02.2011 to enable the parties to admit/deny the documents.

List before the Court on 01.08.2011 for framing of issues.

Cosanguinity and family members living in a joint family

Badri Lal Gurjar v. Yogesh Kumari, 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009)

Judges: R.S. Chauhan

Judgment

1. The petitioner has challenged the order dated 19.03.2009, passed by the Additional Chief Judicial Magistrate No. 4, Kota, whereby the learned Magistrate had directed the petitioner to pay ₹ 1,200/- per month to the respondent No. 1, Yogesh Kumari, and ₹ 800/- per month to the respondent No. 2, Rimjhim, by way of interim maintenance under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The petitioner has also challenged the order dated 03.08.2009, passed by the learned Judge, Special Court (Women's Atrocities and Dowry) Cases, Kota, whereby the learned Judge has upheld the order dated 19.03.2009.

2. Mr. Naseemuddin Quazi, the learned Counsel for the petitioner, has vehemently argued that the respondent No. 1 was living with her father-in-law, sister-in-law and brother-in-law. None of them had committed any act of domestic violence against her. She is unjustified in claiming that they had thrown her out of the matrimonial home. Moreover, the petitioner happens to be an old man who does not have any source of income. Hence, he is unable to pay the interim maintenance as directed by the learned Magistrate and the learned Judge. Lastly, the respondent No. 1, herself, is a teacher by profession. She is, thus, able to earn sufficient amount for herself and her child. Therefore, according to the learned Counsel both the impugned orders should be quashed and set aside.

3. Heard the learned Counsel for the petitioner and perused the impugned orders.

4. A bare perusal of the impugned orders clearly reveal that according to the petitioner himself, he owns 1.54 hectors of irrigated land. He has admitted this fact in his own statement. Thus, he does have a source of income from the agricultural land. Moreover, the petitioner has not been able to produce an iota of evidence to prove the fact that the respondent No. 1 is working as a teacher. Therefore, the plea raised by the learned Counsel about the petitioner's inability to maintain the respondents is unacceptable.

5. Considering the fact that it is the petitioner's moral and legal duty to look after his widowed daughter, considering the fact that he owns irrigated land, considering the fact that the respondent No. 1 does not have any means for looking after herself and her child, the learned Magistrate and the learned Judge were justified in directing the petitioner to pay an interim maintenance of ₹ 2,000/- per month to the respondent Nos. 1 & 2 jointly.

6. In this view of the matter, there is neither any illegality, nor any perversity in the impugned orders. The petition is devoid of any merit; it is, hereby, dismissed.

Sikakollu Chandramohan v. Sikakollu Saraswathi Devi, Crl.R.C. No. 1093 of 2010 (Andhra Pradhesh H.C.)(06.07.2010)

See page 108 for full text of judgment.

Children

Razzak Khan V. Shahnaz Khan, 2008 (4) MPHT 413 (Madhya Pradesh H.C.)(25.03.2008)

See page 292 for full text of judgment.

2. MECHANISMS TO ASSIST WOMEN TO ACCESS RELIEF UNDER PWDVA

PROTECTION OFFICERS

Neeraj Goswami v. State of Uttar Pradesh, 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013)

Judge: Shri Narayan Shukla

Order

Heard Mr.Girish Chandra, learned counsel for the petitioner as well as Mr.Suresh Chandra Shukla, learned counsel for the respondents in both the cases. Since both the cases are based on common facts, they are decided by the following common order.

Through the instant application the applicants have prayed to quash the entire proceedings of case No.11032 of 2010: State of U.P. Vs. Neeraj Goswami and others, pending before the court of Additional Chief Judicial Magistrate, Court No.27, Lucknow, under Sections 498-A, 313, 323, 406, 506 IPC and ¾ Dowry Prohibition Act, Police Station Mahila Thana, Lucknow as also to set aside the judgment and order dated 16th of January, 2012, passed by the learned Additional Chief Judicial Magistrate, Lucknow.

By means of order dated 16th of January, 2012, the applicant's objection against the jurisdiction of the learned Additional Chief Judicial Magistrate, Lucknow has been rejected. The applicants have stated that the First Information Report lodged against them indicates that the entire allegation is vague and no specific date has been indicated clearly about the

date of occurrence of offence. The applicants are living at Gurgaon, State of Haryana, except applicant No.4 and 5, as since before the marriage of applicant No.1, the applicant No.4 is living in U.S.A. and since last more than three years the applicant No.5 is living in Patna, State of Bihar. She has also no concern with the family affairs of the applicant Nos.1 to 3. So far as the applicant No.6 is concerned, he never resided with applicant Nos.1 to 3 at Gurgaon as he was studying in Delhi living separately nor has he any concern with their family affairs.

They have also raised finger over the fairness of investigation that being biased and under the influence of father of the opposite party No.2, who is posted in 35th Bn. P.A.C., Mahanagar, Lucknow. It is stated by them that the grievance of opposite party No.2 is forceless being based on concocted story with a bundle of lies. They have also denied from making any attempt to burn to the opposite party No.2 as well as beating her.

It is stated that all the alleged incidents took place within the territory of Gurgaon, State of Haryana and no incident occurred in district Lucknow, State of U.P, so as to give authority to the police of district Lucknow to inspect. It is further stated that at the time of lodging of First Information Report, the opposite party No.2 was an employee of Hewitt Noida, U.P. Working as Auditor Associate and was getting salary of ₹ 25,000/- per month. Thus, it is established that since the date of her marriage she was living at Gurgaon. It is further stated that after marriage, she started living separately from her husband and other family members in a rented House No.U-9/44, DLF, Phase-III, Gurgaon, Haryana, therefore, it is baseless and wrong and malafide to say that she is residing in House No.5, 35th Bn.P.A.C, Mahanagar, Lucknow.

The marriage of the applicant No.1 and opposite party No.2 was solemnized on 20.2.2009 at Lucknow. The father of the opposite party No.2 who is a Sub Inspector in police department has behaved in a very rude manner right from the date of marriage and used to threat the family members of applicant No.1. It is further stated that after the marriage, the applicant No.1 and opposite party No.2 were living at 3rd Floor of residential house of applicant No.3, living separately from applicant Nos.2 and 3 having a separate kitchen for them, so that a peace may be maintained in the family. Now the applicant NO.1 is living in House No.7/16, DLF, Phase-III, Gurgaon, Haryana.

It is further stated by them that on 23rd of May, 2010 opposite party NO.2 came down shouting after having fierce firing with applicant No.1 and causing injuries to him. She also quarreled with applicant No.2 and tore her clothes and snatched her gold chain and caused injuries to applicant No.3. They informed about the incident to the local police and thereafter went to Sanjivani Hospital for their treatment. Thereafter both of them, husband and wife, started separate living. The father of opposite party No.2 came to the house of the applicant Nos.1 to 3 along with other persons and threatened the applicant No.1 to leave the rented house. Under threat the applicant No.1 vacated the house. Thus it is stated that all incident

took place at Gurgaon. Therefore, there was no occasion to register the first information report for the incident took place at Gurgaon, at Lucknow.

But it appears that the same has been registered at the behest and influence of the father of the opposite party No.2, who himself is the police Sub Inspector, only just to harass the applicants. He also interferred in the investigation by misusing his official position, therefore, the investigation has not been done in fair and proper manner. Further there is no allegation of demand of dowry, therefore, it is established that no offence is made out as alleged, against the applicants. It is further stated by the applicants that the offence as alleged in the First Information Report and the materials collected through the investigation, make it abundantly clear that the offences are not continuing offences, hence the court of Additional Chief Judicial Magistrate, Lucknow has no territorial jurisdiction to deal with the case.

Per contra the opposite party No.2 submitted that all the applicants are residing jointly and have committed offence as stated in the First Information Report. They tortured her mentally as well as physically and also got aborted her forcibly. They also demanded dowry. On account of non-fulfilment of their demand, they thrown out her, therefore, she started to live at Lucknow with her parents and lodged the First Information Report. Since they have continuously been torturing her even after thrown out her from their residence, therefore, she lodged the First Information Report at Lucknow. She also expressed her willingness to live with her husband, but the applicant No.1 is not ready to keep her with him. It is further stated that even after filing of the charge sheet the applicant No.1 has neither appeared before the court nor has been granted bail, therefore, for this reason alone the instant application moved through the counsel is liable to be rejected as not maintainable.

Through this application, the applicants have prayed to quash the entire proceedings of Case No.509 of 2010: Preeti Goswami versus Neeraj Goswami and others, pending under Section 12 of the Protection of Woman From Domestic Violence Act (in short Domestic Violence Act), pending in the court of VIII Additional Chief Judicial Magistrate, Lucknow as also to quash the order dated 16th of February, 2012, passed by the learned Additional Chief Judicial Magistrate, Court No.32 in the said case.

By means of order dated 16th of February, 2012, the learned Additional Chief Judicial Magistrate, Lucknow has rejected the applicants' objection raised against the jurisdiction of the court concerned and has entertained the application moved by the opposite party No.3 under Section 12 of the Domestic Violence Act.

The applicants' submitted that the learned Additional Chief Judicial Magistrate, Lucknow under misconception of law on the basis of report dated 19.7.2011 submitted by the District Protection Officer, Lucknow issued notices to the applicants to proceed with the case, whereas it suffers from jurisdiction. It is stated that whole incident as alleged have taken place at Gurgaon in the State of Haryana, as the application moved by the opposite party No.3 itself does not

indicate any incident as alleged to have taken place at Lucknow. It is further stated that on the date of filing of the application she was employed in a Private Company situated at Gurgaon, Haryana. It is further stated that from bare perusal of averments made in paragraph 14 of the application, it appears that opposite party No.3 used to make casual visits to Lucknow for check up during her employment at Gurgaon while residing at Gurgaon. It is further stated that the learned Additional Chief Judicial Magistrate, Lucknow did not call domestic violence report from the District Protection Officer, Gurgaon, Haryana, who is the competent authority being appointed under the Act for the area where incident is alleged to have taken place. The learned Magistrate called a report from the District Protection Officer, Lucknow where no incident took place. The applicants submitted that the allegations made in the instant case that the applicants have demanded dowry over phone from her father is contrary to the stand taken in prosecution case i.e. case crime No.72 of 2010 (Case No.10132 of 2010), in which no such allegations have been made against the applicants. It is also stated by them that the opposite party NO.3 has also filed a petition under Section 9 of the Hindu Marriage Act as well as Maintenance Case under Section 125 Cr.P.C. In the court of Principal Judge, Family Court, Lucknow, which are frivolous in nature. Since she was neither residing nor employed at Lucknow on the date of filing of application i.e. 8th of October, 2010, therefore, the application moved by her is not maintainable as it lacks territorial jurisdiction.

On the basis of the aforesaid averments the learned counsel for the applicants submitted that the learned court below has committed manifest error of law in rejecting the petitioner's objection on the point of jurisdiction. He drew attention of this court towards the contents of the application moved by the respondent NO.3 before the learned Magistrate, in paragraph 11 of which she has stated that on 23rd of May, 2010 the applicants and other members of his family assaulted her and thrown out from home. She got treatment in Nilkanth Hospital and since thereafter she is residing at her parents home.

In light of the aforesaid facts it is stated that it is admitted by her that on 23rd of May, 2010 when she was at Gurgaon the incident took place thereat and only thereafter she started residing with her parents, therefore, her application was not maintainable before the court at Lucknow.

The learned counsel for the applicants further submitted that on the date of application, she had shown her willingness to leave the job, but it is admitted that on that date she had been working in the private Company at Gurgaon and the resignation submitted by her was not accepted by that date. He further stated that in paragraph 20 of the application, she stated that now she would live in her parental house as nobody is there except her parents to look after her. Thus, it is established that on the date of application, she was not residing at Lucknow, rather she expressed her will to live at Lucknow in her parents' home in future.

In support of their submissions the applicants have also brought on record the certificate of status of her job dated 20th of October, 2010, 23rd of November, 2010 and 11th of April,

2011 and submitted that it certifies her status in service in the Company and discloses that she is in active employment of the Company, namely, Hewitt Associates ((India) Private Limited, Gurgaon.

Besides above they have also brought on record one copy of E-mail sent on 29th of September, 2010 to Head of Department and Managing Director of the applicant No.1 (husband) not to entertain the applicant No.1 in the employment of their Organization, in which she has admitted that she is working as Team Developer Quality Audit in Hewitt Associates.

Per contra the opposite party No.3 submitted that she has repeatedly submitted that she is residing in the house of her parents since the time when she was thrown away from the house of her in laws i.e. on 23rd of May, 2010 and she had submitted resignation from service to her appointing authority at Gurgaon, Haryana. She further stated that she was employed in Hewitt Associates, Noida U.P., but on becoming pregnant, she submitted resignation on 15th of September, 2010 expressing her willingness to discontinue the job due to complications developed during pregnancy as the Doctor Advised to take off from service to avoid any risk. It is further stated that she got admitted herself in Verma Clinic, Indira Nagar, Lucknow and delivered a female child on 14th of January, 2011.

Besides the aforesaid facts there are claims and counter claims of abusing and torturing to each other as well as their family members.

In support of the submissions of the applicants, the learned counsel for the applicants Mr.Girish Chandra, cited some decisions, which are discussed hereunder:-

(1) State of Haryana and others versus Bhanaj Lal and others, reported in 1992 Supp (1) Supreme Court Cases 335. Relevant portion of paragraph 102 of the same is reproduced hereunder:-

"102..... Sub para (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(2) Madhavrao Jiwajirao Scindia and others versus Sambhajirao Chandrojirao Angre and others, reported in (1998) 1 Supreme Court Cases 692. Relevant paragraph 7 the same is reproduced hereunder:-

"7.The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It it also for the court to take into consideration and special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing

a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

Code of Criminal Procedure, 1973

"178.Place of inquiry or trial.-(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.-When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

The Protection of Women from Domestic Violence Act, 2005

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India."

Cases cited by the learned counsel for the petitioners:-

(1) Bhura Ram and others versus State of Rajasthan and another, reported in 2008 (61) ACC 668.

In this case the Hon'ble Supreme Court considered the question of jurisdiction of the court of Additional Chief Judicial Magistrate to try the offences as a cause of action accrued within the jurisdiction of the other court. The court found that all the allegations regarding the offences charged with have been committed at the previous residence of complainant. In this case the complainant left the place, where she was residing with her husband and in-laws and came to the city of Shri Ganganagar, State of Rajasthan and that 'all the alleged acts as per the complaint had taken place in the State of Punjab. Therefore, the Court at Rajasthan does not

have the jurisdiction to deal with the matter'. The Hon'ble Supreme Court held that on the basis of factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in Rajasthan and, therefore, the Magistrate concerned has no jurisdiction to deal with the matter. As a consequence thereof, the proceeding before the Additional Chief Judicial Shri Ganganagar are quashed. The complaint be returned to the complainant and if she so wishes she may file the same in the appropriate Court to be dealt with in accordance with law.

(2) Y.Abraham Ajith and others versus Inspector of Police, Chennai and another, reported in 2004 (II) UPCrR, page 315.

In this case the Hon'ble Supreme Court considered the question as to when the offence would be the continuing offence and also considered the term "cause of action" as to what it mean. Relevant paragraphs 8, 9, 12, 13, 14, 15 and 16 are reproduced hereunder:-

"8. As observed by this Court in State of Bihar V.Deokaran Nenshi and another, AIR 1973 SC 908, continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all, that it is one of those offences which arises out of the failure to obey or comply with a rule or its requirement and which involves a penalty, liability continues till compliance, that on every occasion such disobedience or non-compliance occures or recurs, there is the offence committed.

9. A similar plea relating to continuance of the offence was examined by this Court in Sujata Mukherjee (Smt.) v. Prashant Kumar Mukherjee, 1997 (35) ACC 108 (SC). There the allegations related to commission of alleged offences punishable under Sections 498-A, 506 and 323 IPC. On the factual background, it was noted that though the dowry demands were made earlier the husband of the complainant went to the place where complainant was residing and had assaulted her. This court held in that factual background that Clause (c) of Section 178 was attracted. But in the present case the factual position is different and the complainant herself left the house of the husband on 15.4.1997 on account of alleged dowry demands by the husband and his relations. There is thereafter no even a whisper of allegations about any demand of dowry or commission of any act constituting an offence much less at Chennai. That being so, the logic of Section 178 (c) of the Code relating to continuance of the offences cannot be applied.

12. It is settled law that cause of action consists of bundle of facts, which give cause to enforce the legal inquiry for redress in a Court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

13. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or

the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself.

Compendiously the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action."

14. The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

15. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in Court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.) the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.

16. In Halsbury Laws of England (Fourth Edition) it has been stated as follows:

"Cause of action" has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

(3) Manish Ratan and others versus State of M.P. and another, reported in 2007 (I) U.P.Cr R, page 282. In this case the Hon'ble Supreme Court considered the scope of Section 177 and 178 Cr.P.C. and also considered the term continuing offence and held that the offence cannot be held to be a continuing one only because the complainant has forced to leave her matrimonial home. The Hon'ble Supreme Court concurred its opinion on the point as given in the cases of State of Bihar V. Deokaran Nenshi and another (Supra) and Sujata Mukherjee (Supra) as referred in the case of Y.Abraham Ajith (Supra).

In order to deal with the case under the domestic violence Act, the petitioner has referred a case i.e. Sharad Kumar Pandey versus Mamta Pandey, reported in 2010-LAWS (DLH)-9-9. In

this case the Hon'ble Supreme Court of Delhi dealt with the term temporary residence, which empowers the complainant to lodge complaint at the place where she temporarily resides under Section 27 of the Domestic Violence Act. Relevant paragraphs 9 and 10 are reproduced hereunder:-

"(9) All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation of jurisdiction of the Court. Domestic Violence Act is the first Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. The expression residence, means to make abode.- a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words dwelling place, or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

(10) therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there."

In the case of Bhagwan Dass Versus Kamal Abrol, reported in 2005-CTLJ-1-501, 2005-AIR (SC)-0-2583, the Hon'ble Supreme Court considered the term residence and held that the question of residence is a mixed question of law and fact, hence this being the mixed question of law and fact, has to be decided, keeping in mind the facts and circumstances of each case. The Hon'ble Supreme Court referred its another decision of Jewanti Pandey Versus Kishan Chandra Pandey, in which considering the Section 19(ii) of the Hindu Marriage Act, 1955, the Supreme Court stated that : (Para 12)

"In ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time to have a fixed home or abode. Where there is such fixed home or such home at one place, his legal and actual residence is the same and cannot be said to reside at any other place

where he had gone on a casual or temporary visit. But if he has not established home, his actual and physical habitation is the place where he actually or personally resides."

Ultimately the Hon'ble Supreme Court expressed the following opinion :-

"(12) From the aforesaid analysis it is apparent that the word 'residence' is generally understood as referring to a person in connection with the place where he lives, and may be defined as one who resides in a place or one who dwells in a place for a considerable period of time as distinguished from one who merely works in a certain locality or comes casually for a visit and the place of work or the place of casual visit are different from the place of 'residence'. There are two classifications of the meaning of the word 'residence'. First is in the form of permanent and temporary residence and the second classification is based on de facto and de jure residence. The de facto concept of residence can also be understood clearly by the meaning of the word 'residence' as given in the Black Law Dictionary, 8th Edition. It is given that the word residence means bodily presence as an inhabitant in a given place. Thus de facto residence is also to be understood as the place where one regularly resides as different to the places where he is connected to by mere ancestral connections or political connections or connection by marriage."

Geeta Mehrotra and another versus State of U.P. And another, Criminal Appeal No.1674 of 2012. In this case the Hon'ble Supreme Court discussed the question of territorial jurisdiction as well as the enormity of allegations levelled against the relatives of the accused. In this case the court did not find any specific allegation against the sister and brother of the complainant's husband as to how they could be implicated into the matrimonial bickering between the complainant and her husband Shyamji Mehrotra including the parents, therefore, the court held that merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, we are pleased to quash and set aside the criminal proceedings in so far as these appellants are concerned and consequently the order passed by the High Court shall stand overruled.

The cases cited by the learned counsel for the respondents are:-

(1) Sunita Kumari Kashyap versus State of Bihar and another, reported in 2011 (2) JIC 643 (SC). In this case the petitioner/appellant was forcibly taken out of her matrimonial home at Ranch and brought to her parental home at Gaya, where she gave birth to a girl child. After some time her husband came out with a new demand that unless her father given his house at Gaya to him, she will not be taken back to his matrimonial home at Ranchi. The petitioner initiated the criminal proceeding for offences punishable under Section 498-A/406/34 IPC and Dowry Prohibition Act. In this case the Hon'ble Supreme Court held that "keeping in

view the fact that she was taken out at her parental home at Gaya by her husband with a threat of dire consequences for not fulfilling their demand of dowry, we hold that in view of the Sections 178 and 179 of the Code, the offence in this case was a continuing one having been committed in more local areas and one of the local areas being Gaya, the learned Magistrate at Gaya has jurisdiction to proceed with the criminal case instituted therein."

(2) Rajiv Modi versus Sanjay Jain and others, reported in 2010 (1) JIC 12 (SC). In this case the Hon'ble Supreme Court discussed the scope of Sections 177, 178 and 482 of the Code of Criminal Procedure. It also discussed the several judgment on the expression "cause of action" and in conclusion held that "to constitute the territorial the whole or a part of cause of action must have arisen within the territorial jurisdiction of the Court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts."

(3) Manish Shukla and others versus State of U.P. and others, reported in 2012 (1) JIC 431 (All). In this case this court held that "the question of jurisdiction of the Magistrate does not taken upon the Domestic Violence report of the Protection Officer. The said question has been decided according to the provisions of Section 27 of the Act. According to which the court of Magistrate within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed, has jurisdiction in the matter. It further held that the question of jurisdiction was not to be decided on the basis of the office of Protection Officer or his report, rather it was to be decided only in the terms of the provisions of Section 27 of the Act."

(4) The Division Bench of this court, in which I (Justice Shri Narayan Shukla) has been one of the members in the case of Dr. G.N.Saigal and another versus Judicial Magistrate I Class Court No.4 Amrawati and two others Writ Petition No.8410 of 2007 (MB) and other connected writ petition No.9409 of 2010(MB) considered the issue of jurisdiction. The Division Bench of this court took cognizance of the term "jurisdiction" as defined under Section 27 of the Domestic Violence Act and held as under:-

"Keeping in mind the said objects of the Act, it has to be considered that the legislature has provided the aggrieved women, covered under the Act, with such wide options to institute a case against the unscrupulous persons who harass or abuse her at the places covered under Section 27 of the Act with an intent that women may opt for the place which best suited their convenience, comfort and accessibility. Thus place of "Domestic Violence" and the place of aggrieved woman are two places which are the places of actions under the Act where the Magistrate can give directions under the Act. The Legislature provided that jurisdiction can be invoked by an aggrieved person on the basis of temporary residence. It appears that this provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one

of her friends at a place where the domestic violence was not committed or her matrimonial home was not there.

"Section 27 provides that such a woman can invoke jurisdiction of the court where she is compelled to reside in view of commission of domestic violence. The temporary residence must be one which an aggrieved person takes under the circumstances of domestic violence. Thus a peculiar provision was enacted in Section 27 of the Act which does not find place in any other law. The Domestic Violence Act is a welfare legislation to a specified class of women who are financially, economically or physically abused and, therefore, the provision of this Act have to be interpreted in the manner which advances the object of the Act.

"The word 'temporary residence' is different from 'short stay'. The word "reside" involves some permanency in itself. If an aggrieved person travels by a train and passes through several stations then it can not be said that she is at liberty to file an application at any of such places or if a woman for as short term, stays in a guest house or in a hotel, even then it can not be said to be her temporary residence. The Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been recognized as place for invoking the jurisdiction of the court. The expression "residence" means "to make abode"- a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words "dwelling place" or "abode" are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this can not be a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person."

(5) Deepak Joshi and others versus State of U.P. and another, reported in 2009 (1) JIC 600 (All). In this case this court held that "Section 498-A IPC is a continuing cruelty includes the mental as well as physical torture. It would be immaterial whether the opposite party is living at her matrimonial house or at her parental house, it would be continuing offence."

So far as the role assigned to the members of the family of her in-laws in commission of offence is concerned, upon perusal of the First Information Report, I find that they have been assigned the active roles for commission of offence, as it is alleged that the complainant's grand mother-in law, grand father-in-law, husband, brother-in-law(Dewar) and Aunt-in-law (Chachaiya Sas) and brother-in-law(Chachaiya Devar) locked the complainant in the room, brother-in-law(Devar), husband and father-in-law caught and Chachiya Sas poured the can which was full of kerosene oil and when her mother-in-law, was set to fire after burning a match stick, incidentally her sister, namely, Sangeeta Giri, reached there and saved her. Thus, the allegations levelled through the First Information Report show the commission of offence by them. Therefore, at this stage there is no occasion to interfere in the trial in exercise of

power provided under Section 482 of the Code of Criminal Procedure, as it does not come in the category of the exceptional case as described by the Hon'ble Supreme Court in the case of Bhajan Lal (Supra).

The learned Magistrate has rejected the applicant's application raising the question of jurisdiction on the ground that indisputedly the offence took place at the place of in-laws house, but due to the said offence, in compelling circumstances, the complainant has left her in-laws house and is residing in the parental house at Lucknow. Her stay at her parental house is the continuous victimization by her in-laws, therefore, the offence comes in the category of continuing offence and thus it is triable within the territorial jurisdiction of the place, where she is residing, may be temporarily.

A bare perusal of the contents of the First Information Report show that the complainant was tortured and assaulted by her in-laws in their house, situate at Gurgaon. They also started demanding ₹ 10 lakh as dowry. When her sister intervened in the matter, her in-laws told her that till the complainant turns back with ₹ 10 lakh, she would not be permitted to enter in the house and they will arrange another marriage of her husband.

There is also allegation that her in-laws have thrown out her out of their house and have refused to keep her therein, therefore, the complainant is residing in the house of her parents. Thus, in the light of the aforesaid facts, it cannot be said that she is living in her parental house happily with her own wish, rather it is established that she is living therein in compelling circumstances and definitely in the state of harassment, which comes under the category of offence and is termed as continuing offence. Once the offence is continuing at Lucknow, it may be tried by the court having jurisdiction over the local area of Lucknow.

The learned Magistrate at Lucknow has jurisdiction to try the offence under Section 179 of the Act also as her living at Lucknow in parental house is the consequence of the offence committed at Gurgaon and it has resulted to en sue the applicants. Thus, the facts of the case are the prevalent factors to determine the place of trial as has been held in the several judgments quoted, as above.

The facts of the instant case, as has been observed, here-in-above, establish the continuation of offence committed by the applicants against the complainant at Gurgaon in Lucknow also, therefore, I am of the view that the learned Magistrate at Lucknow has jurisdiction to try the case No.11032 of 2010, arising out of case crime No.72 of 2010, under Sections 498-A, 313, 323, 406, 506 IPC and Section ¾ of the Dowry Prohibition Act, Police Station Mahila Thana, Lucknow.

The place of trial of offence under the Domestic Violence Act (in short Act) is regulated by Section 27 of the Act. Sub-Section 1(a) of Section 27 of the Act speaks that the court of Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within

the local limits of which the person aggrieved permanently or temporarily resides or carries on business or is employed shall be competent court to try the offences under the Act.

The complainant claims her residence at Lucknow on the date of institution of the complaint, which has been refuted by the applicants on the basis of some documents provided by the Company, where she is alleged to be employed. In the said documents her status of service has been certified as active on the date of institution of the complaint, which is relevant date for determination of place of trial. In the complaint she has stated that on 23rd of May, 2010 the applicants assaulted her, she got treatment in Nilkanth Hospital and since thereafter she is residing in her parental house. No doubt she has admitted her employment in a Private Company, but she has shown her unwillingness to continue the employment due to abnormality developed in her during pregnancy period. She also stated that she was leaving the job and submitted the resignation. In paragraph 19 of the complaint, she has specifically stated that now she is unemployed and has no source of income as she has submitted her resignation to the Company. In paragraph 10 she has stated that now she will live in her parental house as except her parents there is nobody to help her.

The aforesaid facts reveal that on the date of application, she had left her job by submitting the resignation. It appears that her status in employment is shown in the Company as active because of nonacceptance of resignation, but it is not certified by the Company that she was regularly attending the office. Her version that now she would live at Lucknow in her parental house, cannot be interpreted in the manner that on that date she was not living thereat, as even by living in the parental house on that date too she could state that now she would live in her parental house. Thus, her residence may be temporary at Lucknow on the date of institution of the complaint under Section 12 of the Domestic Violence Act is well established, therefore, I am of the view that the learned Magistrate at Lucknow is vested with the jurisdiction to try the offence committed under Section 12(1) of the Domestic Violence Act.

Section 12 (1) of the Domestic Violence Act is reproduced hereunder:-

"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."

In the light of the aforesaid provisions the learned counsel for the applicants contended that to proceed with the case under the aforesaid Section there must be a report of the Protection Officer for his consideration, whereas I am of the view that it is not compulsory. Since the provisions of Section 12 permits to entertain an application either moved by the aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person, it means 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.

Section 9(1)(b) of the Act defines the duties and functions of the Protection Officer. It provides that (1) It shall be the duty of the Protection Officer-(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.

Section 10(2) of the Act discusses the power of a service provider and provides that a service provider registered under sub-section (1) shall have the power to record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place.

A bare perusal of the aforesaid provisions shows that the Protection Officer as well as the service provider are the instrument to set the law in motion for the justice to aggrieved person. Therefore, Section 12 permits the application to be moved either by the aggrieved person herself or by the Protection Officer or an other person on behalf of the aggrieved person and on presentation of such an application the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider before passing any order on the application.

Thus, the protection officer as well as the service provider both have been empowered to assist the aggrieved person, but they cannot be termed as investigating agency in the matter.

Therefore, I am of the view that the report of the Protection Officer having jurisdiction within the local limits of Lucknow is equally important as that of the Protection Officer of Gurgaon. Thus, the learned Magistrate at Lucknow is competent enough to take care the report of Protection Officer of Lucknow, where the complainant is residing temporarily in her parental house.

Under the circumstances I do not find error either in the order dated 16.1.2012, passed in Case No.11032 of 2010 or in the order dated 16.2.2012, passed in Misc. Case No.509 of 2010 by the Additional Chief Judicial Magistrate, Lucknow. In the result both the Criminal Cases i.e. Criminal Misc. Case No.290 of 2012 and Criminal Misc.Case No.990 of 2012 are hereby dismissed.

It is observed that the learned Magistrate shall try the offences without being prejudiced with the observations made or opinion expressed as above.

3. DOMESTIC INCIDENT REPORTS (DIRS)

Aboobacker Master v. Jaseena K, Crl.MC.No.3960 of 2009 (Kerala H.C.) (8.12.2009)

Judge: M. Sasidharan Nambiar

Order

Petitioner is the second respondent in M.C.102/2009 on the file of Judicial First Class Magistrate Court-I, Thamarassery a complaint filed by the first respondent under section 12 of Protection of Women from Domestic Violence Act, 2005. This petition is filed under section 482 of the Code of Criminal Procedure to quash the proceedings contending that the basic requirement of an application filed under section 12 of the Act is lacking and in such circumstance, learned Magistrate has no jurisdiction to take the case on file or pass any order.

2. Learned counsel appearing for the petitioner was heard.

3. The argument of the learned counsel is that in order to pass any order on an application filed under section 12 of the Act, Magistrate is bound to take into consideration a domestic incident report from the Protection Officer or service provider and as no such report was called for or received, Magistrate is not competent to pass any order in the application and therefore application is bad at the very inception.

4. On hearing the learned counsel, I do not find any reason to quash the proceedings as sought for. Firstly in Crl.M.C.2225/2009, this court has already held that Section 482 of the Code of Criminal Procedure is not to be invoked to quash an application filed under section 12 of the Act which is enacted to provide for a remedy under the civil law. Moreover, as I could see from Section 12, the Magistrate is not bound to call for a report from either the Protection Officer or the service provider before or after entertaining an application from an aggrieved person or a Protection Officer or any other person on behalf of an aggrieved person. Proviso to sub section (1) of Section 12 only provides that before passing any order on an application under section 12(1), the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or service provider. It is to be borne in mind that an application under sub section (1) of Section 12 could be filed either by aggrieved person or a Protection Officer or by any other person on behalf of the aggrieved person. If a Protection Officer is filing the application, necessarily there should be a domestic incident report from the Protection Officer. What is provided under the proviso is only that if a domestic incident report is received from the Protection Officer, before passing any order on an application filed under section 12(1), Magistrate is bound to take into consideration the same. It does

not mean that Magistrate is, to call for a report in all cases, from the Protection Officer or service provider. Section 2(e) defines a domestic incident report means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person. Rule 5(1) of Protection of Women from Domestic Violence Rules provides that upon receipt of a complaint of domestic violence, the local Protection Officer shall record the Domestic Incident Report and submit it to the appropriate Magistrate. So also if the aggrieved person approaches the Service Provider he should on the request of the victim record a Domestic Incident Report and forward it to the Magistrate. If an application by an aggrieved person or by any other person on behalf of the aggrieved person could be filed under section 12, only after approaching the Protection Officer, it could be said that the Protection Officer or service provider has to inquire about the domestic incident and then file a Domestic Incident Report. When Section 12 enables an aggrieved person to directly file an application before the court without approaching the Protection Officer and neither the Act nor the Rules provide for getting a domestic incident report from the Protection Officer or the service provider by the Magistrate before passing any order under section 12, it cannot be said that an application filed under section 12 can be entertained by the Magistrate only on getting a Domestic Incident Report. Hence at its inception, for want of a domestic incident report, the application is bad as canvassed by the learned counsel cannot be accepted.

5. Moreover, when an order is passed in an application filed under section 12, under section 29 of the Act petitioner is entitled to file an appeal. In such an appeal petitioner is entitled to raise all the contentions, including the maintainability of the petition. In such circumstance petition is dismissed.

Rakesh Sachdeva v. Neelam Sachdeva, 2011 Cr.L.J. 158 (Jharkhand H.C.) (09.07.2010)

See page 87 for full text of judgment.

Milan Kumar Singh v. State of Uttar Pradesh, 2007 Cr.LJ 4742 (Allahabad H.C.) (18.7.2007)

Judge: R.N. Misra

Judgment

1. This application, under Section 482 Cr.P.C has been filed by the applicants, who have been called by Metropolitan Magistrate, Kanpur Nagar vide order dated 21.5.2007 in

Criminal Case No. 2262 of 2007 under Sections 12, 17, 18, 19, 20 and 22 of Protection of Women From domestic Violence Act, 2005 (hereinafter referred to as the Act) to show cause within specified time, why action should a not be taken against them on the complaint of opposite party No. 2, Smt. Swapnil Singh. The applicants have prayed for quashing and stay of proceedings of said complaint.

2. Heard learned Counsel for the applicants and learned A.G.A.

3. It appears from the record that the opposite party No. 2 has been married with applicant No. 1. The applicant No. 2 is the father-in-law of opposite party No. 2. Some matrimonial disputes are going on between, the parties, and beside this complaint, some other criminal proceedings are also going on. Learned Counsel for the applicants has placed before me a few legal points: According to him, there is no compliance of Rule 6 of the Protection of Women from Domestic Violence Rules 2006 (hereinafter referred to as the Rules). According that Rules, the complaint must be filed in Form II given in the Rules. He has argued that without compliance of Rule 6 the complaint cannot be entertained by the Magistrate. 6 of the said Rules is quoted below:

Rule. 6: Application to the Magistrate-

(1) Every application of the aggrieved person under Section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under Sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under Sub-section (2) of Section 23 shall be filed in Form III.

(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).

4. Section 12(3) of said Act also provides procedure for filing application under Sub-section (1) which runs as under:

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

5. Though, learned Counsel for the applicants has given a good reasoning in support of his argument, but I see no force in this contention.

The word "as nearly as possible thereto" appeared in Section 12(3) of the Act and Rule 6 both. This is social legislation and purpose of the Act is not to the aggrieved person in filing the complaint, but Form has been prescribed in the Rules, only to facilitate filing of

complaint so that it may contain all necessary particulars for decision of the case. If any complaint is drafted in such a manner with all necessary particular and usual information required by prescribed Form are contained therein, that cannot be said to be a bad complaint in the eyes of law. The Form prescribed by the Act is nothing else, but proper forum and facility given to the complainant for placing all relevant facts before the court concerned. The legislature was very much aware of this fact, that is why both in Section 12 and Rule 6, the word "as nearly as possible thereto" has been mentioned. The intention of the legislature was not at all to reject the complaint for not filing in prescribed Form II.

6. The next point, which has been vehemently argued by learned Counsel for the applicants is that the complaint cannot be filled directly to the Magistrate, but it should be filed before the Protection Officer as defined in Section 2(n) of the Act and on receiving the complaint, the Protection Officer will submit Domestic Incident Report and then the Magistrate will take cognizance of the matter. The power of Protection Officer has been given in Section 9 of the Act. The services of service providers as provided in Section 2(r) of the Act may also be taken. The duties of service provider has been provided under Section 10 of the 'Act, But a plain perusal of these provisions clearly show that this argument of learned Counsel for the applicant has no legal force that any aggrieved person cannot file complaint directly to the Magistrate concerned. Section 12 of the Act reads as under:

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. 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.

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

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

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

7. A plain reading of the Section shows that the aggrieved person can file complaint directly to the Magistrate concerned. This is the choice of the aggrieved person that instead of direct approaching the Magistrate, he or she can approach the Protection Officer and in case of emergency, the service provider and with their help to the Magistrate concerned. The word "or" used in Section 12 of the Act is material, which provides a choice of the aggrieved Oh to approach in the aforesaid manner. There is no in direct approaching the Magistrate for taking cognizance in the matter. This is for the Magistrate concerned to take help of Protection Officer and service provider after receiving the complaint provided, he feels it necessary for final disposal of the dispute between the parties. If the parties concerned or Magistrate takes help of the Protection Officer, he, will submit a Domestic Incident Report to the Magistrate concerned.

8. The Form II provides mode of verification of affidavit. Learned Counsel for the applicant has contended that since on the bottom of the complaint, no such verification note has annexed, therefore, also the complaint filed before the Magistrate is bad in law. But this argument has no force because in support of the complaint, the opposite party No. 2 has filed an affidavit a swearing contents of the complaint. Therefore, that lacuna is duly filled up. Any law, does not provide for rejection of the complaint only on the basis that it does not contain verification note on the complaint itself. The purpose of the Act is to cause prima-facie belief to the authority concerned where the complaint is filed on the basis of affidavit or verification note about contents of application. In the present case also, an affidavit has been filed in support of complaint which is properly verified.

9. As regards facts of the case are concerned, that are to be seen by the Magistrate concerned after hearing the parties. The learned Magistrate has issued notice to the applicants vide order dated 21.5.2007 calling them to appear before him and to place their versions on the complaint. Thus, the applicants have opportunity to appear before the Magistrate concerned and to put their versions and after hearing the parties, the magistrate will take decisions according to law.

10. In view of my above discussions I come to the conclusion that this application, under Section 482 Cr.P.C. is devoid of merits and is hereby dismissed.

Rahul Soorma v. State of Himachal Pradesh, 2012 Cr.L.J. 2742 (Himachal Pradesh H.C.) (01.05.2011)

Judge: Kuldip Singh

Judgment

1. This petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India has been filed for setting aside, quashing summoning order dated 25.05.2011 in Domestic Violence Act Case No.7 of 2011 and complaint pending before the Judicial Magistrate Ist Class (I), Hamirpur.

2. Briefly stated the facts are that petitioner No.1 and respondent No.2 wanted to marry, but father of respondent No.2 was against the marriage. He even threatened to end the life of the petitioner and his family members. The marriage of petitioner No.1 and respondent No.2, however, was solemnized at 'Araya Samaj Mandir, Hanuman Mandir', New Delhi, on 09.05.2010 as per Hindu rites. The marriage of petitioner No.1 and respondent No.2 was against the wishes of family members of respondent No.2. At the time of marriage, members of family of petitioner No.1 were present , but no-one was present from the family of the respondent No.2.

3. The petitioner No.1 and members of his family received constant threats from the members of family of respondent No.2. The members of family of the petitioner No.1 on 12.05.2010 filed Crl. Misc. No. 3049 of 2011 in the Delhi High Court. The respondent No.2 lived happily in her matrimonial home. The respondent No.2 had been undergoing B.D.S. Course from Rajasthan. The petitioner No.1 paid course fee of respondent No.2.

4. The members of family of respondent No.2 in a well planned conspiracy invited petitioner No.1 and respondent No.2 at Nandanheri, Kotkhari, District Shimla, to attend some function which was to be held on 08.12.2010. The petitioners No.2 and 3 attended that function, but petitioner No.1 could not attend that function due to his final examinations. The respondent No.2 did not accompany petitioners No.2 and 3. On return, she contacted her maternal aunt and uncle. The respondent No.2 had undergone abortion in Rippon Hospital with the help of her aunt and uncle, who had been working in Rippon Hospital, Shimla. The respondent No.2 after abortion joined her relatives.

5. The petitioner No.1 and members of his family tried to contact respondent No.2, but without any response from her side. The petitioner No.1 filed a complaint against respondent No.2 on 19.04.2011 in the Court of learned Chief Judicial Magistrate, Hamirpur. The petitioner No.1 filed divorce petition against respondent No.2. The respondent No.2 did not appear in the case. On the contrary, respondent No.2 has filed a complaint on 19.05.2011 under Section 12 of the Protection of Women from Domestic Violence Act,

2005 (for short 'the Act') in the Court of learned Chief Judicial Magistrate, Hamirpur. The respondent No.2 in order to put pressure has even filed a case for divorce.

6. The respondent No.2 has filed the complaint under the Act on total misconception and concealment of facts. The learned Judicial Magistrate has not followed proper procedure while registering the complaint. The service provider has not filed any domestic incident report nor such report has been filed by Protection Officer. The learned Magistrate has erred in summoning the petitioners vide order dated 25.05.2011. The marriage between petitioner No.1 and respondent No.2 being a love marriage, there was no occasion for the petitioners demanding or accepting any dowry articles from the members of family of the respondent No.2, who were against the marriage. The respondent No.2 has not averred in the complaint any specific date or event so as to attract any provision of the Act. The petitioner No.1 and members of his family are innocent, they have been falsely implicated by respondent No.2 and members of her family. The respondent No.2 till now had been sending messages to petitioner No.1. This indicates there is no domestic violence on the part of the petitioners.

7. Heard. The learned counsel for the petitioners has submitted that complaint is vague. There is no report of the Protection Officer or service provider. In absence of such report, the learned Magistrate has erred in issuing process to the petitioners on the basis of vague complaint. The submission has been made for setting aside impugned order and quashing the complaint. The learned counsel for the petitioners has relied M. Palani v. Meenakshi AIR 2008 Madras 162. The learned counsel for the respondent No.2 has supported the impugned order and submitted that no fault can be found with the impugned order.

8. The sum and substance of submissions of learned counsel for the petitioners is that without report of the Protection Officer or service provider, the learned Magistrate has no jurisdiction to take cognizance of the complaint under Section 12 of the Act. The complaint is vague which lacks material particulars for taking cognizance under Section 12 of the Act.

9. In order to appreciate the contentions of learned counsel for the petitioners, it is necessary to refer to some of the provisions of the Act. The aggrieved person has been defined in Section 2(a) means any woman who is, or has been, in domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The domestic incident report defined in Section 2(e) means a report made in prescribed form on receipt of a complaint of domestic violence from an aggrieved person. The definition of domestic violence is provided in Section 3, economic abuse as per Section 3 (d)(iv) includes (a) deprivation of all or any economic or financial resources to which an 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 necessi-

ty 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.

10. The duties and function of Protection Officer are provided in Section 9. The sub-section (1) of Section 9 provides that it shall be the duty of the Protection Officer (a) to assist the Magistrate in discharge of his functions under the Act (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 the copies thereof to service provider etc.. The Section 10(2) provides that a service provider registered under sub-section (1) shall have the power to (a) record the domestic incident report in prescribed form if the aggrieved person so desires and forward a copy thereof to Magistrate and Protection Officer having jurisdiction in the area where the domestic violence took place.

11. The Protection Officer on receipt of complaint of domestic violence under rule 5 of the Protection of Women from Domestic Violence Rules, 2006 (for short 'Rules') shall prepare a domestic incident report and submit the same to the Magistrate and supply copies thereof to service provider. On the request of any aggrieved person under sub-rule(2) of Rule 5 a service provider may record a domestic incident report and forward a copy thereof to Magistrate and Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place. The application of aggrieved person under Section 12 is provided under rule 6. The registration of service provider is provided in rule 11.

12. The sub-section (1) of Section 12 provides that 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 the Act. The proviso to Section 12 provides 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.

13. The sub-rule (1) of rule 5 provides that upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in form-I and submit the same to the Magistrate. The sub-rule(2) of rule 5 provides that upon a request of any aggrieved person, a service provider may record a domestic incident report and forward a copy thereof to the Magistrate and others. In other words, the domestic incident report referred to in Section 12 will originate when Protection Officer will receive a complaint under sub7 rule (1) of rule 5 or a request if made by aggrieved person to service provider under sub-rule (2) of rule 5. The Section 12 nowhere provides that on receipt of application under sub-section(1) of Section 12, the Magistrate is under obligation to send the application to Protection Officer or service provider and ask their reports. The proviso to Section 12 of the Act operates in limited field where domestic incident report is available

to the Magistrate under rule 5 then Magistrate before passing an order shall consider such domestic incident report. The Magistrate is not debarred to take cognizance of the complaint and on the basis of material on record issue process to respondent (herein petitioners) under Section 12 in absence of domestic incident report under rule 5. The Magistrate has jurisdiction to take cognizance of the complaint under Section 12 of the Act in absence of domestic incident report under rule 5.

14. In M. Palani (supra) the contention was raised on behalf of the petitioner that Section 12 of the Act contemplates report from the Protection Officer so as to enable the learned Judge to pass an order of maintenance. In that case an application under Section 20 read with Section 26 of the Act was filed. The High Court held that a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the Protection Officer whereas such a report is not contemplated when an order is passed by the Civil Court or by the Family Court. In M. Palani (supra) rule 5 has not been considered. The contention of the petitioner that Section 12 contemplates report from the Protection Officer so as to enable the learned Judge to pass an order of maintenance has not been accepted.

15. Section 28 provides that save as otherwise provided in the Act, all proceedings under Sections 12,18,19,20,21,22 and 23 and offences under Section 31 shall be governed by Cr.P.C. The sub-section (2) of Section 28 further 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. There is nothing in the Act or the Rules to prevent the Magistrate to take cognizance of the application seeking one or more reliefs under Section 12 in absence of domestic incident report from Protection Officer or the service provider. The purpose of the Act is to give immediate relief to the aggrieved person. Thus, seen from any angle, there is no force in the contention of learned counsel for the petitioners that Magistrate has no jurisdiction to take cognizance of the application under Section 12 of the Act before receipt of domestic incident report by Protection Officer or service provider.

16. A copy of complaint filed by respondent No.2 under Section 12 has been placed on record praying maintenance at the rate of ₹ 10,000/- per month and residential accommodation with further prayer that petitioners be restrained from maltreatment and physical torture to respondent No.2. In the complaint, it has been stated that respondent No.2 has no source of income The petitioners are having property at Delhi and are having sufficient movable and immovable property and are having means. It has been stated that respondent No.2 has been turned out from the matrimonial home after giving beatings. The learned Magistrate has only issued process to respondents on 25.05.2011. The petitioners instead of contesting the petition have rushed to this Court and filed the petition.

17. It has been stated in the complaint that after the marriage petitioner No.1 came to Hamirpur to the parents' of respondent No.2 where they lived for sometime. The petitioner has given her address of Hamirpur in the complaint. The Section 27 provides that Magistrate of the first Class within the local limits where the person aggrieved permanently or temporarily resides, shall be the competent Court to grant a protection order and other orders under the Act. There is nothing in the petition that complainant is not residing in Hamirpur at the time of filing of the complaint. It is open to the petitioners to contest the petition and place their defence before the learned Magistrate in accordance with law. On the basis of material on record, no case has been made out for interference. There is no merit in the petition.

18. In view of above, the petition is dismissed. The pending application, if any is also disposed of.

Nandkishor Vinchurkar v. Kavita Vinchurkar, 2009 (3) Bom. C.R. (Cri.) 280 (Bombay H.C.) (5.8.2009)

Judge: R.Y. Ganoo

Judgment

1. Rule. Rule returnable forthwith. Mr. Bhattad, Advocate waives notice for non applicants. In the facts and circumstances of the case, the matter is taken up for final hearing forthwith.

2. The non applicant filed an application under Section 23 of the Protection of Women from Domestic violence Act, 2005 (hereinafter referred to as the 'said Act') in the Court of learned Chief Judicial Magistrate, Amravati (hereinafter referred to as learned 'trial Judge') for appropriate reliefs and in particular getting some money towards maintenance. The learned trial Judge passed an order on 07.04.2008 in the said proceedings namely Misc. Criminal Case No. 365/2007 and directed the applicant to pay a sum of ₹ 1200/- per month by way of maintenance to non applicant No. 1-Kavita and a sum of ₹ 600/- per month by way of maintenance to son Atharva-non applicant No. 2. The said order was challenged by the applicant in the District Court by way of Criminal Appeal and the learned Ad hoc Additional Sessions Judge-5, Amravati (hereinafter referred as Additional District Judge) by judgment and order dated 12.06.2008, dismissed the said appeal. Hence, the present criminal application is filed.

3. It was argued by learned Advocate Mr. Chawre, that order dated 07.04.2008 passed by learned trial Judge was without calling for report from the Protection Officer or Service

Provider. He has drawn my attention to the provisions of Section 12 of the said Act which is as follows:

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.

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

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

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

According to him, no order under this Act can be passed in the absence of report from the Protection Office or Service Provider and that is how the impugned order is illegal. As against this, the learned Advocate Mr. Bhattad had submitted that since the proceedings were initiated by non applicants directly, there was no need to obtain such a report.

4. In order to test submissions advance by learned Advocate for the applicant, one will have to consider the nature of order, which was passed by learned trial Judge and perusal of the same would clearly go to show that order dated 07.04.2008 directed the payment of maintenance is interim order. This is being stated on account of use of the term "from 07.04.2008 till the decision of the main application" in the operative part of order dated 07.04.2008. The learned Additional District Judge has dismissed the appeal and, therefore, it is clear that order dated 07.04.2008 is an interim order. In this connection one can refer to the judgment delivered by this Court in Vishal Damodar Patil v. Vishakha Vishal Patil 2008 (6) Bom. R. 297 wherein it is observed that there is no need to file separate

application for interim relief under Section 23 of the said Act. The only requirement is to hear the parties concerned. In the present case, the learned trial Judge has undoubtedly heard the applicant as well as non applicant and has passed an interim order. To that extent, in the absence of regular application for interim maintenance, passing of order dated 07.04.2008 cannot be faulted with.

5. The point as regards calling of the report from the Protection Officer or Service Provider is concerned one will have to interpret provisions of Section 12 of the Act and the said interpretation has to be in favour of the person, who is in need of maintenance and in particular interim maintenance. Report from the Protection Officer or Service Provider has to be gathered and it would assist the Court for the purposes of doing complete justice in the matter. At the same time, it is expected that the trial Court has to pass an interim order as early as possible. If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated. Therefore, I am inclined to observe that it is not necessary in each and every case to obtain a report from the Protection Officer or Service Provider to decide application for interim relief. If on the basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly. In the present case, the applicant had filed reply to the application filed by non applicants and, therefore, necessary material was before the learned trial Judge to decide the question whether interim relief should be granted. The record has been considered and order has been passed.

6. In view of above discussion, the argument advanced by Mr. Chawre, learned Advocate for applicant, as regard obtaining report from the Protection Officer or Service Provider cannot be accepted. Needless to mention that at the time of disposing of the application at final hearing, the trial Judge will have to comply with the provisions of Section 12 of the said Act.

7. The learned trial Judge has fixed the maintenance at the rate of ₹ 1200/- per month for non applicant No. 1-wife and ₹ 600/- per month for the son-respondent No. 2. It has been the stand of the non applicants that the applicant is carrying on a business in the name and style as 'Nandan Cement Gruha Udyog' as well as 'Atharva S.T.D.' at Moti Nagar, Amravati. It is also claimed that the applicant does a business of daily collection in 'Samrudhi Pat Sanstha' and thus he earns a sum of ₹ 25,000/- per month. As against this, the applicant has come out with a case that he is working with a contractor as Labour and earns ₹ 50/- per day as and when the work is available and his monthly income is not more than ₹ 1,000/-. However, it is difficult to accept that he has been working with a contractor as labour. It was necessary for him to name the contractor and the designation

held by him. The stand of the applicant that he earns daily wages of ₹ 50/- per day, cannot be believed and it also cannot be said that his monthly income is not more than ₹ 1000/-. If this is so, it is difficult for the applicant himself to sustain on day-to-day basis and it has not been stated by the applicant whether he seeks assistance of some other person for the purpose of meeting both the ends for himself alone. The stand taken by the applicant appears to be unjust and contrary to the facts. This aspect of matter of suppression of material facts has been rightly considered by learned trial Judge and in my view, he has rightly fixed a reasonable figures of ₹ 1200/- per month and ₹ 600/- per month respectively keeping in view the needs of non applicant No. 1 as lady and non applicant No. 2, who is undertaking education. In my view, the learned trial Judge and the learned Additional District Judge have taken correct view of the matter and have fixed the figure of maintenance properly.

8. Before this Court, the learned Advocate for the applicant attempted to produce an information collected by him under the Right to Information Act wherein it is mentioned that respondent No. 1 works in the institution by name Krushi Vidhnyan Kentra, Selsura, Taluka Deoli, District Wardha in the name and style as Ku. Kavita v. Ingale, as Junior Stenographer and earns a sum of ₹ 8000/- per month. Perusal of the impugned order, would go to show that this aspect was not made over to the learned trial Judge by documentary evidence and that is how the said aspect has not been considered by the learned trial Judge. Hence, the stand of the applicant that respondent No. 1 is gainfully employed and earns ₹ 8000/- per month prima facie could not have been accepted. Hence, the said stand cannot be considered while deciding correctness of the order passed by learned trial Judge as well as learned Additional Sessions Judge. Needless to mention that if the applicant has any material to make an application for modification of the order already granted, he would be able to do so by applying for modification of the order.

9. Keeping in view the aforesaid observations, following order is passed.

(a) Rule discharged.

(b) Order passed by learned Chief Judicial Magistrate referred to above and confirmed by learned Additional Sessions Judge referred to above is confirmed. No interference is required thereto.

(c) If the applicant wants to apply for modification of order dated 07.04.2008, he is free to do so provided provisions of the said Act do permit him to file such an application.

(d) Keeping in view the fact that the application pertains to the year 2008, it would be appropriate to direct the learned Chief Judicial Magistrate, Amravati to hear and dispose of this application on merits as expeditiously as possible.

(e) After aforesaid order is passed, learned Advocate invited my attention to the order passed on 25.03.2009 passed by this Court by which non applicant No. 1 was permitted

to withdraw the ₹ 18,000/- by furnishing an undertaking that she will redeposit the money along with interest, if she loses in this matter. Now as this application is dismissed, the non applicant is absolved from the undertaking given by her pursuant to the order dated 25.03.2009.

Nayankumar v. State of Karnataka, Crl.Pet. No. 2004 of 2009 (Karnataka H.C.) (12.08.2009)

Judge: V. Jagannathan

Order

1. The petitioner seeks quashing of the order dated 24.4.2009 in Crl.RP 156/2008 passed by the Learned Addl. Sessions Judge, Bijapur and also the proceedings in Crl.Misc. 77/08 on the file of the Learned JMFC, Bijapur.

2. The case of the petitioner is that the 2nd respondent claiming to be the wife of the petitioner approached the District Legal Services Authority seeking the assistance of the said authority to bring together the 2nd respondent and the 1st petitioner as they are the wife and husband and following the husband having gone out of the company of the 2nd respondent, she made such a request.

3. Pursuant to the said request made by the 2nd respondent, District Legal Services Authority took up the matter before Lok Adalath and both the petitioner and 2nd respondent were present and after perusing the documents produced by the 2nd respondent and also on being not successful despite a long deliberation, in bringing the parties to arrive at a compromise, the District Legal Services Authority thought it fit to refer the matter back to the jurisdictional Magistrate for doing the needful in accordance with the Protection of Women from Domestic Violence Act, 2005 (for short Act 2005). On receipt of the said order from the District Legal Services Authority, Learned Magistrate of the Trial Court in Crl.Misc. 77/2008 directed notice to be issued to both the parties. This order of the Learned Magistrate was questioned before the Learned Addl. Sessions Judge, Bijapur in Crl.Revision Petition No. 156/2008 and the Learned Judge of the said Court held that the order of the Trial Court does not call for interference except in regard to some technical aspects in as much as issuing notice to the State as a party was not found to be of any necessity and consequently Learned Sessions Judge directed to array only the 2nd respondent and the present petitioner as the parties by deleting the State from the proceedings. It is this order of the Learned Sessions Judge that is called in question.

4. I have heard Learned Counsels for the parties and perused the material placed.

5. Submission of the Learned Counsel for the petitioner Sri. Umesh V. Mamadapur is that the Trial Court was in error in issuing notice to the petitioner and the procedure followed is contrary to Section 12 of the Act 2005. In this regard the contention put forward is that before passing an order, the Magistrate shall take into account any Domestic Incident Report received by him from the Protection Officer or the Service Provider. Since in the instant case, as there was no report received either from the Protection Officer or from the Service Provider, the question of issuing notice to the petitioner does not arise. Further reference was also made to the definition of the Domestic Incident Report as found in Section 2(e) of the Act, 2005 and also Rule 5 of the Rules framed under the Act to submit that the Domestic Incident Report shall have to be in form No. 1. As such, the impugned order of the Trial Court, which has been confirmed by the Sessions Judge, cannot be sustained in law in view of the above provisions.

6. On the other hand Learned Counsel for the 2nd respondent Sri. Sanjay A. Patil submitted that it is only pursuant to the report received from the District Legal Services Authority the Trial Court thought it fit to issue notice to the respondent and 2nd respondent has filed petition under Section 12 of the Act and said petition is under consideration and no order has been passed on the said application in view of the petitioner having approached this Court and having obtained interim order of stay.

7. It is his further submission that the Act itself provides for conciliation in the sense, Section 14 of the Act also empowers the Magistrate to direct the parties to undergo counselling and therefore the procedure followed is not violative of any of the provisions of the Act 2005.

8. The main contention of the petitioner's Counsel is that before passing an order the Magistrate is required to take into account any Domestic Incident Report received by him from the Protection Officer or the Service Provider. In the instant case, the facts are not in dispute in as much as the 2nd respondent first approached the District Legal Services Authority for relief and the District Legal Services Authority in turn took up the matter in Lok Adalat and passed an order on 28.03.2008 as under;

> Dist. Legal Services Authority Bijapur.
>
> In the matter of
>
> 1) Mrs. Gouri Nayanakumar Jogur
>
> v.
>
> 2) Mr. Nayanakumar Jogur
>
> =
>
> 28.3.2008. Taken up before Lok Adalat.
>
> The matter is taken up before the Lok Adalat.

Petitioner Gouri present. The other party was also secured. The petitioner Gouri has shown the copy of the marriage registration certificate, zerox copy of the agreement in respect of rented house taken by them at Nelamangala and some other photos to indicate that they were moving together. Inspite of long deliberation the respondent/Nayankumar and his parents are not ready for the compromise. It is revealed that Civil and Criminal cases are pending between the parties at Nelamangala as well as at Bijapur. On perusal of contents of the petition, it is better to refer the matter to the jurisdiction Magistrate to take further information from the petitioner/Gouri and to do needful in accordance with Protection of Women from Domestic Violence Act 2005.

Sd/- 28.3.2008
Conciliators
Sd/-
S.S. Angadi,
Advocate.

9. Pursuant to the order so passed as above, Learned Magistrate of the Trial Court directed issuance of notice to the parties by registering the case as Crl. Misc. No. 77/2008.

10. Section 12 of the Act, 2005 relevant for our purpose, reads as under:

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:

XXXXX
(3) XXXXX
(4) XXXXX
(5)XXXXX

11. A careful reading of the provisions contained in Section 12 makes it clear that it is only before passing an order on an application that is filed by aggrieved person, that the Magistrate is required to take into account any Domestic Incidental Report. In the instant case, the aggrieved party being the 2nd respondent first approached the District Legal Services Authority for assistance and relief and the proceedings of the District Legal Services Au-

thority in the Lok Adalat which has been referred to above also indicates that it is only upon the failure of Lok Adalat to bring the parties to arrive at compromise, that it was thought fit to refer the matter to the jurisdictional Magistrate as there was number of cases pending between the parties. It is there afterwards that the Trial Court directed both the parties to appear before it as the 2nd respondent filed petition/application under Section 12 of the Act. On said application Learned Magistrate has not passed any order and therefore a careful reading of the proviso to Section 12 makes it clear that the Magistrate shall have to take into account any domestic Incident report recieved by him before passing any order on the application filed by the aggrieved person.

12. In other words if there is a Domestic Incident Report that is received by the Magistrate either from the Protection Officer or from the Service Provider, then it becomes obligatory on the part of the Magistrate to take note of the said Domestic Incident Report before passing an order on the application filed by the aggrieved party. Therefore, the Section does not say that in every case an aggrieved person is bound to go before either the Protection Officer or the Service Provider. On the other hand, the scheme of the Act makes it clear that it is left to the choice of the aggrieved person to go before the Service Provider or the Protection Officer or to approach to the Magistrate under Section 12 of the Act.

13. It is only when the recourse is taken by the aggrieved person is to go before the Service Provider or the Protection Officer that the requirement of Section 10 & 9 of the Act comes into picture in so far as the functioning of the service Provider or the Protection Officer is concerned and it is only when the said authority decides to submit their report, report viz., Domestic Incident Report will have to be sent to the Magistrate in the required form as mentioned in Rule 5 of the Rules 2006.

14. In view of the above reasons, in the instant case as the aggrieved party that is 2nd respondent herein approached the District Legal Services Authority and on failure of conciliation before said authority, the Conciliators referred the matter back to the Court and upon notice being issued to the parties, the aggrieved person then filed an application under Section 12 of the Act, the question of the Magistrate taking note of the Domestic Incident Report does not arise, as this is not a case where the aggrieved party approached either the Protection Officer or the Service Provider.

15. In the light of the above reasons. I do not find any error being committed either by the Learned Magistrate in directing the parties to appear before him or by the Learned Sessions Judge in confirming the order of the Trial Court. Petition therefore lacks merit and it is dismissed.

Yadvinder Singh v. Manjeet Kaur, Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.) (26.11.2010)

Judge: Nimaljit Kaur

Judgment

1. This is a revision petition against the order dated 09.10.2010 passed by Additional Sessions Judge, Jind.

2. The complainant filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The Sub Divisional Judicial Magistrate, Safidon (Jind) dismissed the complaint vide Order dated 12.08.2009. Accordingly, the Respondent-complainant filed an appeal before the Additional Sessions Judge, Jind. The Additional Sessions Judge, Jind, vide his order dated 09.10.2010 set aside the order of the trial Court and accepted the complaint. While accepting the complaint, the only relief granted was as under:

1. Protection order is passed in favour of Petitioner under Section 18 of the Act and Respondent No. 1 is prohibited from committing any Act of domestic violence towards his wife.

2. Respondent No. 1 is directed to provide one room with attached bathroom and kitchen for the Petitioner in the matrimonial home Under Section 19 of the Act or to pay a sum of ₹ 2500/- as the monthly rent w.e.f the date of filing the complaint so that she may take the private accommodation on rent as per her convenience.

3. The Respondent No. 1 is also directed to pay a sum of ₹ 5000/- per month for the Petitioner and his son for their maintenance expenses under Section 20 of the Act w.ef the date of filing of the complaint.

4. The Respondent No. 1 is further directed to pay a sum of ₹ 10,000/- to the Petitioner under Section 2 of the Act as compensation and damages for the injuries including mental torture and emotional distress caused by the acts domestic violence committed by Respondent No. 1.

3. While challenging the above order, learned Counsel for the Petitioners submitted that there was no evidence. The only evidence was of the complainant herself, her mother and the Protection Officer. It was further stated that the Respondent was not able to disclose any date, month or year with regard to when the dispute took place and that she had admitted that she was staying alone in her matrimonial home and the allegation of giving maltreatment or causing physical or mental torture to the Respondent at the hands of Petitioners No. 2 and 3, does not arise.

4. Heard.

5. There is no merit in the argument raised by learned Counsel for the Petitioners. The evidence of the Protection Officer is an important piece of evidence. It is an unbiased evidence, wherein, he has stated that the complainant was being deprived of from the basic necessities of life and that she was a victim of domestic violence at the hands of the Petitioners. The girl herself has stated that the Petitioner No. 1 is an alcoholic. On one occasion i.e in the month of September, 2008, the neighbours came to rescue her from the clutches of Petitioner No. 1 and he had turned her out of her matrimonial home without any reasonable cause. Her only prayer was for protection under Sections 18-23 of the Protection of Women from Domestic Violence Act, 2005, for which, the relief has been provided, as mentioned above. The relief that is granted is only to ensure that the complainant-wife of Petitioner No. 1 is able to get the basic necessities of life which is in any case is the duty of the Petitioner to provide. Thus, he could not have any grievance against the relief granting i.e. 2500/-as monthly rent or provide one room with attached bathroom and kitchen so that she may get roof over her head and ₹ 5000/- as maintenance expenses for her and her son.

6. No fault can be found with the well reasoned order dated 09.10.2010 passed by the Additional Sessions Judge, Jind granting the above relief.

7. Dismissed.

Ajay Kant v. Alka Sharma, 2008 Cr.L.J. 264, I (2008) DMC 1 (Madhya Pradesh H.C. (Gwalior Bench)) (19.06.2007)

Judge: B.M. Gupta

Order

1. The instant petition is for impugning the order dt. 18th January, 2007 passed by Judicial Magistrate First Class, Gwalior in Criminal Case No.848/07, whereby the learned Magistrate has issued notice to the petitioners on an application filed by the respondent under section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act").

2. Brief facts of the case are that respondent Smt. Alka Sharma has filed one application under Section 12 of the Act against the petitioners. On which the learned Magistrate, vide order dated 18th January, 2007, has issued notices to the petitioners. It has been averred in the application that the respondent has married with petitioner No.1 on 16th of May, 2005 at Gwalior. For a period of 4-6 months she became pregnant and thereafter the petitioners started harassing the respondent demanding ₹ 2 lacs and one Maruti car

from her parents. As the father of the respondent is a pensioner, he could not fulfill the demand. He reported the matter to Mahila Police Station at Padav, Gwalior on 2nd November, 2005 but the report was not lodged and no action was taken. On 3rd February, 2006 the respondent delivered a male child in the hospital. Thereafter, on 17th February, 2006 the petitioners separated the child from the respondent, kept him alongwith them and deserted the respondent. Consequently, since 20st February, 2006 she is living in her matrimonial home without her son. Petitioners are trying to declare the respondent as mentally sick and to remarry the petitioner No.1. Admittedly, one application for divorce has been filed by the petitioner No.1 against the respondent and the respondent has filed an application under Section 125 of Cr.P.C. claiming maintenance from him and also she has filed another application under Section 9 of the Hindu Marriage Act for seeking a decree of restitution of conjugal rights against the petitioner No.1. These applications are pending in the Family Court, Gwalior. On these grounds, the respondent has prayed in the application for taking legal action against the petitioners and also to punish them.

3. The aforementioned act of filing of the application by the respondent and issuance of notice by the Court against the petitioners has been assailed by the petitioners on various grounds. The grounds and decisions thereon are as under :- (A) That, the respondent was mentally sick before the marriage which was not disclosed by the respondent. On this ground, application for divorce has been filed by petitioner No.1 on 15.5.06 in which proceedings for reconciliation have been failed on 21.9.06. Only for creating pressure against the petitioner No.1, the present application has been filed on false grounds by the respondent on 23.11.06.

(B) That, in the application under Section 9 of the Hindu Marriage Act filed by the respondent these facts have not been mentioned by her that on demand of ₹ 2 lacs and one Maruti car, she has been harassed by the petitioners and as such the application being on false grounds, proceedings based on it ought to quashed.

The grounds in the application are false or not, this fact cannot be decided by this Court during this summery proceeding under Section 482 of Cr.P.C. The truthfulness or otherwise of the facts mentioned in the application can be decided by the learned Magistrate after due inquiry under the procedure as prescribed by the Act. Hence, the proceeding based on the application cannot be quashed by this Court at this stage on these two grounds.

(C) That, as provided by Section 2(q) of the Act, such application under Section 12 of the Act cannot be filed against the petitioners No.3 and 4 who are the ladies. In Section 2(q) of the Act the term respondent has been defined as under :-

(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. Thus, it is provided by this definition that an application can be filed by an aggrieved person including the respondent claiming relief under the Act only against the adult male person. However, as per the proviso appended to this provision, a 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.

For understanding these two parts, i.e. the main part of the Section and the proviso, it is necessary to understand the scheme of the Act. The first three paragraphs of the statement of object and reasons under which the bill No.116 of 2005 for passing the act was placed before the parliament, are as under (published in the Gazette of India Extraordinary Part II Section 2 page 22 dated 22nd August, 2005):-

"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.

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." (Emphasis supplied)

Keeping these objects and reasons in mind 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, the bill was presented before the parliament which has become the Act after passing the same by the parliament.

Thus, it cannot be lost sight of 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 the women.

However, as provided by Sections 27 and 28 of the Act, a Judicial Magistrate of the first class or the Metropolitan Magistrate has been empowered to grant a protection order and other orders and to try the offence under the Act. Vide Section 28 of the Act, it is mentioned that save as otherwise provided in this Act, 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, 1973. Vide sub-sections 3 and 4 of Section 19, it is also provided that a Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence and such order shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly.

Chapter VIII of Cr.P.C. dealt with security for keeping peace and for good behavior which runs from Section 106 to 124. In these Sections, it is provided that for keeping the peace and maintaining good behavior, a person can be directed by a Magistrate to execute a bond with or without sureties and in case of non-compliance of such order, that person can be detained into custody. Section 31 of the Act provides penalty for breach of protection order passed by the Magistrate, which is punishable as an offence.

A protection order can only be passed under Section 18 of the Act. To understand better the provisions of Sections 18 and 31 are required to be perused, which are as under:- Section18.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.

Section 31.(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 498-A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

The offence under Section 31 of the Act will be cognizable and non-bailable as provided under Section 32 of the Act. Section 8 of the Act provides for appointment of the Protection Officer and Section 33 of the Act provides for penalty for not discharging duty by the Protection Officer. Despite, as mentioned in the objects and reasons that for providing a civil remedy, this act has been enacted, the provisions of Sections 19, 27, 28, 31 to 33 clearly mention that some of the proceedings under the Act are of criminal nature. Under Section 19 to 22 of the Act an order to provide residential facilities, monetary reliefs, custody order for a child and compensation can be ordered by the Magistrate under the Act. Except a part of Section 19 with regard to direction of execution of a bond and dealing the same as provided under Chapter VIII of the Cr.P.C., all the reliefs under Sections 18 to 22 appear to be of civil nature. Thus, some of the proceedings under this Act can be said to be of civil nature and some of the proceedings can be said to be of criminal nature.

Section 12 of the Act provides that an application (not a complaint) for seeking one or more reliefs under the Act can be filed. On perusal of Sections 18 to 22 of the act, it appears that the reliefs under these sections as mentioned hereinabove can be passed on the application under Section 12 of the Act. The word complaint as appeared in the definition of respondent under Section 2(q) of the Act has not been defined anywhere in the Act.

Although it is not provided that the definition of complaint can be considered the same as provided under the Cr.P.C. but at the same time it is also not prohibited. In view of this, the definition of complaint can appropriately be seen in Cr.P.C. which goes as under:- 2(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

It is clear by this definition that a complaint as provided in Cr.P.C. can only be for an offence.

As mentioned hereinabove only two offences have been mentioned in this Act and those are (1) under Section 31 and (2) under Section 33. It appears that this word complaint appeared in the definition of respondent has been used for initiating proceedings

for these two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given a right to file a complaint against a relative of the husband or the male partner. This word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2(q) that is for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with a protection order or interim protection order.

Thus, it is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person. As provided under Section 31 of the Act, non-compliance of a protection order or an interim protection order has been made punishable and as such it can be said that the complaint for this offence can only be filed against such adult male person/respondent who has not complied with the protection order. Hence, it is clear that the application under Section 12 of the Act which has been filed by the respondent against petitioners No.3 and 4, who are not adult male persons, is not maintainable.

(D) The proceeding has also been assailed on the ground that before issuance of the notice, learned Magistrate has recorded the statement of the respondent which is not required. It is true that recording of statements as provided under Sections 200 and 202 of Cr.P.C. is not required before issuance of the notice because application under Section 12 of the Act is an application and not a complaint. However, this action of the learned Magistrate cannot be a ground for quashing the proceedings because as provided by sub-section 2 of Section 28 of the Act, the Court/learned Magistrate is not prevented from laying down its own procedure for disposal of an application under Section 12 of the Act.

(E) The proceeding has also been assailed on the ground that no report from the Protection Officer under Section 12 of the Act has been called. Sub-section 1 of Section 12 of the Act goes as under:- 12.(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; On perusal of the aforementioned proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on a Magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither it is obligatory for a Magistrate to call such report nor it is necessary that before issuance of notice to the petitioners it was obligatory for a Magistrate to consider the report. The words before passing any order provide that any

final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words any report also mention that a report, if any, received by a Magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground for quashing the proceeding.

(F) The last ground raised by the petitioners is that in the application the relief of penalizing the petitioners has been prayed for, which is beyond the provisions of the Act. On perusal of the last paragraph of the application, it is prayed that after registration of the case, petitioners be legally penalized. It is true that at this stage in the application it was not required for the respondent to claim such relief, however, if it has been claimed, this cannot be a ground on which the proceedings can be quashed. At the most, such reliefs if unnecessary, can be negated.

4. Although it is not argued yet it appears appropriate to mention that any order passed by the learned Magistrate under the Act is appealable as provided by Section 29 of the Act. Usually when an opportunity to assail the impugned order in revision or appeal is available, taking recourse under Section 482 of Cr.P.C. is not required. However, it is observed by the Apex Court in para 26 in the case of Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749 that some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to, for correcting some grave errors that might be committed by the subordinate courts. Considering the steps taken by the learned Magistrate against the petitioners No.3 and 4, this petition has been considered herein.

5. In view of all, as discussed hereinabove, the petition deserves to be partly allowed. Consequently, it is partly allowed. The proceeding against petitioners No.3 and 4 is quashed. It is directed that the learned Magistrate will deal the application as provided under the various provisions of the Act and as observed hereinabove.

4. COURT JURISDICTION

Manish Tandon v. State, I (2010) DMC 242 (Allahabad H.C.) (12.10.2009)

Judge: Kailash Gambhir

Judgment

1. By way of the present petition filed under Section 482 Code of Criminal Procedure, 1973 petitioners seeks quashing of complaint case bearing No. 156/1 titled as Gunjan Tondon

v. Sh. Manish Tondon and Ors. filed by the respondent No. 2 against the petitioners under Section 12 of the Protection of Women from the Domestic Violence Act, 2005.

2. The brief facts of the case relevant for deciding the present petition as set out by the petitioners are as under:

That the marriage of the petitioner No. 1 was solemnized with the respondent No. 2 on 23.01.2009 at the Community Centre in Sector-52, Noida (UP) according to Hindu rites and customs. All the petitioners are the permanent residents of the State of Uttar Pradesh. In fact, admittedly, the respondent No. 2 is also a permanent resident of Noida (UP) being Mahagun Manor, Flat No. 417, Plot No. F-30, Sector-50, Noida.

3. That the marriage of the petitioner No. 1 and Respondent No. 2 was an arranged marriage and the acquaintance between them came through a popular matrimonial website known as 'Jeevansathi.com'.

4. That after the aforesaid marriage, the respondent No. 2 joined the conjugal company of the petitioner No. 1 at her matrimonial home in Bareily (UP), at H.No. 17, Madaari Gate, Bada Bazaar. However on account of his employment with M/s. Malayalam Manorma, in Delhi, the petitioner No. 1 has been living in a rented accommodation in Ghaziabad at the aforesaid address.

5. That on 16.03.2009, the respondent No. 2 left her matrimonial home in Uttar Pradesh and started living with her relatives including parents, in Noida Flat No. 417, Plot No. 30, Noida.

6. That thereafter on 24.03.2009, loaded with patently frivolous, false and vexatious averments, despite being permanently residing in Noida, the respondent No. 2 in a most cunning and malicious manner, with the sole objective to cause undue harassment, hardships and mental torture to the petitioners, filed the impugned complaint in the court of the Additional Chief Metropolitan Magistrate, New Delhi which was subsequently marked to Ms. Veena Rani, MM, Patiala House, New Delhi for trial in accordance with law. The said complaint is now posted on 02.07.2009 for further proceedings.

7. Feeling aggrieved with the said complaint filed by the respondent under Section 12 of the Protection of Women from the Domestic Violence Act, 2005 the petitioners have approached this Court seeking quashing of the said complaint.

8. The contention of counsel for the petitioners is that the courts in Delhi have no territorial jurisdiction to entertain and try the impugned complaint as the same has been filed by the respondent No. 2 in a court which lacks jurisdiction. He urged that none of the alleged acts of domestic violence qua respondent No. 2 took place in Delhi and as per the admission of the respondent No. 2 the marriage was solemnized at Noida, and her matrimonial home was either in Bareily or Ghaziabad. Respondent No. 2 even admitted

having been staying at Noida after she left her matrimonial home on 16/3/2009 and reason placed for residing temporarily at Delhi is that, her acutely ill paralytic mother's condition may deteriorate upon seeing her daughter staying with her. The counsel averred that, after 16/3/2009 alleged domestic violence are not in continuance. The counsel for petitioner submitted that the respondent No. 2 is misusing and abusing the provision of Section 27 of the Protection of Women From Domestic Violence Act has been laid down for beneficial support of needy and destitute persons and certainly not for a person like respondent No. 2 who is a malafide litigant with all vexacious claims and thus the proceedings pending before the trial court should be quashed. The counsel relied on decisions in following judgments in support of his contentions:

1. Surjit Singh Kalra v. UOI MANU/SC/0529/1991 : (1991) 2 SCC 87;
2. S.R. Batra v. Tarun Batra 2007 (2) SCC (Cri) 56;
3. Harman Electronics v. National Panasonic 156 (2009) DLT 160 (SC);
4. K.D. Mathpal v. State 132 (2006) DLT 398 (DB);
5. P.C. Jain v. P.K. Soni MANU/DE/1764/2008 : 156 (2009) DLT 760;
6. Harmanpreet v. State of Punjab MANU/SC/0747/2009 : JT (2009) 6 SC 375; and
7. Y. Abraham v. Inspector of Police MANU/SC/0635/2004 : (2004) 8 SCC 100.

9. Per contra, counsel for respondent No. 2 contended that the present petition is nothing but an abuse of the process of the court merely taking up the precious time of the court and should be dismissed forthwith. The counsel drew attention of this Court to Clause (b) of Sub-section (1) of Section 27 of Protection of Women From Domestic Violence Act to contend that the section provides that jurisdiction to try the case under the Act also lies where the respondent resides or carries on business or is employed. The counsel for respondent No. 2 relied on decision in Smt. Darshan Kumari v. Surinder Kumar 1996 SCC (Cri) 44 in support of his contentions.

10. I have heard Ld. Counsel for the parties at length and perused the record.

11. It is a well settled principle that the under provisions of Section 482 Code of Criminal Procedure, 1973, exercise of power should be an exception and not the rule. Explaining the scope of Section 482 Code of Criminal Procedure, 1973, the Hon'ble Apex Court observed as under in Ashabai Machindra Adhagale v. State of Maharashtra (2009) 3 SCC 789:

8. The scope for interference on the basis of an application under Section 482 of the Code is well known.

9. 8. … [Section 482] does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of [the Code]. It envisages three circumstances under which the inherent jurisdiction may be exercised,

namely, (i) to give effect to an order under [the Code], (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle of 'quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest' (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In R.P. Kapur v. State of Punjab this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings: (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly

inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 [of the Code], the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.

12. Thus, clearly the inherent jurisdiction may be exercised by this Court, (i) to give effect to an order under [the Code], (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

13. At this juncture it would be relevant to refer to Section 27 of the PWDV Act, which is as under:

27. Jurisdiction.-(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

14. A bare perusal of the aforesaid provision clearly brings out, that the court, where the respondent resides or carries on business or is employed has territorial jurisdiction to entertain the case under the Protection of Women From Domestic Violence Act. The fact that the petitioner/husband's place of work is at Malyalam Manorama, 56, II Floor, Janpath, New Delhi is not disputed and is admitted by the petitioner husband.

15. The Protection of Women from Domestic Violence Act, 2005 is a piece of legislation brought in by the Parliament as the Parliament felt that the civil law does not provide reliefs to a victim woman subjected to domestic violence. It is in these circumstances, to provide for a remedy under the civil law for protection of women from being victims of domestic violence, that the Act was brought in by the Parliament. It will be apposite to take note of the fact that though it is a piece of civil law, evidently in the interests of expedition and to cut down procedural delays, the forum provided for enforcement of

rights under Protection of Women From Domestic Violence Act is that of the Magistrate Courts constituted under the provisions of the Cr.P.C.

16. The Act seeks to cover 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 a relationship in the nature of marriage, or adoption; in addition relationship with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or are living with the abuser are entitled to get legal protection under the Act.

17. Keeping in mind the said objects of the Act, it has to be considered that the legislature has provided the women covered under the Act with such wide options to institute a case against the unscrupulous persons who harass or abuse her at the places covered under Section 27 of the Act with an intent that women may opt for the place which best suited their convenience, comfort and accessibility.

18. The decisions relied upon by the counsel for the petitioners are of no assistance to them as the said cases do not pertain to interpretation of provision of Section 27 of PWDV Act. Be that as it may, when the language of the Section is so clear and unambiguous then the court cannot interpret or construe the same differently just to give effect to the wishes of the party.

19. In view of the foregoing discussion, I do not find any merit in the present petition and the same is hereby dismissed.

Sharad Kumar Panday v. Mamta Pandey, II (2010) DMC 600 (Delhi H.C.) (01.09.2010)

Judge: Shiv Narayan Dhingra

Judgment

1. This petition under Section 482 Cr.P.C and under Article 227 of the Constitution of India has been preferred by the petitioner for quashing/setting aside the order and judgment dated 3rd November 2009 passed by learned Additional Sessions Judge, Delhi dismissing the revision petition of the petitioner against an order passed by learned Magistrate taking cognizance of a complaint under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (in short, "the Act").

2. The contention raised by the learned Counsel for the petitioner before the court of Magistrate and before the court of learned ASJ was that the marriage between the parties was solemnized in Lucknow on 22nd February 2004. Before marriage, the complainant/

respondent was living in Lucknow at her parental house and was doing Ph.D. research work in Lucknow under supervision of Mr. R.C. Tripathi. After marriage, the respondent/wife remained at Lucknow, occasionally, she went to Shillong where petitioner i.e. husband of the complainant wife/was posted. The incident of domestic violence, if any, had taken place in Lucknow and nothing happened at Delhi. However, the complaint against the petitioner was lodged at Delhi. He submitted that the complainant/wife had given address of 175, Gulmohar Enclave, New Delhi, a house where brother-in-law of complainant/wife namely Mr. Rajesh Ojha was residing. The Court at Delhi would have no jurisdiction.

3. The facts regarding place of marriage and residence are not in dispute. The learned Sessions Judge relying on Bhagwan Das and Anr. v. Kamal Abrol and Ors. (2005) 11 SCC 66 observed that since the temporary residence being one of the incident of jurisdiction the controversy whether the residence of the wife at Delhi was a temporary residence or not, can be decided only after the evidence. He also observed that the Domestic Violence Act being a new Act, there was lack of judgments given by the superior courts on the issue and the issue would be clarified only when some decisions of superior courts come on this point. He observed that if the wife was able to prove that her temporary residence was in Delhi with her sister within the meaning of Section 27 of the Act, the trial court would have jurisdiction to decide the matter. However, this fact can be decided only on the basis of evidence, he left the question open.

4. Learned Counsel for the petitioner submits that the residence of the wife with her sister at Delhi cannot give jurisdiction to the Court at Delhi when none of the incidents of domestic violence had taken place at Delhi nor the marriage took place in Delhi nor the wife ever, before filing the petition lived at Delhi nor the parents of the wife were living in Delhi nor the parties lived together at Delhi. It is submitted that this Court should clarify the position.

5. Section 27 of the Domestic Violence Act, which is about jurisdiction reads as under:

27. Jurisdiction.-

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

6. Every statute has to be interpreted keeping in mind the purpose for which it has been enacted and the interpretation must be such so as to advance the purpose of the act and should not be such as to defeat the intention of the legislature.

7. Under Domestic Violence Act, a complaint can be made by an aggrieved person or any other person (Section 4) against the respondent and prayer can be made for obtaining various interim orders and reliefs as given in various provisions of the Act. Section 5 of the Act provides that when a complaint of domestic violence is received by a police officer/ protection officer/service provider or Magistrate and any of them is present at the place of incident of domestic violence, he shall give information to an aggrieved person on various rights and facilities available in terms of Section 5(a) to 5(e). This section is followed by Section 6 where the service provider can request a shelter service provider to provide shelter to her. Section 6 envisages that as a result of domestic violence, if the aggrieved person has lost home or is not being allowed to reside in the shared household, a request is to be made to the incharge of shelter home for shelter. Section 7 provides for duties of medical facility provider. This section also envisages commission of physical cruelty on the aggrieved person and providing of medical facilities to her. Section 9 is about the duties and functions of protection officer. Section 9(b) again provides for preparation of domestic incident report by protection officer and submitting it to the Magistrate, upon receipt of a complaint of domestic violence, and forwarding the copies of this report to the incharge 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. It is apparent that the protection officer's duties envisage preparation of a report of incident of domestic violence at the place of violence and sending copies to police station incharge and service provider so that the victim of domestic violence can be provided different services as available under the provisions of the Act. Section 9(g) casts a duty on theprotection officer to get the aggrieved person medically examined for bodily injuries and forwarding a copy of the report to the police station and the Magistrate having jurisdiction over the area wheredomestic violence is alleged to have taken place and Section 9(f) of the Act envisages to make available a safe shelter home to the aggrieved person, if she so requires. Section 9(h) requires protection officer to ensure that the order for monetary relief under Section 20 of the Act is complied with and executed, in accordance with the procedure prescribed under Cr.P.C. Section 10 gives duties/powers of service providers and service provider has powers to record domestic violence report if the aggrieved person so desires and forward it to the protection officer and Magistrate and get the aggrieved person medically examined and to provide shelter in a shelter home. Section 12 provides that an aggrieved person can make an application to Magistrate for seeking one or more reliefs and the Magistrate before passing an order on such application, shall take into consideration the domestic incident report, if any, filed before him by the protection officer or service provider. Sec-

tion 12(4) provides that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court. Section 13 provides that a notice of date of hearing fixed under Section 12 shall be given by the Magistrate to the protection officer who shall get it served by such means as may be prescribed, on the respondent and on any other person within a maximum period of two days or such further reasonable time as may be allowed. Section 14 provides that the Magistrate at such stage of the proceedings, direct the respondent and the aggrieved person either singly or jointly to undergo counseling with any member of a service provider who possess such qualifications and experience in counseling as may be prescribed. Section 18 provides that a Magistrate, after hearing the aggrieved person and the respondent, on being prima facie satisfied about domestic violence having taken place, may pass a protection order in favour of the aggrieved person and prohibit the respondent from committing certain acts as given in this section. Section 19 gives powers to the Magistrate for passing residence orders and put conditions on respondent in the residence order. Section 19(5) provides that while passing orders under Section 19(1) to (5), the Court has power to pass an order directing the officer incharge of the nearest police station to go for the protection of the aggrieved person and to assist person making an application on her behalf. Sub-section 7 provides that Magistrate may direct the officer incharge of the police station in whose jurisdiction the Magistrate is approached, to assist in implementation of the protection order.

8. From different provisions of this Act, it is apparent that the scheme of the Act provides that protection officer, service provider and police to help the aggrieved person in not only approaching the court for redressal but to ensure that the domestic violence is not further perpetuated and an aggrieved person gets shelter either in the shelter home or after the residence order in the shared household. Thus, the place of domestic violence and the place of respondent are two places which are the places of actions under the Act which the Magistrate can take and give directions to other bodies created under the Act. However, still the Legislature provided that the jurisdiction can be invoked by an aggrieved person on the basis of temporary residence. It seems that this provision has been made for such aggrieved person who has lost her family residence and is compelled to take residence, though temporarily, either with one of her relatives or with one of her friends at a place where the domestic violence was not committed or her matrimonial home was not there. Such a woman can invoke jurisdiction of the court where she is compelled to reside in view of commission of domestic violence, this temporary residence must be one which an aggrieved person takes under the circumstances of domestic violence. It may also be there that after domestic violence; an employed aggrieved person decides to take job at some other place and has to shift her residence. Section 27 provides that the court where an aggrieved person carries on business or has employment also has jurisdiction. The jurisdic-

tion of the court would not be there where an aggrieved person starts residing deliberately only for the purpose of filing a case under domestic violence against respondent while the place has no relevance i.e. neither she has a relative or friend there neither a business nor a job and she is helped by parents or other well-wishers to go to a place and hire a house and lodge a report under Domestic Violence Act. Say domestic violence is committed in Chennai, the woman comes to Delhi, she does not have job in Delhi, she does not have business in Delhi, she has no relative or friends in Delhi but she hires a house and files an application under Domestic Violence Act. Exercise of jurisdiction by the Magistrate in such cases would be contrary to the Act as the Act envisages help from police of the local area where domestic violence had taken place and it envisages visit by the protection officer to the share household and to the place of incident. Such providers may also find it difficult to serve respondent if she moves far away from the place of Domestic Violence and the Magistrate may find it difficult to ask the protection officer and other service providers of far off places to help.

9. All legislative enactments on matrimonial disputes or custody matters make ordinary residence or residence or the place where parties lived together or the place of cause of action as a ground for invocation of jurisdiction of the Court. Domestic Violence Act is the first Act where a temporary residence of the aggrieved person has also been made a ground for invoking the jurisdiction of court. The expression 'residence' means 'to make abode' - a place for dwelling. Normally place for dwelling is made with an intention to live there for considerable time or to settle there. It is a place where a person has a home. In Webster Dictionary, the residence means to dwell for length of time. The words 'dwelling place' or abode are synonyms. A temporary residence, therefore, must be a temporary dwelling place of the person who has for the time being decided to make the place as his home. Although he may not have decided to reside there permanently or for a considerable length of time but for the time being, this must be place of her residence and this cannot be considered a place where the person has gone on a casual visit, or a fleeing visit for change of climate or simply for the purpose of filing a case against another person.

10. I, therefore, consider that the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.

11. In the present case, the aggrieved person is residing with her sister and has filed the petition under Domestic Violence Act. It cannot be said that her residence with her sister was a fleeing residence or was a temporary residence acquired for lodging the complaint of domestic violence. Her sister's house is a place where she has taken shelter and temporarily resides. I, therefore, find that there is no force in this petition. The petition is hereby dismissed with no orders to costs.

Neeraj Goswami v. State of Uttar Pradesh, 2013 Cr.L.J. 1767 (Allahabad H.C.) (24.1.2013)

See page 320 for full text of judgment.

Hima Chugh v. Pritam Ashok Sadaphule, 2013 Cr.L.J. 2182 (Delhi H.C.) (10.04.2013)

See page 160 for full text of judgment.

Sukrit Verma v. State of Rajasthan, III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011)

Judge: R.S. Chauhan

Judgment

1. Aggrieved by the judgment dated 2962010, passed by Additional Chief Judicial Magistrate No. 12, Jaipur City, Jaipur, and by the judgment dated 1912011, passed by Additional Sessions Judge (Fast Track) No. 3, Jaipur City, Jaipur, the Petitioner has approached this Court. By the former judgment, the learned Magistrate had directed the Petitioner to pay a monetary relief of $ 2000 per month, or an equivalent amount in Indian Currency, to the Respondent from the date of presentation of the application i.e. 912007, and to pay $ 2500, or an equivalent amount thereof, for the expenses of the proceedings under the Domestic Violence Act, 2005 ('the Act' for short); by the latter judgment, the learned Judge has upheld the judgment dated 2962010, and has dismissed the appeal filed by the Petitioner.

2. The brief facts of the case are that on 2512002 the Petitioner No. 1 Sukrit Verma, and the Respondent No. 2, Rupal Khullar, were married, at New Delhi, according to the Hindu customs and rites. They left for United States of America ('USA' for short) on

662002. They continued to live there till January, 2006. According to the husband, the Respondent wife refused to return back to USA, to live with him, for the reasons best known to her. However, according to the Respondent wife, she refused to go back with him for the reason that while she was staying in the USA, with him, she was subjected to acts of domestic violence . Therefore, she had no desire to join him back in the USA. In January, 2007, the Respondent wife filed a petition under Section 9(6) and 37 (2) (d) of the Act before the learned Magistrate. In order to buttress her contentions, the Respondent wife examined herself as a witness, and submitted 86 documents. On the other hand, the husband examined himself as a witness, and submitted 115 documents. After going through the oral and documentary evidence, vide judgment dated 2962010, the learned Magistrate allowed the petition in the terms aforementioned. Since the Petitioner was aggrieved by the said judgment, he filed an appeal under Section 29 of the Act. However, vide judgment dated 1912011, the learned Judge confirmed the judgment dated 296 2010, and dismissed the appeal. Hence, this revision petition before this Court.

3. Mr. Mohit Tiwari, the learned Counsel for the Petitioner, has raised the following contentions before this Court:

Firstly, that the learned Magistrate, and the learned Judge have not appreciated the evidence in proper perspective. They have erroneously concluded that the Petitioner husband had committed acts of cruelty towards the Respondent wife.

Secondly, both the learned courts below have failed to consider the fact that the Petitioner husband is unemployed; he does not have means to give the monetary relief as directed by the court. Therefore, the maintenance allowance is unreasonable.

Thirdly, the Respondent wife herself is a renowned artist, who earns about ₹ 1 lac per month by selling her paintings.

Fourthly, learned courts below have erred in calculating the maintenance in terms of US dollars, instead of Rupees. In fact, the learned Magistrate should have calculated the maintenance in terms of Rupees.

Lastly, relying on the case of Sanjay Bhardwaj and Ors. v. State and Anr., (Cr.M.C. No. 491/2009 decided by Delhi High Court on 2782010), the learned Counsel has contended that "there is no requirement in law for the husband to maintain his wife. For, the Court cannot tell the husband to beg, borrow, or steal but give maintenance to the wife, more so when the husband and wife are almost equally qualified and almost equally capable of earning". Thus, according to the learned Counsel, in the present case, since the husband is unemployed, since the wife is earning by selling her paintings, the husband cannot be forced to maintain his wife.

4. On the other hand, Mr. S.R. Bajwa, Senior Advocate, the learned Counsel for the Respondent wife, has raised the following contentions:

Firstly, both the learned courts below have meticulously examined the evidence. They have validly concluded that the Respondent wife was subjected to domestic violence . Moreover, question of facts cannot be disturbed under the revisional jurisdiction.

Secondly, the Act is a social beneficial piece of legislation, which is meant not only to protect the women from domestic violence, but also to provide them economic assistance; it ensures that their economic rights are implemented. The said Act does not make an exception that in case the husband is unemployed, he is absolved of his liability to maintain his wife.

Thirdly, before the learned trial court, the husband pleaded that he has been fired from his job. However, according to the documents produced by the husband he had left his job voluntarily. Therefore, he had raised a false plea before the learned trial court.

Fourthly, despite the orders of the learned trial court to the Petitioner to produce statements of his Bank accounts, he singularly failed to do so. Therefore, the learned trial court was certainly justified in concluding that the Petitioner was earning $ 9000 per month. Further, out of $ 9000, the learned trial court has directed him to pay merely $ 2000 per month, which is a mere fraction of his monthly salary. Hence, he is liable to maintain his wife.

Fifthly, unemployment is not a valid defence. The Petitioner happens to be not only a qualified person, but was also working abroad, that too, in America. Therefore, he is capable of earning in his own country.

Sixthly, from the money sent by him his mother had bought two properties in Delhi, therefore, his family has sufficient means for maintaining the wife.

Seventhly, it is misnomer to claim that Respondent wife is an internationally renowned artist. Although documents have been submitted before the learned trial court to show that the Respondent wife had participated in certain art exhibition, in America, but most of them were within the college, where she was studying in America. Although she has also exhibited her paintings in New Delhi, but she has not been able to sell her art work on a regular basis. Learned Counsel has also emphasised that life of an artist is a life of struggle. Therefore, the Respondent continues to be financially dependent upon her parents. Hence, she is entitled to monetary relief under the Act.

Lastly, he has questioned the veracity of the observation made in the case of Sanjay Bhardwaj and Anr. (supra); he has contended that the observations made by Their Lordships of the Delhi High Court are legally untenable.

Learned Public Prosecutor has echoed the arguments raised by Mr. S.R. Bajwa.

5. Heard learned Counsel for the parties, perused the impugned judgments, and considered the case law cited at the Bar.

6. Women have been subjected to violence, domestic or otherwise, throughout the pages of historywhether they be Helen of Troy, or Sita of Ramayana, whether they be Casandra of Troy, or Dropadi of Mahabharata. Women have been easy pray to the male ego, and dominance. Much as the Indian Civilization pays obedience to the feminine divine, but the harsh reality remains that throughout the length and breath of this country, women are assaulted, tortured, and burnt in their daily lives. The phenomenal growth of crime against women, has attracted the attention of the international community. The International organisations took a serious look at the epidemic called "domestic violence". The Vienna Accord of 1994, and the Beijing Declaration and the Platform for Action (1995) felt the necessity for a proper law on this burning issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) asked the member nations to enact a proper law for dealing with the mischief of domestic violence.

7. In India, although the criminal law deals with domestic violence in the form of Section 498A IPC, but there was no provision in the Civil Law to deal with the said problem. In order to get rid of the mischief of domestic violence, the Parliament, in its wisdom, enacted the Act, which came into force on 26 October, 2006. The Act is a social beneficial piece of legislation, which should be given as wide and as liberal an interpretation as possible.

8. Section 3 of the Act defines the words " domestic violence " as under:

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 wellbeing, 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 endanger 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 purpose of this section

(i) "physical abuse" means any act of 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 women;

(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 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 and 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 of 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.

9. Interestingly, the Act defines the term "economic abuse". While explaining the term economic abuse, the Act has defined economic rights of the women, the right to stridhan, the right to maintenance, the right to have access to the joint property owned by the aggrieved party, the right to shared household etc.

10. The right to maintenance is further reflected in Section 20 of the Act, which is as under:

20. Monetary reliefs. (1) While disposing of an application under Subsection (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, 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 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 incharge 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 Subsection (1).

(6) Upon the failure on the part of the Respondent to make payment in terms of the order under Subsection (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.

Section 20 bifurcates monetary relief into two categories, firstly compensation, and secondly maintenance. Section 20(1) (a) (b) and (c) deals with compensation which should be paid to the aggrieved party for the loss of earning, for medical expenses, for loss caused due to destruction, damage or removal of any property from the control of the aggrieved party. However, these three categories are merely illustrative, and are not meant to be exhaustive in their content.

Section 20(1) (d) deals with maintenance both for the aggrieved party, and for children, if any. According to Section 20(2), monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved party is accustomed to. According to Section 20(3), the Magistrate is empowered to order the payment of monetary relief either by way of lump sum payment, or as monthly payment, in the facts and circumstances of the case may require. Section 20(5) casts a duty upon the Respondent to pay the monetary relief within the specified period as directed by the order. Section 20(6) empowers the Magistrate to direct the employer or a debtor of the Respondent to pay the monetary relief either directly to the aggrieved party, or to deposit the same with the court, in case the Respondent fails to pay the monetary relief.

Thus, Section 20 of the Act is meant to ameliorate the financial condition of the aggrieved person, who may suddenly find herself to be without a hearth and home. Financially, the aggrieved person may exist in a suspended animation, if she is neither supported by the husband, nor by her parents. In order to protect women from such a pergutory, Section 20 bestows a right to seek monetary relief in the form of compensation and maintenance. Section 20, thus, is a powerful tool for ensuring gender equality in economic terms. Section 20, does not contain any exception in favour of the husband. In fact, it recognises the moral and legal duty of the husband to maintain the wife.

11. After meticulously examining the evidence available on record, both the learned courts below have opined that the Petitioner had committed acts of domestic violence upon the Respondent wife, both during their stay at USA, and otherwise. They have noticed the fact that when the wife's visa was about to expire, the Petitioner kept on threatening her that he would not get the visa renewed, but instead would have her deported from the USA; they have noticed the fact that he would lock the computer, and deny access to the wife; they have noticed the fact that he would hardly give her any money to survive in an alien land; they have noticed the fact that he would ridicule her for her dark complexion, for her wearing Indian clothes in America; they have noticed the fact that despite her unwillingness to go to nude camps, he would drag her there. They have also noticed the fact that ever since the Respondent wife has returned to India, that too with a child, the Petitioner has failed to pay any maintenance to the wife. All these acts fall within the definition of domestic violence contained in Section 3 of the Act. Hence, learned courts below were certainly justified in concluding that the Respondent wife was subjected to domestic violence .

12. A perusal of the judgment dated 2962010, clearly reveals that during the course of proceedings the Respondent wife had submitted sufficient evidence to prove that the Petitioner husband was earning about US $ 9000 per month since 1996. In the span of twelve years, he had accumulated almost ₹ 6 crores. Moreover, in 2006 he had three fixed deposits in ICICI Bank totaling an amount of ₹ 26 lacs; in his regular bank account, he had about ₹ 25 lacs. Moreover, he had bought two houses, one in Vindyachal Nagar,Miyawali, and the other in Vrinda City, Greater Noida. The judgment further reveals that although the learned trial court had passed an order under Section 91 Code of Criminal Procedure directing the Petitioner husband to submit statements of his bank accounts, but he singularly failed to do so. Although he pleaded that he does not have sufficient financial means, but he failed to establish this fact.

13. It is, indeed, trite to state that there is a difference between a statement of fact, and the proof thereof. It is not sufficient for a party to merely claim that a fact exist; it is important and essential that the party should prove that the fact does exist. After all, the courts of law

demand that cogent evidence be marshaled out, and a fact stated by a party be established to exist. This is rather clear from the provisions of the Evidence Act, which lays down the principles governing proof. Therefore, it was not sufficient that the Petitioner pleaded that he did not have financial means to maintain the wife: it was essential that he should establish this fact. Since, even after the direction of the learned trial court, the husband failed to submit relevant statements of his bank accounts, the learned trial court was certainly justified in drawing adverse inference against the Petitioner husband under Section 114 (f) of the Evidence Act. Hence, the Petitioner's plea that he is not able to maintain the wife was rightly rejected.

14. Of course, the Petitioner has pleaded, both before the appellate court and before this Court, that the Respondent wife has sufficient means to support herself. Again he has failed to establish this fact. Exhibits D5 to D14, and D114, are merely documents which prove the fact that Respondent had exhibited her art work in different art galleries. But there is difference between exhibition of art work and sale thereof. Merely because paintings were exhibited, it can not be presumed that they were sold. It is common knowledge that the life of an artist, is a life of struggle, and not a bed of roses. Art history, whether of the East or the West, bears testimony to the fact that even famous artist like Van Gogh have died in poverty and have committed suicide. Moreover, some of the paintings were exhibited in college campus. The exhibition of art work in college campus is merely display of work by a student; they are not necessarily meant for sale to the public at large. Therefore, the documents showing the holding of exhibition do not substantiate the plea of the Petitioner that through such exhibition the Respondent wife has a regular source of income. Therefore, the learned trial court, as well as the appellate court were justified in concluding that Respondent did not have means to support herself. In fact, financially she was dependent on her parents, and on her sister.

15. Learned Counsel for the Petitioner is not justified in claiming that maintenance should have been calculated in terms of Rupees, rather than in terms of dollars. The documents which were submitted before the learned trial court showed the earning of the Petitioner in terms of dollars. Moreover, while calculating the monetary relief under Section 20 of the Act, the learned trial court has clearly stated that equivalent amount of dollars should be paid to the Respondent. Therefore, the contention raised by the learned Counsel is unsustainable.

16. Section 20 (2) of the Act casts a duty upon the Court to award a fair, adequate and reasonable maintenance while keeping in mind the standard of living to which the aggrieved person has used to. In the present case since the Respondent wife had lived in the USA, naturally she was used to a high standard of living. Therefore, the maintenance of $ 2000 per month is most fair, & reasonable.

17. In an era of human rights, of gender equality, the dignity of women is unquestionable. Articles 14 and 15 of the Constitution of India recognise the dignity of women. The Constitution empowers the Parliament to enact laws in favour of women. Flowing from the constitutional ranges, Section 125 Code of Criminal Procedure, Section 24 Hindu Marriage Act, Section 20 Domestic Violence Act, ensure that women are paid maintenance by the husband. Section 26 of the Act further lays down that the maintenance paid under the Act, would be in addition to maintenance paid under any other law being in force for the time being. Therefore, the provisions of the Act are supplementary to provisions of other law in force, which guarantee the right of maintenance to the women. Hence, the observations made by Their Lordship of Delhi High Court, in the case of Sanjay Bhardwaj, that "No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not". Such an observation is clearly contrary to the provisions of law. Hence, this Court respectfully disagrees with the opinion of Their Lordship of the Delhi High Court.

18. None of the laws, mentioned above, make the inability of earning as a valid defence. In fact, according to Section 125(3) Code of Criminal Procedure, if a husband does not maintain his wife, after an order has been passed in favour of the wife, he is liable to be imprisoned. Section 20(6) of the Act empowers the Court to direct a debtor of the Respondent to either directly pay the maintenance to the aggrieved person, or to deposit the maintenance/ compensation in the court. Of course, while granting maintenance the court has to weigh the comparative hardship of the husband and of the wife. In case the wife has sufficient means to maintain herself, and in case the husband does not have any means whatsoever, in such a scenario the court may not impose the liability of maintenance upon the husband. However, such is not the case here.

As mentioned above, the Petitioner could not establish the fact that Respondent has a regular source of income. On the contrary, the wife has been able to establish that the Petitioner was gainfully employed in America and has accumulated no dearth of wealth. Therefore, both the courts below were legally justified in directing the Petitioner to maintain the wife.

19. The Law has always stood to favour of the women. For the Law recognises their vulnerability for survival in the cruel world. Women, being a keeper of hearth in home, need to be protected as they are the foundation of any society. If women are exposed to physical abuses, to sexual exploitation, the very foundation of the society would begin to weaken. It is only after recognising their importance, sociologically, that the ancient Indian Seers had opined that "Gods dwell only in those houses, where women are respected". Thus, both the law and society recognise a moral and legal duty of the husband to maintain the wife.

20. Therefore, this Court does not find any perversity or illegality in the impugned order and the judgment. The revision petition, being devoid of merit, stands dismissed.

Neetu Singh v. SuniI Singh, AIR 2008 Chattisgarh 1 (Chattisgarh H.C.) (28.09.2007)

Judges: L. Bhadoo, SK Sinha

Judgment

L. Bhadoo, J.

1. By this appeal under Section 19(1) of the Family Courts Act, 1984, appellant Smt. Neetu Singh has questioned legality and correctness of the order dated 15-6-2006 passed by the Judge, Family Court, Bilaspur on an application filed by the appellant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act, 2005') whereby learned Judge, Family Court held that since application has been filed under Section 12 of the Act, 2005, which ought to have been filed before the Magistrate and the relief sought for falls under the jurisdiction of the Civil Court, therefore, it be returned to the appellant for filing the same before the competent Court having jurisdiction.

2. Brief facts necessary for the disposal of this appeal are that the appellant herein filed an application under Section 12 of the Act, 2005 read with Section 7 of the Family Courts Act, 1984, in the Court of Judge, Family Court, Bilaspur on 13-6-2006 with the averments that the appellant was married to respondent on 28-4-2003 as per the Hindu custom. Just after the marriage, her in-laws started treating her with inhuman, cruel and neglect behaviour. In connection with demand of money in-laws started beating the appellant and she was thrown out of the matrimonial house, against which reports were lodged in the Police Station on 7-8-2003 and 16-9-2004. On 9-11-2004, the appellant sent a notice to the respondent reminding him about his matrimonial duties, thereafter the appellant filed an application under Section 125 of the Cr. P.C. in the Court of Chief Judicial Magistrate, Bilaspur, from where same has been transferred to the Family Court, Bilaspur. The Family Court vide its order dated 20th April, 2005 passed an order for interim maintenance to the tune of ₹ 1500/- per month. Her husband is earning about ₹ 20,000/-per month. The in-laws have refused to return her articles which were given to her by her parents in her marriage. On the contrary, they have levelled false allegation of character assassination against the appellant, complaint of which was made by her in the Police Station. Ultimately, the appellant demanded ₹ 2 lakhs which were spent by her parents on arrangement of the marriage i.e. on tent, shamiyana & food, an amount

of ₹ 1,56,792, value of articles, which were given to her in the dowry and ₹ 1 lakh for subjecting her to cruelty and character assassination. On 15-6-2006, the learned Judge, Family Court, in the presence of the appellant, passed the impugned order.

3. We have heard Shri Rahul Birtharey and Shri Sachin Singh Rajput, counsel for the appellant and Shri Anurag Dayal Shrivastava, counsel for the respondent.

Learned Counsel for the appellant in-viting attention of the Court towards the provisions of Section 26 of the Act, 2005, argued that the Family Court is competent to entertain the said application as per the provisions of Section 26 of the Act, 2005, therefore order impugned suffers from illegality.

4. In order to appreciate the controversy, in our opinion, it would be beneficial to have a glance on the relevant provisions of the Act, 2005. Section 12 of the Act, 2005, envisages that:

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.

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

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

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

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.

5. In order to appreciate issue involved in this matter, it will be profitable to have a glance on the scheme of the Act, 2005. The Act, 2005 has been enacted, as the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The civil law does not address this problem in its entirety. Even though where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the IPC. Therefore, in order to provide a remedy in the civil law for the protection of women from being victim of domestic violence and to prevent the occurrence of domestic violence in the society for the protection of women from domestic violence, the Act, 2005 has been enacted by the Parliament. Considering the fact that domestic violence is undoubtedly a human right issue and serious deterrent to development, this law has been enacted 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. Therefore, in order to grant minimum relief to the aggrieved person who is subjected to domestic violence, the above Act, 2005 has been enacted. Aggrieved person as defined in Section 2(a) of the Act, 2005 is subject of domestic violence as defined in Section 3 of the Act, 2005, she is entitled to move an application before a Magistrate under Section 12 of the Act, 2005 for seeking relief for issuance of the order for payment of compensation or damages without prejudice to 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.

6. Sub-section (4) of Section 12 contemplates that 'the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond 3 days from the date of receipt of the application by the Court. Sub-section (5) further cast duty on the Magistrate to dispose of every application made under Sub-section (1) within a period of 60 days from the date of its first hearing. Section 17 envisages that 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. It further envisages that the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent. Section 18 contemplates that after hearing aggrieved person and the respondent, on being satisfied that domestic violence has taken place or is likely to take place, the Magistrate has to pass a protection order in favour of the aggrieved person and prohibit the respondent under situations enumerated in Clauses (a)

7. Section 19 envisages that the Magistrate on being satisfied that domestic violence has taken place, pass order in respect of residence of aggrieved person in the situations mentioned in Clauses (a) to (f) of Sub-Section (1) of Section 19 and also pass order as contemplated in Sub-section (2) to (8) of Section 19. As per Section 20, the Magistrate can grant monetary reliefs in respect of and in situations enumerated in Section 20. Section 21 authorizes the Magistrate to pass orders in respect of the custody of the child or children to the aggrieved person. Section 22 authorizes the Magistrate to pass compensation orders on an application being made by the aggrieved person directing the respondent to pay compensation or damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent.

8. Section 26 of the Act has been inserted with an objective that in addition to the provisions of Section 12 the aggrieved person is entitled to any relief available under Sections 18, 19, 20, 21 and 22 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 the Act. Sub-section (2) of Section 26 further envisages that 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. Sub-section (3) cast duty on the aggrieved person that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under Section 12 of this Act, she shall be bound to inform the Magistrate of the grant of such relief. Therefore, as per Section 26 of the Act, the aggrieved person is also entitled to seek relief as provided under Sections 18, 19, 20, 21 and 22 in any legal proceeding, before a civil Court, family Court, or a criminal Court in which the aggrieved person and respondent are party & that relief is in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding. Therefore, an option has been given to the aggrieved person to avail reliefs available to her under Sections 18, 19, 20, 21 and 22 in a legal proceeding pending in a civil Court, criminal Court or family Court in addition to filing of the application under Section 12.

9. In view of the above scheme of the Act, specially as per the provisions of Section 26 of the Act, the appellant herein is entitled to seek relief available to her under Sections 18, 19, 20, 21 and 22 of the Act, 2005 in the maintenance proceeding pending in the Family

Court, Bilaspur. But the appellant is required to move an application under Section 26 read with Section in which she is seeking relief. However, instead of doing that, the appellant moved an independent fresh application under Section 12 of the Act, 2005 which can be entertained only by the Magistrate having jurisdiction. An application under Section 12 cannot be filed before Family Court because proceeding under Section 12 of the Act, 2005, as per the scheme of the Act, has to be filed before the Magistrate competent to entertain the application.

10. In the circumstances, we do not find any illegality or infirmity in the order impugned passed by the learned Judge, Family Court. The appeal is, therefore, liable to be dismissed and it is hereby dismissed. Still the appellant is entitled to move an application under Section 12 of the Act, 2005 before the Family Court in the maintenance proceeding said to be pending before that Court.

M.J. John v. Elizabeth John, Civil Revision Petition (PD) No. 3396 of 2009 and M.P. Nos. 1 and 2 of 2009 (Madras H.C.) (28.03.2011)

Judge: K. Mohan Ram

Order

1. The first Respondent in OP. No. 282 of 2008 on the file of the First Additional Judge, Family Court, Chennai is the Petitioner in the above civil revision petition.

2. The Petitioner herein is the husband of the first Respondent. The first Respondent herein filed OP. No. 282 of 2008 under Sections 12 and 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 seeking the following reliefs:

> ...that she been given a protection order under Section 18 of the Domestic Violence Act and the residence order under Section 19 of the Domestic Violence Act directing to return the property and the money due to the Petitioner and that the Respondent to be paid as ₹ 15,000/- as maintenance every month under Section 21 and a compensation of ₹ 10 lakhs under Section 22 of the Domestic Violence Act.

3. The said petition was contested by the Petitioner herein on various grounds. In the said petition, the first Respondent herein filed two applications in IA. Nos. 276 of 2008 and 2535 of 2009. In IA. No. 276 of 2008, an order of interim injunction was prayed to restrain the second Respondent herein from handing over possession to 11-A and 11-B Golden Alteus, AK-3/4, 4th Avenue, Anna Nagar, Chennai-40 to the Petitioner herein or his nominee. In IA. No. 2535 of 2009, the first Respondent herein prayed to raise the

order of injunction dated 12.2.2008 made in IA. No. 276 of 2008 in the said petition with reference to Flat 11B, Golden Altius, Anna Nagar, Chennai-40.

4. IA. No. 2535 of 2009 was disposed of by an order dated 29.9.2009, in and by which, it was allowed and the order of status quo in respect of flat No. 11-B, Golden Altius, Anna Nagar, Chennai-40 granted in IA. No. 276 of 2008 stood modified and the order of status quo was raised in respect of the said property. Being aggrieved by that, the Petitioner is before this Court.

5. Heard both.

6. Mr. V. Bhiman, learned Counsel for the Petitioner submitted that the said original petition filed by the first Respondent herein under Sections 12 and 18 to 22 of the said Act itself is not maintainable. Learned Counsel further submitted that as per the provisions contained in the said Act, an application under Section 12 can be presented by an aggrieved person only before a Magistrate seeking one or more reliefs under the said Act and that only in an application under Section 12 of the said Act before the Magistrate, the Magistrate can grant orders under Sections 18 to 22 of the said Act. It is the contention of the learned Counsel that an independent application seeking the reliefs under Sections 18 to 22 of the said Act is not maintainable.

7. Learned Counsel for the Petitioner herein drew the attention of this Court to Section 26(1) of the said Act, which provides that any relief available under Sections 18 to 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.

8. The said provision makes it clear that the relief provided under Sections 18 to 22 of the said Act may also be sought, if any legal proceedings before the family court is pending between the parties. Section 26 does not provide for an independent application being filed under Section 12 seeking the relief under Sections 18 to 22.

9. In support of his contention, learned Counsel for the Petitioner placed reliance on the decision in the case of Cap.C.V.S. Ravi v. Mrs. Ratna Sailaja 2009 (1) MWN (Cri) 472}. In the said decision, it has been laid down as follows:

> The Domestic Violence Act does not contain any provisions clothing jurisdiction on the Family Court to entertain an application filed under Section 12 of the Act. It may be true that the reliefs available under Sections 18 to 22 of the Act may also be claimed in a pending proceeding before the Family Court already initiated by the aggrieved person but from that it cannot be inferred that an independent application under Section 12 of the Act can be filed before the Family Court. So only an option is given to the aggrieved person to claim the reliefs available under Sections 18 to 22 of the Act in a pending legal proceedings initiated by such aggrieved person before the Family Court and therefore

from such a liberty given to the aggrieved person an inference cannot be drawn to the effect that a pending application filed under Section 12 of the Act before the learned Magistrate can be transferred to the file of the Family Court. Unless the Court has been specifically empowered to entertain an independent application filed under Section 12 of the Act, transfer of a pending application filed under Section 12 of the Act from the file of the learned Magistrate to the file of the Family Court cannot be ordered.

10. Countering the said submissions, learned Counsel for the first Respondent fairly submitted that from a reading of Section 26, it is correct, as contended by the learned Counsel for the Petitioner, that an independent application under Section 12 or Sections 18 to 22 of the said Act is not maintainable before the Family Court. But, the learned Counsel submitted that subsequent to filing of the said original petition, the first Respondent herein also filed OP. No. 133 of 2009 in January 2009 seeking divorce and therefore, OP. No. 282 of 2008 could be treated as an interim application under Section 26 of the said Act in OP. No. 133 of 2009. Learned Counsel submitted that entertaining of OP. No. 282 of 2008 by the Family Court is only an irregularity and that therefore, on that ground, the order passed by the Family Court may not be interfered with. Learned Counsel further submitted that the Family Court has inherent powers to treat OP. No. 282 of 2008 as an interim application in OP. No. 133 of 2009 and on this ground also, the order passed by the Family Court is sustainable.

11. I have considered the aforesaid submissions of the learned Counsel on either side and perused the materials available on record.

12. A reading of Section 12 makes it abundantly clear that the application under Section 12 can be filed by the aggrieved person only before the Magistrate. Section 12 does not provide for filing of an application under Section 12 before the Family Court or Civil Court. Section 26 enables the aggrieved person to seek the relief under Sections 18 to 22 of the said Act in any pending legal proceedings before the Family Court. Admittedly, when no other legal proceedings were pending before the Family Court on the date of filing of OP. No. 282 of 2008, the said original petition filed under Sections 12 and 18 to 22 seeking interim reliefs, prima facie, is not maintainable. The Family Court has no jurisdiction to entertain an independent application under Sections 12 and 18 to 22 of the said Act in the absence of any other pending proceedings between the parties.

13. In the decision rendered in 2009 (1) MWN (Crl.) 472 (cited supra) also, I have held so, but in a different context. For the aforesaid reasons, the contention of the learned Counsel for the Petitioner is to be upheld. The contention of the learned Counsel for the first Respondent that entertaining of OP. No. 282 of 2008 filed under Section 12 of the said Act is only interlocutory cannot be countenanced for the reason that the Family Court has no jurisdiction to entertain the application, which goes to the root of the jurisdictional issue

and as such, it cannot be considered to be an irregularity. The order passed by the Family Court in OP. No. 282 of 2008 cannot be sustained and this Court holds that the order passed in OP. No. 282 of 2008 is not maintainable.

14. For the foregoing reasons, the civil revision petition is allowed. However, in view of the pendency of OP. No. 133 of 2009 filed by the first Respondent herein, it is open to the first Respondent to file an application under Sections 18 to 22 of the said Act in OP. No. 133 of 2009 and seek appropriate relief. No costs. Consequently, the above M Ps are closed.

A.V. Rojer v. Janet Sudha, Crl. O.P. (MD). No. 2496 of 2007 and M.P (MD) Nos. 1 and 2 of 2007 (Madras H.C.) (12.04.2007)

Judge: G. Rajasuria

Judgment

1. This petition has been filed to call for the records in C.C. No. 26 of 2007 on the file of the learned Judicial Magistrate No. II, Nagercoil, Kanyakumari District and quash the same.

2. The facts giving rise to the filing of this petition as stood exposited from the records could be portrayed thus:

The respondent wife herein filed a petition before the learned Judicial Magistrate No. II, Nagercoil and it was taken up on file in C.C. No. 26 of 2007 as against the petitioner.

3. The gist and kernel of the averments in the petition is that it was filed so as to invoke Sections 12,18, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005, Act No. 43 of 2005. The wife happened to be the aggrieved person before the Magistrate who would air her grievance to the effect that the petitioner herein being the husband neglected her and the children without maintaining them. The fact remains that there are proceedings pending before the District Court for taking custody of the children at the instance of the petitioner so to say, the husband and the M.C proceeding also is pending before the Magistrate at the instance of the respondent herein seeking maintenance in favour of the wife and the children.

4. During arguments, it also transpired that the Magistrate concerned posted the matter for conciliation and the Protection Officer tried to conciliate, but ended in a fiasco. Thereupon, the Protection Officer submitted the report dated 12.02.2007 to the effect that the allegations made by the wife are true. The husband also filed his counter before the Magistrate.

5. At this juncture, the husband being the petitioner herein has chosen to invoke the jurisdiction of this Court under Section 482 Cr.P.C, so as to get quashed the entire proceedings pending before the Magistrate under the Protection of Women from Domestic Violence Act, 2005, Act No. 43 of 2005.

6. The main grievance of the petitioner as aired by the learned Counsel for the petitioner is that when before the competent Courts, the litigations are pending relating to the custody of the children and for maintenance, the Magistrate under the Protection of Women from Domestic Violence Act, 2005,Act No. 43 of 2005, would have no jurisdiction to entertain such a petition and proceed with the matter, for which the learned Counsel for the respondent would draw the attention of this Court to Sections 26 and 36 of the Act and they are extracted hereunder for ready reference:

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.

This clause provides that any relief available under the proposed legislation may also be sought in any legal proceeding before a civil Court, family Court or a criminal Court and that any relief which may be granted under the proposed legislation may be sought for in addition to and along with reliefs sought for in a suit or legal proceeding before a civil or criminal Court. Sub-clause (3) lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceeding other than proceedings under the proposed legislation.

36. Act not in derogation of any other law.- The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

This clause stipulates that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law.

7. The mere perusal of those provisions would show that the jurisdiction exercised by the Magistrate under the Special Enactment namely the Protection of Women from Domestic Violence Act, 2005,Act No. 43 of 2005, is not to the exclusion of ordinary jurisdiction exercisable by the regular Courts.

8. The legislators thought fit to specifically highlight under Section 36 that this special enactment is not in derogation of other laws for the time being in force. Over and above that, in Section 26 of the Act, the clause "whether such proceeding was initiated before or after the commencement of this Act" is worthy of being referred to. This is a fitting and suitable answer as against the contention that when proceedings are pending before the competent Courts already even as on the commencement of theAct, there could be fresh proceedings initiated before the Magistrate Court under the said special enactment. Once again, to the risk of repetition, I would like to make it clear that the legislators in their wisdom thought fit that aggrieved women should be given more option in getting speedy remedy as trying to get remedy as per the general law is a time consuming one. When such is the position, applying Heydon's rule / Mischief rule / Golden rule, the provisions of the Act should be interpreted. The Heydon's rule could be summarised as under:

1st - What was the common law before the making of the Act,

2nd - What was the mischief and defect for which the common law did not provide,

3rd - What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and

4th - The true reason of the remedy;

9. In Smith v. Hughes reported in (1960) 1 W.L.R 830, [in Maxwell on The Interpretation of Statutes - Twelfth Editiion by P.St.J.Langan] the Golden Rule is further explained.

10. The aggrieved women should not be made to run from pillar to post by wasting time and energy to get justice and by way of providing a quick remedy, the Magistrate is given with such a jurisdiction under the Special enactment. While this Court interpreting the provisions of such special enactment should not simply lay down as a rule that when the proceedings are pending before competent Court, the Magistrate would be debarred from entertaining similar grievances at the instance of the aggrieved party. Hence, in this view of the matter, the broad proposition which is sought to be pressed into service by the petitioner, cannot be countenanced and upheld.

11. The learned Counsel for the petitioner would raise one other point based on the definition "domestic violence" as found envisaged in Section 3 of the special enactment. The mere perusal of it, would show that it has wider scope. I would even put it that A to Z type of injuries either physical or mental are as found incorporated in Section 3 of the Act, with the intention to give speedy protection to women zealously.

12. Here, the learned Counsel for the respondent would draw the attention of this Court to the paragraph No. 13 of the petition filed before the learned Magistrate by her and highlight that on 10.12.2006 so to say after the commencement of this Act, there was violence inflicted on the wife by the husband. When such is the position, ex facie and prima facie, I cannot hold that there is no ground at all to invoke the Act. However, I do not hereby

give any final verdict on that factual issues. It is open for the petitioner herein to raise the plea that the averments in the petition do not attract the definition "domestic violence" under Section 3 of the of the Protection of Women from Domestic ViolenceAct, 2005, Act No. 43 of 2005, and on such raising of the issue, the Magistrate shall hear both sides and give his verdict as a preliminary issue on that point.

13. With the above observation, this petition is closed. Consequently, connected M.P.Nos. 1 and 2 of 2007 are also closed.

Bimal Mitra v. Ashalata Mitra, 2013 Cr.L.J. 4110 (Gauhati H.C.) (23.07.2013)

Judge: BD Agarwal

Judgment and Order (Oral)

1. This application under Section 482 read with Section 397/401 of the Code of Criminal Procedure, 1973 has been filed by the accused persons praying for quashing the Complaint Case No. 281 of 2012 filed by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('D.V. Act' in brief), which is pending in the court of learned Sub-Divisional Judicial Magistrate, Bijni.

2. Heard Mr. K. Sarma, learned counsel for the petitioners and Mr. S. Bhuyan, learned counsel for the respondent. Also perused the complaint petition and other documents annexed with the criminal petition.

3. Mr. Sarma, learned counsel for the petitioner prayed for quashing of the domestic violence proceeding on two grounds. Firstly, according to the learned counsel since the respondent has already filed a separate case under Section 498 A of the Indian Penal Code, with the same allegation, a separate case under D.V. Act is not maintainable in law. Secondly, Mr. Sarma submitted that at least the case is not maintainable against the in-laws as the allegations are basically against the husband.

4. The complaint under Section 12 of the D.V. Act has been filed with the allegations that since after the marriage on 8.3.2012 all the accused persons inflicted mental torture by way of demanding dowry and also abused the complainant by using unparliamentary words and filthy language. There is also an allegation of demand of dowry of ₹ 50,000/-.

5. The D.V. Act has been enacted with avowed objective to give effective protection to the victims of domestic violence since it was felt that general provisions of IPC were not sufficient and enough to address the grievances of married women in the marital home. Under Section 3 of the Act, domestic violence includes verbal and emotional abuse by

way of insult, humiliation etc. and also economic abuse. I have noted earlier that there is an allegation of demand of dowry and also misbehaving the complainant/respondent by way of using filthy language, involving her dignity. The allegation of emotional torture is equally against the in-laws. Hence, the criminal proceeding cannot be quashed against the in-laws at this stage.

6. With regard to the question whether a parallel proceeding under Section 498A of the IPC and also under Section 12 of the DV Act can continue the reply can be solicited from Section 26 of the Act. For better appreciation of this issue, Section 26 of the Act is reproduced below :

"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 alongwith 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."

7. A bare reading of Section 26 clearly indicates that the reliefs that can be claimed under the DV Act by way of filing a complaint under Section 12 is in addition to the legal proceedings that may be initiated by an aggrieved person either in a civil court or in any criminal court.

8. Referring to Clause 8 of the complaint format, Mr. Sarma contended that at the time of preparing the complaint the 'service provider' should inform the victim/aggrieved person that she can also initiate a criminal proceeding by way of lodging an FIR and if the victim is not interested to file the FIR the said fact may be noted in the report. Mr. Sarma further submitted that as per the statutory rule the fact of previous litigation should also be mentioned in the complaint.

9. In my considered opinion, the fact of disclosing previous litigation itself admits the legal position that an aggrieved person can file a complaint under Section 12 of the Act in addition to other criminal or civil proceedings. I am also of the view that the requirement to inform the victim that she can also initiate a criminal proceeding is only to apprise the victim about her legal right about additional and alternative remedy. Besides this, under the DV Act a victim can seek various reliefs viz., protection order under Section 18, residential order under Section 19, monetary relief under Sections 20 and 22 and custody order under Section 21 etc. These reliefs cannot be granted in a proceeding under Section 498A of the IPC. Even if some of the reliefs can be sought for in a civil proceeding and

that would also not be a bar for filing complaint under Section 12 of the DV Act. The only pre-condition is that if any such civil or criminal proceeding is initiated the same shall be reflected in the complaint and the result of such litigation should also be brought to the notice of the court.

10. In view of above, I do not find any merit in this criminal petition. Resultantly, it is dismissed.

Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder), C.R.R. 1835 of 2010 (Calcutta H.C.)(06.10.2010)

Judge: Syamal Kanti Chakrabarti

Judgment

1. The present revisional application under Section 482 Cr.P.C. is directed for quashing the proceedings being Misc. Case No. 180/2010 corresponding to T.R. Case No. 85/2010 under Section 12 of the Protection of Women From Domestic Violence Act, 2005 now pending before the 5th Court of Learned Judicial Magistrate, Srirampore at District Hooghly.

2. The petitioner contends that he is a school teacher and married O.P. No. 1 in the month of May, 1994 according to Hindu Rites and Customs and thereafter led conjugal life with her at 21, Library Lane, P.S. Srirampore, District - Hooghly, A female child was born out of their wedlock. Subsequently O.P. No. 1 suffered from various ailments and lastly on 26.01.2010 father of O.P. No. 1 took her at the paternal house and on 29.01.2010 their daughter was also taken to her paternal house but subsequently she has declined to come back. So he has filed a suit for restitution of conjugal rights being MAT Suit No. 176 of 2010 on 23.02.2010. In the meantime the O.P. No. 1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking the reliefs under Sections 17/19A/19D/29 of the Act. In addition, she has repeatedly claimed monthly maintenance allowance for herself and the child under Section 125 Cr.P.C. and reliefs to be awarded under Section 24 of the Hindu Marriage Act. On receipt of such application Learned Court below by order dated 10.03.2010 called for a report from the Protection Officer, Hooghly fixing 15.03.2010 for report. On 18.03.2010 the aggrieved women filed another petition for interim relief under Section 23(2) of the Act. Learned Court below also called for a domestic incident report thereon from the Protection Officer, Hooghly within the date fixed. On 05.04.2010 the Protection Officer, Hooghly submitted his report which was placed before the Learned Court below. On 03.05.2010 the Learned Court below considered her prayer for exparte interim relief under Section 23 of the Act

as per provision of Section 17 of the Act. At the relevant time he was inclined to grant the relief regarding right of residence and all other reliefs as prayed for by her shall be considered after hearing the respondent. Therefore, by such order dated 03.05.2010 the Learned Court below decided that the aggrieved women Smt. Shakuntala Sanyal will get the right of residence in the shared household and the respondent/husband was restrained from dispossessing the aggrieved women from the dwelling unit till final disposal of the case and fixed 07.05.2010 for service return of notice upon the respondent/husband and for hearing of the petition of complaint.

3. Being aggrieved by and dissatisfied with such order the respondent/husband has preferred this revisional application praying for quashing of such proceedings which is not inconformity with the mandatory provisions of Section 12 of the Act. The Learned Lawyer for the petitioner herein has raised the following points in support of his contention: -

A. Such type of exparte order cannot be passed by the Learned Court below after issue of summons to the respondent/husband and before his appearance.

B. The aggrieved women has claimed several reliefs at different courts under Section 125 Cr.P.C., Section 24 of the Hindu Marriage Act and also lodged a complaint under Section 498A IPC in addition to the reliefs claimed under the Protection of Women from Domestic Violence Act, 2005 which may be opposed to the process of law seeking same relief at different fora.

C. The learned Court below has granted the relief without considering properly the report of the Protection Officer.

4. The Learned Lawyer for the O.P. No. 1 opposed the move and had contended that such type of revisional application under Section 482 Cr.P.C. is not maintainable at all since the impugned order is appelable. Secondly, the object of the present Act of 2005 is to concentrate the claims of wretched and deserted women who are victims of domestic violence to seek relief through single window system instead of roaming at different courts/places for certain reliefs.

5. So far as the question of maintainability is concerned. Learned Lawyer for the petitioner has claimed that under Section 29 of the Act of 2005 there shall lie an appeal to the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved persons or the respondent, as the case may be whichever is later. But the petitioner has challenged the entire proceeding under Section 482 Cr.P.C. which is a general right conferred under a separate code and the provision of Section 482 Cr.P.C. and Section 29 of the Act, 2005 shall be treated as mutually exclusive. In fact if the proceeding is quashed the reliefs sought to be granted under Section 17 of the Act read with Section 23 thereof, the impugned order dated 03.05.2010 passed under Sub-Section 2 of Section 23 of the Act will have to be set aside and thereby the appellate authority of the

Court of Session contemplated in Section 29 of the Act will be usurped under the sweep of Section 482 Cr.P.C. When the legislature has prescribed an appellate authority, i.e., the Court of Session for challenging the legality and propriety of any order made by a Magistrate under the Protection of Women from Domestic Violence Act, 2005 the inherent power conferred under Section 482 Cr.P.C. cannot be exercised usurping the jurisdiction of the appellate authority without reasonable cause. It has been set at rest in Hossein Kasam Dada (India) Ltd. v. State of M.P. AIR 1953 SC 221 that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. To disturb an existing right of appeal is not a mere alteration in procedure. Such a vested right cannot be taken away except by express enactment of necessary intendment. The Act of 2005 is a special beneficial legislation containing specific provision of appeal. Where such special law provides Provision for appeal, with period of limitation under Section 29 of the Act, no external aid is permissible to interpret such express provision in terms of general inherent powers under Section 482 Cr.P.C. in a round about way by quashing entire proceedings to make one specific order inoperative. Therefore, I hold that such argument is not tenable in law and the instant application is not maintainable in law in view of Section 29 of the Act.

6. The Second contention of Learned Lawyer for the petitioner is that the aggrieved women has sought for same reliefs at different courts which is opposed to the principle of natural justice because the husband cannot be forced to concede to her same demand repeatedly at different proceedings. In this connection learned Lawyer for the O.P. No. 1 has drawn my attention to Sub-Section 2 of Section 26 of the Act which provides that any relief referred to in Sub-Section 1 may be sought for in addition to and alongwith any other relief that the aggrieved person may seek in such suit or legal proceedings before a civil or criminal court. A safeguard has been made against abuse by such process of law in Sub-Section 3 of Section 26 of the Act in which it is provided that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under the Act of 2005, she shall be bound to inform the Magistrate of the grant of such relief. Admittedly the O.P. No. 1 has not been granted any relief under Section 125 Cr.P.C. or Section 24 of the Hindu Marriage Act which she is supposed to inform the Learned Magistrate concerned. Therefore, pendency of her application elsewhere cannot stand in the way of seeking her urgent relief under Section 12 of the Act of 2005.

7. Learned Lawyer for the petitioner has argued at length that when an application under Section 12 of the Act has been filed and the Learned Magistrate has issued summons to the respondent/ husband to appear and contest, when the report of the Protection Officer called for is not available, no relief can be granted violating mandatory provisions laid down therein. I fear that this is not the true proposition of law in connection with the present relief granted.

8. From the certified copy of the relevant order sheet it will appear that on 18.03.2010 the aggrieved woman filed a petition for interim relief under Section 23(2) of the Act on which Learned Magistrate called for a domestic incident report. Said report was received by him on 05.04.2010. From the impugned order dated 03.05.2010 I find that the Learned Court below perused the petition of complaint, the domestic incident report submitted by the Protection Officer, Hooghly and the submissions made by learned Lawyer for the petitioner/aggrieved woman and on perusal of the available materials on record he has decided to grant exparte interim relief contemplated in Section 17 of the Act in the shared household. Such relief granted under Section 17 of the Act is an appellable order under Section 29 of the Act and as such the same cannot be challenged under Section 482 Cr.P.C. for the reasons cited above. The special self-contained law shall prevail upon the general procedural law embodied in procedural law i.e. Cr.P.C.

9. While considering the urgent need for conferring the right of residence, Learned Court below has reserved his consideration for other reliefs claimed by the petitioner under Sections 12, 19A/D, Section 20 and 22 of the Act. Learned Court below was not inclined to give any other relief to the complainant aggrieved woman which shall be considered after hearing the respondent. Sub-Section 2 of Section 23 provides that 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 exparte order on the basis of affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, 19, 20, 21 or as the case may be, Section 22 against the respondent. Now Section 19 (1) (a) of the Act provides that while disposing of an application under Sub-Section 1(a) of Section 12, the Magistrate may on being satisfied pass a residence order 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. Therefore, in exercising the power conferred under Sub-Section 2 of Section 23 of the Act, Learned Magistrate has dealt with matters which is specifically provided in Section 19 of the Act by way of granting temporary relief subject to final decision upon hearing the respondent/husband.

10. Needless to say that the legislature in its wisdom has enacted the Protection of Women from Domestic Violence Act, 2005 to provide more effective protection of the rights of women guaranteed under the Consideration who are victims of violence of any kind occurring within the family and for matters communicated therewith or incidental thereto through single window system. In the instant case unfortunately the marital tie of the contending parties is on the verge of collapse after leading conjugal life for more than 15 years. It is alleged by the petitioner that his wife is suffering from serious ailments along with her child and has undergone operations in 2000. Therefore, she needs her husband's

care and for this purpose learned court below has temporarily granted the right of residence in their shared house which is neither illegal nor opposed to public policy rather quite consistent with the object of this beneficial special legislation.

11. Learned lawyer for the petitioner has also drawn my attention to Annexure A to the application under Section 12 of the Act containing as many as sixteen allegations against the husband originating from the date of their marriage in 1994 while the Act was not in force. Since the Act has no retrospective effect such types of claims cannot be entertained under Section 12 of the Act.

12. From the own averment of the petitioner it will appear that the wife is residing separately from the husband with effect from 26.01.2010 (paragraph 8) and learned court below by the impugned order dated 03.05.2010 has granted relief for temporary residence at her matrimonial home in the context of pending litigation between the spouses being MAT Suit No. 176 of 2010 for restitution of conjugal right which has also been sought for by the husband. Therefore, I do not find any merit in this revisional application which is dismissed.

13. In CRAN No. 2480/10 the petitioner has prayed for interim order of stay of the aforesaid Misc. Case No. 180/2010 which need not be considered in view of the final disposal of the main revisional application. Learned court below is directed to proceed with the case as per law.

14. The parties will act upon signed plain copy of this order.

Renu Mittal v. Anil Mittal, II (2010) DMC 775 (Delhi H.C.) (27.09.2010)

Judge: Shiv Narayan Dhingra

Judgment

1. This Revision Petition has been filed by the petitioner against an order dated 20th May, 2010 whereby learned Additional Sessions Judge (ASJ) dismissed an appeal filed by the petitioner against the order of learned Metropolitan Magistrate (MM) partly allowing the application under Protection of Women from Domestic Violence Act, 2006 ('Domestic Violence Act' for short) and partly rejecting the application under Domestic Violence Act.

2. The petitioner had married the respondent in the year 2006 and a dispute arose between her and her husband soon after the marriage and in the year 2007 itself the petitioner filed a petition under Section 125 of Code of Criminal Procedure (Cr.P.C.) against the respondent for grant of maintenance. Learned MM awarded a maintenance of (Editor:

The text of the vernacular matter has not been reproduced.) 6,000/- p.m. The petitioner also filed an FIR Under Section 498A/406 IPC against respondent and thereafter filed an application under Section 12 of Domestic Violence Act seeking therein, apart from maintenance, compensation under various heads of (Editor: The text of the vernacular matter has not been reproduced.) 1.00 lakh, (Editor: The text of the vernacular matter has not been reproduced.) 2.00 lakh, (Editor: The text of the vernacular matter has not been reproduced.) 3.00 lakh and (Editor: The text of the vernacular matter has not been reproduced.) 5.00 lakh. She had also asked for rights of residence. The learned MM after considering the averments made by both the parties, observed that Section 12(2) of the Domestic Violence Act provides that compensation can be claimed by the parties for the injuries under civil suit as well. The petitioner had made astronomical claims for compensation without specifying grounds for different compensations in her petition. At one place the claim was of (Editor: The text of the vernacular matter has not been reproduced.) 1.00 lakh, at another place for (Editor: The text of the vernacular matter has not been reproduced.) 2.00 lakh, at third place for (Editor: The text of the vernacular matter has not been reproduced.) 3.00 lakh and at fourth place for (Editor: The text of the vernacular matter has not been reproduced.) 5.00 lakh. In support of these claims no documents etc. were filed. She also claimed Istridhan and dowry, while she had already preferred a criminal case under Section 498-A/406 of IPC against the respondent and issue of dowry demand or non return of any article was pending before the competent Court and that Court was to decide if any Istridhan/dowry article was still with the respondent. The Court therefore allowed the application of the petitioner only partly to the extent of re-confirming the maintenance of (Editor: The text of the vernacular matter has not been reproduced.)6,000/- p.m. and as awarded to her by the learned MM under Section 125 of Cr.P.C. dismissing the rest of the claim. Learned ASJ after going through the entire material upheld the order of MM.

3. The revision petitioner has argued that learned ASJ did not fix maintenance after considering the evidence of the parties and fixed the maintenance on the basis of order passed by the Court of MM under Section 125 of Cr.P.C.

4. It must be considered that for granting maintenance, a party can either approach the Court of MM under Domestic Violence Act soon after commission of Domestic Violence or under Section 125 Cr.P.C. claiming maintenance. The Jurisdiction for granting maintenance under Section 125 Cr.P.C. and Domestic Violence Act is parallel jurisdiction and if maintenance has been granted under Section 125 Cr.P.C. after taking into account the entire material placed before the Court and recording evidence, it is not necessary that another MM under Domestic Violence Act should again adjudicate the issue of maintenance. The law does not warrant that two parallel courts should adjudicate same issue separately. If adjudication has already been done by a Court of MM under Section

125 Cr.P.C., re-adjudication of the issue of maintenance cannot be done by a Court of MM under Domestic Violence Act. I, therefore, consider that learned MM was right in allowing maintenance only to the tune of (Editor: The text of the vernacular matter has not been reproduced.) 6,000/- p.m.

5. So far as other reliefs are concerned, the learned MM and ASJ had given liberty to the petitioner to approach the Civil Court and prove that she had suffered loss and was entitled for compensation. I find no ground to interfere with this order of learned ASJ as the order is not without jurisdiction. I also find force in the reasoning given by learned ASJ that since the matter regarding dowry articles and Istridhan was pending before another court, it was rightly not gone into by MM as it would not have been appropriate for the Court of MM under Domestic Violence Act to initiate simultaneous adjudication in respect of Istridhan and dowry articles, when another court was seized with the matter.

6. I, therefore, find no force in this petition. The petition is dismissed.

Rajesh Kurre v. Safurabai, AIR 2009 (NOC) 813 (CHH) (Chattisgarh H.C.)(11.11.2008)

Judge: T.P. Sharma

Order

1. By this petition, the applicant has challenged legality & propriety of the judgment dated 17-4-2008 passed by the Sessions Judge, Kabirdham in Criminal Appeal No.5/2008 whereby learned Sessions Judge has partly modified the amount of monthly maintenance awarded to the non-applicants under the provisions of Section 20 (1) (d) of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') by the Judicial Magistrate, First Class, Kawardha vide order dated 14-12-2007 in Misc. Criminal Case No.76/2007.

2. The part of the judgment is challenged on the ground that while awarding any maintenance in accordance with Section 20 (1) (d) of the Act, the Court is required to award maintenance in accordance with Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Code'), but the trial Court has not awarded maintenance in accordance with Section 125 of the Code and thereby committed illegality.

3. I have heard learned counsel for the parties and perused the record of the trial Court as also the appellate Court.

4. Short question raised by the applicant is that at the time of awarding any monetary relief in terms of Section 20 (1) (d) of the Act, whether the Court is required to take into

consideration the liability and entitlement for maintenance in terms of Section 125 of the Code?

5. Learned counsel for the applicant submits that Section 20 (1) of the Act envisages that while disposing of an application under sub-section (1) of section 12, the Magistrate is competent to direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person as a result of the domestic violence including 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. Learned counsel further submits that in accordance with the provisions of Section 125 of the Code, the aggrieved party is required to prove that he or she is unable to maintain himself/herself and having sufficient cause for separate living and the person against whom maintenance is claimed is having sufficient means, but he is not maintaining the aggrieved person. Therefore, at the time of disposing the application under Section 12 (1) of the Act if the Court directs for payment of any expenses including maintenance, then the Court is required to examine the entitlement and liability in accordance with Section 125 of the Code.

6. On the other hand, learned counsel appearing for the non- applicants supported the judgment impugned and submitted that the provisions for maintenance under Section 20 of the Act are in addition to an order of maintenance under Section 125 of the Code therefore, at the time of passing any order of maintenance under Section 20 of the Act, the Court is not required to examine the case in accordance with the provisions of Section 125 of the Code. The provisions are independent and in addition to the provisions of maintenance under the Code. Learned counsel further submit that Section 20 of the Act is a special provision for maintenance to the persons aggrieved under the Act. This section empowers to order lump sum or monthly payments for maintenance. Sub- section (6) of Section 20 of the Act empowers to direct the employer or a debtor of the non-applicant, 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. Relief available under Section 20 of the Act is additional relief available to the aggrieved person and in accordance with Section 26 of the Act the aggrieved person may also avail the remedy before a civil court, family court or a criminal court in addition to and along with any other reliefs available under the Act.

7. In order to appreciate the contentions of the parties, I have examined the provisions relating to monetary relief provided under Section 20 of the Act. Section 20 of the Act reads as follows: -

"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, 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."

8. Section 20 of the Act says that at the time of disposal of the application under sub-section (1) of Section 12, the Magistrate is competent to direct the respondent to pay monetary relief to the effected or aggrieved person or 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 or any other law for the time being in force.

Sub-section (2) of Section 20 of the Act empowers the Magistrate to grant such relief which shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved is accustomed.

Sub-section (3) of Section 20 of the Act empowers the Magistrate to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

Sub-section (6) of Section 20 empowers the Magistrate to direct the employer or a debtor of the respondent, to directly pay to the aggrieved person.

Section 26 of the Act reads as follows:- "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."

9. Section 26 of the Act says that relief available under sections 18, 19, 20, 21 and 22 may also be sought in addition to and along with any other relief which the aggrieved person may seek in any legal proceeding before a civil court, family court or a criminal court. Relief of maintenance to wife and children is available to the effected party under his entitlement and liability of the person against whom relief is claimed under Section 125 of the Code, when such person is unable to maintain herself and the person against whom relief is claimed is under obligation to maintain and having sufficient means to maintain, but fails to maintain the applicants. But in case of domestic violence, the Court is empowered to grant such relief if the person is aggrieved as a result of the domestic violence and may grant monetary relief in terms of maintenance which would be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved party is accustomed and also empowered to grant lump sum or monthly maintenance or to 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. However, the Magistrate is not empowered to grant relief in such form in accordance with Section 125 of the Code. At the time of interpretation of statutes, the Court is required to see whether the provisions of the statute are plain, unambiguous and capable of giving their ordinary meaning.

10. In the matter of J.P. Bansal v. State of Rajasthan and another the Apex Court has held that

"When the words of a Statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered

from the language used, which means that attention should be paid to what has been said as also to what has not been said."

11. While dealing with the question of Interpretation of Statutes, the Apex Court has held in the case of Gurudevdatta VKSSS Maryadit and others v. State of Maharashtra and others that

"..it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

12. The golden rule of interpretation of statutes is that the words of a statute must prima facie be given their ordinary meaning. The words of provisions under Section 20 of the Act are clear, plain and unambiguous. The provisions are independent and are in addition to any other remedy available to the aggrieved under any legal proceeding before the civil Court, criminal Court or family Court. The provisions are not dependent upon Section 125 of the Code or any other provisions of the Family Courts Act. 1984 or any other Act relating to award of maintenance. In case of award of maintenance to the aggrieved person under the provisions of the Act, the Court is competent to award maintenance to the aggrieved person and child of the aggrieved person in accordance with the provisions of Section 20 of the Act and the aggrieved person is not required to establish his case in terms of Section 125 of the Code.

13. Learned trial Court after arriving at a finding that the non-applicants are aggrieved as a result of domestic violence has awarded maintenance in accordance with Section 20 of the Act. The trial Court has committed neither any illegality nor any infirmity while passing the order impugned.

14. In the result, I do not find any merit and substance in the petition, same is liable to be dismissed and it is accordingly, dismissed.

Anwar v. Shamim Bano, 2012 Cr.L.J. 2552 (Rajasthan H.C.) (13.04.2012)

Judge: Mahesh Chandra Sharma

Order

1. This Criminal Misc. Petition No. 786 of 2011 under section 482, Cr. P.C. against the order dated 25.1.2011 of Special Court Women Atrocities and Dowry Cases, Kota and quashing the proceedings pending before the ACJM No. 4 in case No. 04/08 wherein the same relief has been sought by the non petitioners by way of application under sections 12, 22, 23, 23(2) of the Protection of Women from Domestic Violence Act, 2005 whereas the application for interim maintenance under section 125, Cr. P.C. has already been decided by the Family court vide order dated 9.5.2008. Brief facts of this criminal misc. petition are that the petitioner got married to the respondent No. 1 on 13.5.2004 as per the Islamic shariat known as 'Nikah'. After consuming the marriage they lived together happily. A child was born out of their wedlock. But the relations between them could not be maintained for long and began quarreling after two years. The wife of the petitioner began to stay at her father's house without any reason, when all efforts had failed to maintain the relation between spouses. Eventually the petitioner had to file a suit for restitution of conjugal rights before the family court. After filing of the application for restitution of conjugal rights in family court Kota and when the notices were issued to the respondent she filed a complaint under section 156(3), Cr. P.C. for the offence under sections 498A and 406, IPC on 27.9.2006 wherein all family members of the petitioner have been implicated. The respondent No. 1 filed an application under section 125, Cr. P.C. for maintenance in Family Court Kota. After hearing both the parties, the Family court awarded ₹ 500/- per month for the child per month and in respect of the respondent No. 1 her prayer was rejected vide order dated 9.5.2008. Thereafter the respondents filed application for interim maintenance under section 12 of the Protection of Women from Domestic Violence Act, 2005 before the court of Judicial Magistrate No. 4 Kota. The petitioner submitted reply to this application. Hearing both the parties the court passed an order dated 17.4.2008 wherein the application for interim maintenance was rejected. The respondent No. 1 filed revision petition before the Sessions Judge Kota, who transferred the same to the court of Special Court Women Atrocities and Dowry Cases. Kota. The court after considering the facts and circumstances of the case vide order dated 25.1.2011 directed the petitioner to pay interim maintenance in the amount of ₹ 2000/- per month to the respondent from the date of filing of the application. Aggrieved by the order dated 25.1.2011 the petitioner filed the above criminal misc. petition for quashing the order of interim maintenance to the respondent No. 1.

2. Mr. K.A. Khan, learned counsel appearing for the petitioner has argued that the divorced Muslim lady cannot claim for monthly maintenance continuously and for indefinite period of time even after Iddat period under section 125, Cr. P.C. If the divorced Muslim lady unable to maintain herself, she can claim under section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 during Iddat period and under section 4 of the Act a divorce muslim lady is entitled for maintenance after Iddat period. The Muslim lady has been given option to be governed by the provisions of Sections 125 to 128, Cr. P.C. under the Muslim Women (Protection of Rights on Divorce) Act. The learned counsel for the petitioner has contended that although the option was given in the Family Court but the order dated 9.5.2008 was passed according to Muslim law, hence the petitioner has not raised any objection against this order. The learned counsel has further contended that two remedies cannot be exercised at a time for the same relief. Despite passing of the order by the Family Court granting maintenance to the child, the respondent No. 1 also avail the remedy of filing application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. The Judicial Magistrate rejected the application but on a revision petition filed by the respondent the revisional court allowed interim maintenance ₹ 2,000/-per month to the respondent No. 1 from the date of filing of the application. The learned counsel has further argued that this order is liable to be set aside in the facts and circumstances of the case.

3. Mr. Pradeep Shrimal, Public Prosecutor for the State and Mr. A.K. Khan, learned counsel appearing for the non-petitioners have categorically opposed the arguments of the learned counsel for the petitioner. They have stated that the revisional court after considering the material and the decisions relied on by the parties, rightly allowed the application for interim maintenance granting maintenance in the amount of ₹ 2,000/- per month from the date of application.

4. I have heard Mr. K.A. Khan, learned counsel for the petitioner, Mr. A.K. Khan, learned counsel appearing for the non-petitioners and Mr. Pradeep Shrimal, Public Prosecutor appearing for the State of Rajasthan and have also gone through the order dated 25.1.2011 passed by the revisional court and the material placed on the record of this case and the decisions relied on by the parties before the revisional court.

5. Before proceeding further it would be necessary to have a look at the Apex Court judgments concerning the Muslim women.

A Constitution Bench of the Apex Court in Danial Latifi v. Union of India (2001) 7 SCC 740 : (2001 Cri LJ 4660) in paras 28-29 & 30) held as under :

28. A careful reading of the provisions of the Act would indicate that a divorced woman is entitled to a reasonable and fair provision for maintenance. It was stated that Parliament seems to intend that the divorced woman gets sufficient means of livelihood

after the divorce and, therefore, the word 'provision' indicates that something is provided in advance for meeting some needs. In other words, at the time of divorce the Muslim husband is required to contemplate the future needs and make preparatory arrangements in advance for meeting those needs. Reasonable and fair provision may include provision for her residence, her food, her clothes, and other articles. The expression 'within' should be read as 'during' or 'for' and this cannot be done because words cannot be construed contrary to their meaning as the word 'within' would mean 'on or before', 'not beyond' and, therefore, it was held that the Act would mean that on or before the expiration of the iddat period, the husband is bound to make and pay maintenance to the wife and if he fails to do so then the wife is entitled to recover it by filing an application before the Magistrate as provided in Section 3(3) but nowhere has Parliament provided that reasonable and fair provision and maintenance is limited only for the iddat period and not beyond it. It would extend to the whole life of the divorced wife unless she gets married for a second time.

29. The important section in the Act is Section 3 which provides that a divorced woman is entitled to obtain from her former husband 'maintenance', 'provision' and 'mehr' and to recover from his possession her wedding presents and dowry and authorises the Magistrate to order payment or restoration of these sums or properties. The crux of the matter is that the divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. The wordings of Section 3 of the Act appear to indicate that the husband has two separate and distinct obligations: (1) to make a 'reasonable and fair provision' for his divorced wife; and (2) to provide maintenance' for her. The emphasis of this section is not on the nature or duration of any such 'provision' or 'maintenance', but on the time by which an arrangement for payment of provision and maintenance should be concluded, namely, 'within the iddat period'. If the provisions are so read, the Act would exclude from liability for post-iddat period maintenance to a man who has already discharged his obligations of both 'reasonable and fair provision' and 'maintenance' by paying these amounts in a lump sum to his wife, in addition to having paid his wife's, mahr and restored her dowry as per sections 3(1) (c) and 3(1) (d) of the Act. Precisely, the point that arose for consideration in Shah Bano case (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : (1985 Cri LJ 875) was that the husband had not made a 'reasonable and fair provision' for his divorced wife even if he had paid the amount agreed as mahr half a century earlier and provided iddat maintenance and he was therefore, ordered to pay a specified sum monthly to her under Section 125, Cr. P.C. This position was available to Parliament on the date it enacted, the law but even so, the provisions enacted under the Act are 'a reasonable and fair provision and maintenance to be made and paid' as provided under Section 3(1)(a) of the Act and these expressions cover different things, firstly, by the use of two different verbs-'to be made and

paid to her within the iddat period' it is clear that a fair and reasonable provision is to be made while maintenance is to be paid; secondly, section 4 of the Act, which empowers the Magistrate to issue an order for payment of maintenance to the divorced woman against various of her relatives, contains no reference to 'provision'. Obviously, the right to have 'a fair and reasonable provision' in her favour is a right enforceable only against the woman's former husband, and in addition to what he is obliged to pay as 'maintenance'; thirdly, the words of The Holy Quran, as translated by Yusuf Ali of 'mata' as 'maintenance' though may be incorrect and that other translations employed the word 'provision', this Court in Shah Bano case dismissed this aspect by holding that it is a distinction without a difference, indeed, whether 'mata' was rendered 'maintenance' or 'provision', there could be no pretence that the husband in Shah Bano case had provided anything at all by way of 'mata' to his divorced wife. The contention put forth on behalf of the other side is that a divorced Muslim woman who is entitled to 'mata' is only a single or one-time transaction which does not mean payment of maintenance continuously at all. This contention, apart from supporting the view that the word 'provision' in Section 3(1)(a) of the Act incorporates 'mata' as a right of the divorced Muslim woman distinct from and in addition to mahr and maintenance for the iddat period, also enables 'a reasonable and fair provision' and 'a reasonable and fair provision' as provided under Section 3(3) of the Act would be with reference to the needs of the divorced woman, the means of the husband, and the standard of life the woman enjoyed during the marriage and there is no reason why such provision could not take the form of the regular payment of alimony to the divorced woman, though it may look ironical that the enactment intended to reverse the decision in Shah Bano case (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : (1985 Cri LJ 875) actually codifies the very rationale contained therein.

36. while upholding the validity of the Act, we may sum up our conclusions:

(1) A Muslim husband is liable to make reasonable and fair provision for the future of the divorced wife which obviously includes her maintenance as well. Such a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period in terms of Section 3(1)(a) of the Act.

(2) Liability of a Muslim husband to his divorced wife arising under section 3(1) (a) of the Act to pay maintenance is not confined to the iddat period.

(3) A divorced Muslim woman who has not remarried and who is not able to maintain herself after the iddat period can proceed as provided under Section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law from such divorced woman including her children and parents. If any of the relatives being unable to pay maintenance, the Magistrate may direct the State Waqf Board established under the Act to pay such maintenance.

(4) The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India."

The Apex Court in Sabra Shamim v. Maqsood Ansari (2004) 9 SCC 616 held as under:

10. Proceedings under Section 125, Cr. P.C. are civil in nature. Even if the Court noticed that there was a divorced woman in the case in question, it was open to it to treat it as a petition under the Act considering the beneficial nature of the legislation. Proceedings under Section 125, Cr. P.C. and claims made under the Act are tried by the same court. In Vijay Kumar Prasad v. State of Bihar, (2004) 5 SCC 196 : 2004 SCC (Cri) 1576 : (2004 Cri LJ 2047), it was held that proceedings under Section 125, Cr. P.C. are civil in nature. It was noted as follows : (SCC p. 200, para 14).

14. The basic distinction between Section 488 of the old Code and Section 126 of the Code is that section 126 has essentially enlarged the venue of proceedings for maintenance so as to move the place where the wife may be residing on the date of application. The change was thought necessary because of certain observations by the Law Commission, taking note of the fact that often deserted wives are compelled to live with their relatives far away from the place where the husband and wife last resided together. As noted by this Court in several cases, proceedings under section 125 of the Code are of civil nature. Unlike clauses (b) and (c) of Section 126 (1) an application by the father or the mother claiming maintenance has to be filed where the person from whom maintenance is claimed lives.

11. Accordingly, we set aside the impugned order of the High Court and remit the matter for fresh consideration.

12. The High Court while deciding the matter shall keep in view the principles indicated above. Since the matter is pending since long, the High Court shall dispose of the matter within six months from the date of receipt of this order to avoid unnecessary delay, We direct the parties to appear before the High Court on 23-7-2007. We request the Chief Justice of the High Court to list the matter before the appropriate Bench.

13. The appeal is disposed of accordingly.

6. In the light of the Apex Court decisions now I may consider the judgment of the revisional court.

7. In the order dated 25.1.2011, the revisional court observed as under :

"सुना गया एवं पत्रावली का ध्यानपूर्वक अवलोकल किया गया। गैर-निगराकार की और से प्रस्तुत तर्को की रोशनी में प्रस्तुत निगरानी एवं निगराकार के तर्को को देखा जांये तो यह तो स्वतः ही साबित होता है निगरानीकार शमीम बानो अनवर की विवाहिता पत्नी थी यद्यपि दोनो पक्षो के बीच तलाक हुआ या नही हुआ तलाक किन परिस्थितियो में हुआ, विधि की सब शर्तो को पूरा करते हुए तलाक हुआ अथवा नही हुआ, यह सभी साक्ष्य में तय किये जाने वाले विन्दु है। फिर भी शमीम का गैरनिगराकार की पत्नी होने का तथ्य न केवल उनकी बहस में बल्कि विद्वान अधीनस्थ न्यायालय के समक्ष प्रस्तुत प्रार्थना पत्र के जवाब से भी स्पष्ट होता है कि उसने अपने जवाब मे अन्यथा भी यह कई जगह स्वीकार किया है कि प्रार्थीया से उसका निकाह लगभग चार वर्ष पूर्व सुन्नी मुस्लिम कानून के हिसाब से हुआ था वह पति पत्नि के रूप मे कई वर्ष तक साथ रहे तथा तमाम वैवाहिक दायित्वों एवं कर्तव्यो को दोनो के द्वारा निभाया गया। विवाहता के उपरांत उन्हें एक लडका फैजान भी पैदा हुआ। बच्चा पैदा होने पर डिलीवरी का खर्चा भी प्रत्यर्थी गैर निगरानीकार द्वारा ही उठाया जाने की बात कही गयी है। इस प्रकार इस संबंध में कोई सन्देह नही है कि शमीम पीडिता, गैर निगरानीकार की पत्नी है। उसके वापिस जाने पर यदि परिवारिक न्यायालय मे निगरानीकार द्वारा दाम्पत्य जीवन के पुनःस्थापन हेतु मुकदमा दायर कर उसे नोटिस जारी करवाया गया तो इसका यह आशय नही निकाला जा सकता कि घरेलू हिंसा अधिनियम के तहत पीडिता पत्नी का कोई अधिकार शेष नही रहा हो जबकि अपने जवाब के विशेष कथन की चरण सं04 में गैर निगराकार ने यह स्पष्ट उल्लेख किया है कि छोटी-2 बातों को लेकर प्रत्यर्थी से प्रार्थिया शमीम का मन मुटाव रहने लगा था। वह बार बार अपने पिता के यहां जाने की जिद करने लगी थी यद्यपि वह मोटे मोटे तौर पर स्वयं के द्वारा लडाड झगडा करने से इंकार करता है फिर भी वह छोटी छोटी बातों पर मनमुटाव होने की बात तो प्रत्यर्थी ने स्पष्ट स्वीकार की है।

तलाकनामें के बाबत प्रत्यर्थी गैर निगराकार ने अपने जवाब में यह उल्लेख किया कि उसने दिनांक 1-5-07 को बीस रूपये के स्टाम्प पर दो गवाहो के हस्ताक्षर और प्रत्यर्थी के हस्ताक्षर से निगराकार प्रार्थीया पीडिता को तलाक दे दिया था जो तलाकनामा कोटा शहर काजी अनवर अहमद साहब द्वारा भी तस्दीक किया हुआ है और अब वह उसको बीबी तलाक होने से नही रहने के कारण वह घरेलू हिंसा अधिनियम के तहत भरण पोषण पाने की अधिकारी नही रह जाती है। हमारी विनम्र राय में जहा एक और पीडिता का प्रत्यर्थी ने अपने जवाब में स्वीकार किया है वही इन दोनो के मध्य कब और किन परिस्थितिया में तलाक हुआ यह पूर्णतः साक्ष्य का विषय है जबकि घरेलू हिंसा अधिनियम के तहत जो स्त्री पूर्व में उसकी पत्नी रही है उसको भरण पोषण दिये जाने का विधान है फिर माननीय सर्वोच्य न्यायालय द्वारा 2002 कि. ला. जन. 4276 में यह तय किया गया है कि किन व्यक्तियों की उपस्थिती में तलाक दिया था यह काफी महत्वपूर्ण है माननीय सर्वोच्य न्यायालय के अनुसार तलाक प्रभावी इफेक्टिव रूपस प्रोनाउन्स उद्घोषित किया जाना चाहिए। दी टर्म प्रोनाउन्स मीस टू प्राक्लेक, टू अदर फोर्मली .... टू डिक्लेयर टू, अटर टू ए अटर मात्र यह कह देने कि किसी व्यक्ति ने सअपनी पत्नी के तलाक ले लिया है, पर्याप्त नहीं होगा। पति को इस संबंध में

पर्याप्त साक्ष्य न्यायालय के समक्ष प्रस्तुत करनी होती है कि उसके द्वारा कब किन परिस्थितियों में किन किन गवाहों के समक्ष तलाक की उद्घोषणा की गई और क्या यह पीडिता को कम्युनिकेट किया गया या नही ? क्या तलाक होने से पूर्व दोनो बीच मध्यस्थता आरबीटरेटर्स द्वारा की गई या नही ? जिनमें एक पीडिता के परिवार से और एक पति के परिवार से मध्यस्थता करने के लिए व्यक्ति चुने जाने होते है। फिर भी उनके प्रयास यदि निष्फल हो जायें तब तलाक की कार्यवाही सही प्रकार से की जानी मानी जायेगी। मुस्लिम लॉ के तहत होली कुराण में तलाक के बाबत यह आवश्यक बताया गया है इस स्टेज पर हमारी राय में निगरानीकार को अंतरिम निर्वाह दिलाया जाना न्यायोचित प्रतीत होता है

अतः उपरोक्त विवेचनानुसार हमारी राय में विद्वान अधीनस्थ न्यायालय द्वारा पारित आदेश अपास्त किये जाने योग्य है"

8. There is no perversity in the order passed by the revisional court in granting interim maintenance to the respondent No. 1. It is true that the Family Court also awarded maintenance in the amount of ₹ 500/- to the child. The order passed by the revisional court is not related to the grant of interim maintenance to the child. The petitioner gave talaq to the respondent vide written talaqnama on 1.5.2007 and the same also verified by the Qazi Shehar Kota. This talaqnama is still to be proved by the petitioner in the appropriate court of law as per Muslim Law and if interim maintenance is granted to the respondent under the Protection of Women from Domestic Violence Act, the same cannot be said to be illegal or perverse as the respondent No. 1 is entitled to receive interim maintenance in view of the judgments of the Apex Court. For these reasons, the criminal misc. petition filed by the petitioner is rejected being devoid of merit. The stay application also stands dismissed.

MA Mony v. MP Leelamma, 2007 Cr.L.J. 2604 (Kerala H.C.) (29.03.2007)

Judge: R. Basant

Order

1. Does the availability of alternative options for grievance redressal deprive the aggrieved person of her right to approach the Magistrate with a petition under Section 12 of the Protection of Women from Domestic Violence Act? Does this Court have power to direct transfer of a petition under Section 12 pending before the Magistrate to a Family Court, where another dispute between the same parties is pending? These questions arise for

consideration In these petitions. I am satisfied and both counsel agree that this transfer petition and the Cri. M. C. can be disposed of by a common order. Accordingly, I have taken up both these matters together for consideration.

2. The first respondent in these petitions is admittedly the wife of the petitioner herein. The marriage had taken place as early as on 8-11-1977. The parties are living separately from 11-4-1982. It is unnecessary to refer to the prior history of litigations between the parties. Suffice it to say that at the moment two petitions are pending before the Family Court at Kottayam. The first is for divorce filed by the petitioner herein and the second is an Original Petition claiming an amount of ₹ 36,55.000/- under various heads by the first respondent against the petitioner. There are other reliefs also claimed in the said petition before the Family Court.

3. While those petitions were pending before the Family Court, the Protection of Women from Domestic Violence Act, hereinafter referred to as DVA, was enacted by the Parliament and rules were framed. The 1st respondent herein, in these circumstances, filed C. M. P. No. 33 of 2007 before the Judicial First Class Magistrate-Ill, Kottayam claiming reliefs under Sections 19, 20 and 22 of the DVA. An application in the prescribed form-II was filed under Section 12 of the DVA claiming the said reliefs.

4. The petitioner has received notice in C. M. P. 33 of 2007 issued by the learned Magistrate. The petitioner had appeared before the learned Magistrate. After entering appearance, the petitioner has come straight to this Court and filed these petitions.

5. Transfer petition No. 6 of 2007 is filed by the petitioner to transfer C. M. P. 33 of 2007 from the file of the J. F. C. M.-III, Kottayam to the Family Court, Kottayam at Ettumanoor, where the above said Original Petitions between the parties are pending.

6. Cri. M. C. 165 of 2007 has been filed by the petitioner for quashing all proceedings initiated by the first respondent by filing an application under Section 12 of the DVA claiming reliefs under Sections 19, 20 and 22 of the Act.

7. I have heard the learned Counsel for the petitioner and the first respondent in detail. I shall first deal with the prayer for transfer of the case,

8. The Protection of Women from Domestic Violence Act, 2005 is a piece of legislation brought in by the Parliament as the Parliament felt that the civil law does not provide reliefs to a victim woman subjected to domestic violence. It is in these circumstances, to provide for a remedy under the civil law for protection of women from being victims of domestic violence, that the DVA was brought in by the Parliament. It will be apposite to take note of the fact that though it is a piece of civil law, evidently in the interests of expedition and to cut down procedural delays, the forum provided for enforcement of rights under DVA is that of the Magistrate Courts constituted under the provisions of the Cr. P.C. A reading of the Introduction, Statement of Objects and Reasons and Preamble

etc. makes the position absolutely clear. There is no provision anywhere in the Act which permits or authorises transfer of a petition filed under Section 12, which is pending before the Court of a Magistrate to any other Court. Powers under the Cr. P.C. do not evidently clothe superior Courts with power to transfer a proceeding pending before a criminal Court to any other civil Court. Though the rights created and the reliefs granted under the DVA are essentially civil in nature, significantly there is no provision in the Act for transfer of such a civil claim pending before the Magistrate to any other civil Court. In the absence of specific provisions to that effect, I am of the opinion that the superior Courts do not have the power to transfer a petition under Section 12 pending before the Magistrate to any civil Court or Family Court as the case may be. The prayer made is thus on the face of it not maintainable. Such a power if inferred or assumed would virtually deprive the aggrieved woman of the right to expeditious procedure for enforcement of her civil rights under the DVA through the structures established under the Code of Criminal Procedure, which the Parliament in its wisdom had conferred on her.

9. The learned Counsel for the petitioner submits that though there is no specific provision to transfer a claim under Section 12 of the DVA to any other civil Court, this Court should not lose sight of the nature of the reliefs that can be claimed under Section 12 r/w. Sections 18 - 23. Essentially rights conferred and which can be claimed are civil rights. The counsel further submits that the stipulations of Section 26(1) must also convey that the reliefs under Sections 18 - 22 of the DVA can also be sought in any pending proceedings before a Civil Court, Family Court or Criminal Court. I extract Section 26(1) below:

Section 26. Relief in other suits and legal proceedings.- (1) Any relief available under Sections 18, 19, 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.

10. The learned Counsel submits that in view of the stipulations in Section 26(1), there cannot be a bar against transfer of a claim under Section 12 to any such civil Court or Family Court. The counsel further submits that Section 7(2)(b) of the Family Courts Act, which I extract below, is also sufficient to indicate that the Family Court has jurisdiction to deal with a claim under Section 12.

Section 7. Jurisdiction - (1) Subject to the other provisions of this Act, a Family Court shall-

xx xx xx

(2) Subject to the other provisions of the Act, a Family Court shall also have and exercise-

(a) xxx xxx

(b) such other jurisdiction as may be conferred on it by any other enactment.

I am unable to accept this argument at all. Though under Section 7(2)(b), the Family Court is clothed with authority to deal with matters, which, under any other law the Family Court can consider, it is significant that the Family Court is not invested with any power to deal with an application under Section 12 of the DVA. That reliefs under Sections 18 - 22 can be claimed before the Family Court in any other proceedings is a world different from the contention that a petition under Section 12 can be considered and disposed of by the Family Court. There is nothing in the language, scheme or purport of the DVA, which can even remotely suggest that a Civil Court or Family Court is competent to deal with an application under Section 12 and grant reliefs under Sections 18 - 22 in such application under Section 12. Of course, the Family Court and the Civil Court have the jurisdiction in a proceedings pending before it to grant the reliefs under Sections 18 - 22 of the DVA also. But certainly there is no power for the Family Court or Civil Court to deal with an application under Section 12. They cannot entertain an application under Section 12 neither when it is originally filed before them nor can the superior Courts entertain any jurisdiction to transfer such petition under Section 12 pending before the Magistrate to such Civil or Family Court so that such Court can entertain jurisdiction to deal with an application under Section 12. The decision of the Legislature to confer the right to redressal through the criminal Court cannot obviously be denied to or taken away from an aggrieved woman by such an order of transfer by the superior Court. That she can claim the reliefs under the DVA through the civil Court also is no reason to deprive her of the vested statutory right of procedure to claim enforcement through the Criminal Court. I, therefore, take the view that except the Magistrate clothed with authority to deal with petitions under Section 12 of the DVA, no Civil Court or Family Court has jurisdiction to deal with an application under Section 12. Consequently this Court cannot direct transfer of a petition under Section 12 pending before the Magistrate to the Family Court and thus clothe the Family Court with jurisdiction to consider such application under Section 12. The prayer for transfer cannot hence succeed.

10A. Now we come to the prayer for quashing of proceedings initiated under Section 12 of the DVA. Three grounds are urged in support of this contention. First of all, it is contended that the Court of the learned Judicial Magistrate of the First Class-Ill, Kottayam, has no territorial jurisdiction to deal with the matter. Section 27 of the DVA which I extract below deals with the jurisdiction of the Courts:

27. Jurisdiction.- (1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed;

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen, shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.

(Emphasis supplied)

A Judicial Magistrate of the First Class or the Metropolitan Magistrate as the case may be within the local limits of which the person aggrieved permanently or temporarily resides does also have territorial jurisdiction to deal with the matter as stipulated in Section 27(1)(a) of the DVA.

11. The learned Counsel for the 1st respondent points out that the petitioner, it has been clearly averred in the affidavit filed along with the petition, has in connection with her employment, now taken up residence within the jurisdiction of the learned Judicial Magistrate of the First Class-Ill, Kottayam. That being so, I find no merit in the contention at this stage that the Court has no jurisdiction to deal with the matter.

12. It is then contended that the overlapping claims have been made before the Family Court as also before the learned Magistrate. Three claims are made in the application under Section 12 under three specific heads. Claim under Section 19 is for an order of residence. Admittedly, the right of residence is claimed in a building over which, as per the records, the petitioner has title. In the proceedings before the Family Court - O. P. No. 455/04 - declaration of title of the very same property has been claimed by the 1st respondent on the plea that the said property has been purchased making use of her funds and she is consequently entitled for such a declaration. That claim before the Family Court relates to title over the property, whereas the claim here in this petition under Section 12 read with Section 19 is for a right of residence in the property which the petitioner claims to be his own. If declared by the Family Court, no order for residence need be insisted. But at the moment as per the documents, title vests in the petitioner and therefore the claim for an order of residence under Section 19 is in no way affected by the claim for declaration of title in the O. P. pending before the Family Court.

13. Under Sees. 20 and 22 of the DVA monetary reliefs and compensatory reliefs can be claimed. On a perusal of the petition in Form-II filed by the respondent, it can be seen that a composite claim has been made both under Sees. 20 and 22 obviously because of an error in Form-II prescribed, in which columns 3(iii) and 3(iv) do both relate to monetary reliefs under Section 20. A composite claim under Sections 20 and 22 for ₹ 15 lakhs is evidently made in Clause 3(iv) of Form-II. It is possible on a perusal of the break up of the claim of ₹ 36.55 lakhs in O. P. No. 455/04 and the claim under Clause 3(iv) of the petition under Section 12 in Form-II, to conclude that there is overlapping of the claims. But I must alertly note that the scheme of the Act does appear to contemplate such

overlapping claims made before the other Courts and the. Court (Magistrate) under the DVA. The proviso to Section 12(2), which I extract below, makes the position amply clear.

12. Application to Magistrate.- (1) xxxxxxxxxxxx

(2) xxxxxxxxxxx

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.

Even if the monetary/compository claim is allowed under Section 12, such payment has to be set off against the amounts due under the identical heads as per the decree or order of any other Court. Therefore, it may not be correct to assume rigidly that overlapping of claims must lead to the quashing of the proceedings under the DVA. The said ground cannot also, in these circumstances, be held to be sufficient to non-suit the 1st respondent.

14. The same argument in a different form is advanced with the help of Section 26 of the DVA as the third ground. The learned Counsel contends that the 1st respondent shall be entitled to claim the relief under Sees. 19, 20 and 22 before the Family Court in the pending proceedings and therefore, it is not necessary or open to her to stake the identical claim under Section 12 of the DVA. The answer to that contention also is clearly available from the proviso to Section 12(2), which I have extracted above, which shows that notwithstanding the option to claim identical relief elsewhere, the jurisdiction of the Magistrate under the DVA is not ousted. The option clearly vests with the claimant/ aggrieved woman. That she has exercised her statutory right to claim the amount under Section 12 r/w. Sections 20 and 22 of the DVA cannot obviously lead to quashing of proceedings.

15. The upshot of the above discussions is that the petitioner is not entitled for the relief of transfer or that of quashing of the proceedings initiated under Section 12.

16. I must clearly observe that I have not intended to express any opinion on the merits of the claim made under Section 12 read with Sees. 19, 20 and 22 of the DVA. I have only chosen to hold that the powers under Section 482 of the Cr. P.C. - the extraordinary inherent jurisdiction - does not deserve to be invoked to prematurely terminate the proceedings initiated under Section 12 of the DVA. It shall be open to the petitioner to raise all relevant, necessary and appropriate contentions before the learned Magistrate, who shall consider such contentions and pass appropriate orders.

17. These petitions are accordingly dismissed.

5. PROCEDURE FOR OBTAINING RELIEF UNDER PWDVA
APPLICATION TO MAGISTRATE

Nayankumar v. State of Karnataka, Crl.Pet. No. 2004 of 2009 (Karnataka H.C.) (12.08.2009)

See page 348 for full text of judgment.

Sabah Sami Khan v. Adnan Sami Khan, 2011 (1) MhLj 427 (Bombay H.C.) (21.10.2010)

Judge: Roshan Dalvi

Judgment

1. The Petitioner-wife has challenged a part of the order of the learned Judge, 2nd Family Court, Mumbai, dated 15th June 2010, in not restraining the Respondent-husband from entering upon the matrimonial home and in allowing him to reside therein wherein she has been allowed to reside. Consequently, both the Petitioner-wife and the Respondent-husband have been allowed to reside in the matrimonial home.

2. The parties admittedly have a large matrimonial home as also other residential flats and an earlier matrimonial home. The matrimonial home of the parties consists of 5 flats on the 13th and 14th floors of the building Oberoi Sky Garden, Lokhandawala Complex, Andheri, Mumbai in which both wife as well as husband have been allowed to reside under the import of the order of the Family Court. The parties have two flats on the 12th floor of the same building also. The parties have had another matrimonial home at 203, Ankita Apartments, Versova, Mumbai.

3. The parties have been unable to live together. The husband has remarried. His second wife lives with him in the matrimonial home. The husband was an alcoholic. He has denied that he continues to be so. The wife alleges that the husband continues to be an alcoholic. He has entered into a unique agreement with his wife, assuring and promising his rehabilitation as an alcoholic. The wife claims that despite the assurances, he failed to do so and a month after entering into the agreement, she was constrained to leave the matrimonial home. This was prior to his second marriage.

4. The husband contends that he was forced to enter into the said agreement assuring his rehabilitation because his father was to come from Pakistan to live with him in his matrimonial home which would have been allowed by his wife only if he signed such an agreement.

5. There would have been a little need for a husband who was never an alcoholic to enter into such an agreement. The husband could have promised the wife any other thing to allow his father to reside in the matrimonial home with them. In view of the fact that the parties have other residential premises, in the same building, the constraint on the part of the husband sought to be made out cannot even be prima facie accepted. The execution of this queer agreement at least, prima facie, shows the husband's alcoholic trait.

6. The husband has admittedly married another wife. She would be living in the same residential premises in which the Petitioner-wife has been allowed to live. The Petitioner-wife has complained of domestic violence. The violence complained of is both verbal and emotional. The case of domestic violence under Section 3 of the Protection of Women from Domestic Violence Act, 2005 (D.V. Act) is alleged. The relevant part of Section 3 of the D.V. Act runs thus:

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 wellbeing, 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 to 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) either 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

In this case the import of the impugned order would be that the Petitioner-wife would be constrained to live under one roof with her husband who is prone to alcohol and his second wife.

Hence the wife s case is sought to be made out under Section 3(a) and (d) of the D.V. Act.

7. It is contended on behalf of the Respondent-husband that the domestic incident report of a Protection Officer or a service provider under Section 12 of the D.V. Act has not been obtained and hence no case of domestic violence is made out. On this ground, it is argued on his behalf that no injunction restraining him from entering upon the matrimonial home is made out and hence the impugned order of the Family Court not granting any relief in that behalf and allowing the wife as well as the husband to continue to reside in the matrimonial home does not require any interference.

8. A domestic incident report is required to be prepared by a Protection Officer under Section 9 (1) (b) of the D.V. Act. This is contemplated in case of physical violence when complaint in that behalf is made or filed. The Protection Officer, in such a case, functions under Section 9 (1) (a) of the D.V. Act. The injuries caused to the aggrieved person are required to be documented. Consequently, a report in that behalf would be required to be seen by the Magistrate who may be called upon to ultimately determine and consider the application after some time when it reaches hearing. At such time, no evidence of any injuries etc. may be shown to the Magistrate except under the report of the Protection Officer. Consequently, the said provision is an enabling provision. Such a report cannot be made in case of any application alleging Domestic Violence which may be other than physical violence e.g. Verbal or emotional abuse. An application made under Sections 18 and 19 of the D.V. Act may have to be considered based upon the facts of each case and not necessarily with the aid and assistance of any Protection Officer or Service Provider. It may be required to be considered only upon the application made to the Court by the aggrieved person herself. In such a case no domestic incident report may be filed or may be necessitated. This is one such case.

9. Both the wife and the husband claim title to the matrimonial home which was admittedly their shared residence. Purchase of the 5 flats on the 13th and 14th floors of the aforesaid building, forming one duplex flat, initially by the husband is admitted. An execution of the Deed of Gift by the husband to the wife gifting the said flats to her is also admitted. The transfer of the immovable property is complete upon execution of the Deed of Gift. The husband claims revocation of the gift unilaterally made by him to reclaim the title to the said property. The wife has challenged such unilateral revocation. The claim of the respective parties to the title of the premises can be decided only in a Civil Court.

10. The application before the Family Court and in this Petition relates only to the right of occupation of the wife. She has been allowed to occupy that as a shared residence, being admittedly her matrimonial home. It is the home in which the husband continues to reside, after the marriage between the parties broke down, with his second wife. It is only under these admitted circumstances that the wife's right to occupation is required to be adjudicated.

11. The moot question is whether a wife can be allowed or made to live in a house occupied by a husband who is either an alcoholic or who at least admittedly was earlier an alcoholic and with his second wife.

12. It is common knowledge, and of which judicial notice would be required to be taken, that once an alcoholic, is always an alcoholic except if such an alcoholic shows his withdrawal and rehabilitation. In this case, under the aforesaid strange agreement, the husband has accepted that he was an alcoholic and assured and promised the wife that he would reform himself. It is admitted that a month after the execution of the agreement the wife has left the matrimonial home and hence the link between the non- performance of the promise under the agreement and the consequent action of the wife is at least prima facie shown.

13. The husband is stated to be a singer and a musician. The order of the learned Judge of the Family Court shows that he has certain practice sessions of his music recitals in the said premises.

14. Admittedly, the husband has married again. His second wife lives with him.

15. It is in these circumstances that the order allowing the wife to live in the said premises is resisted by the wife on the ground that in terms she is unable to enter upon her matrimonial home and to occupy, use and enjoy it peaceably. She has, therefore, applied that the husband be directed to remove himself and be restrained from entering into such matrimonial home.

16. The act of the husband in living as aforesaid with the proverbial wine, wife and song is an illustration of an antithesis of an egalitarian matrimony. That the wife would be required to live under the same roof with her husband and his second wife is an oxymoron in itself. It clothes itself in the cliché of a woman being treated as a chattel; a wife being left to the vagaries of the emotional and mental violence when a husband surrenders himself to his pleasures in which wife cannot and would not partake. This act itself falls squarely within the broad and inclusive definition of the domestic violence under Section 3(a) (d) of the D.V. Act.

17. If the husband can offer the wife no alternative accommodation to reside there peaceably, he would be required to be injuncted from living in such a matrimonial home with his second wife.

18. However, in this case, the parties are in easy circumstances. The wife, of course, does not live in a separate and alternate independent residential accommodation though it is alleged that she is in circumstances able to do so. She is stated to have been residing in a hotel for a good length of time. The parties, however, have an earlier matrimonial home and 2 other flats on the 12th floor of the same building.

19. It is contended on behalf of the wife that the husband can shift to the 12th floor flat. The husband has in turn offered 2 flats on the 12th floor to the wife for her separate and independent accommodation with all facilities and comforts in paragraph 6 of his Affidavit-in-reply filed in May 2009.

20. The parties being Muslims are governed by the Koran as the main source of Muslim Law considered along with the legislations of the country having jurisdiction, being the one in which they reside and where the dispute has arisen, which are within the spirit of such main source.

In the English translation of the Koran Part IV the chapter relating to women (Nisaaa) Verse 177 Sub-Sections 3 & 24 of Section 23 run thus:

3 marry the women who seem good to you, two or three or four; and if ye fear that ye cannot do justice (to so many) then one (only) or (the captures) that your right hands possess. Thus it is more likely that ye will not do injustice:

24 And all married women (are forbidden) until you save those (captives) who in your right hands possess. It is a decree of Allah for you. Lawful unto you are all beyond those mentioned. So that ye seek them with your wealth in honest wedlock, not debauchery.

And those of whom ye seek content (by marrying them) give unto them their portions as a duty.

And there is no sin for you in what ye do by mutual agreement after the duty (hath been done).

Lo Allah is ever knower, wise.

(Underlining supplied)

21. The rights of parties to a marriage for occupation of the matrimonial home, and even of parties to any domestic relationship, has been initially considered under the common law in England. Various British legislations have crystallised the legal position of the parties in matrimony which has now been incorporated in the D.V. Act. Section 1(2) of the Matrimonial Homes Act, 1967 in the U.K. came to be amended under Section 3 of the Domestic Violence and Matrimonial Proceedings Act, 1976. Under Section 3 thereof the order of regulating the exercise of the right of occupation by a spouse in the dwelling house came to be substituted by the order of prohibiting, suspending or restricting such a right. Further the positive permission to exercise the right of occupation by the Applicant came to be specifically granted by incorporation of that right.

22. The Matrimonial Homes Act, 1967 was repealed by the Matrimonial Homes Act, 1983 (M.H. Act) brought into force from 9th May 1983. The 1983 Act dealt with the consolidation of the rights of a husband or wife to occupy a dwelling house which was their matrimonial home. Section 1(1), (2), (3), (4) and (10) determined the statutory rights along with Section 9 thereof. Under Section 1(1) where one spouse was entitled to occupy a dwelling house by virtue of a beneficial estate, interest or contract or an enactment and the other spouse was not so entitled, then such other spouse would have a right of occupation. Under that right of occupation, he or she had a right not to be evicted or excluded therefrom or a right to enter upon and occupy it.

Under Section 1 (2) either spouse may apply for declaring, enforcing, restricting or terminating those rights, or for prohibiting, suspending, or restricting the right of the other.

Under Section 1 (3), the Court could make any just and reasonable order having regard to the conduct of the spouses, the respective needs, financial resources and the needs of their children in that behalf as also to make periodical payments to the other spouse in respect of such occupation and for repayment and maintenance of the dwelling house.

Under Section 1(4), such order would remain in force for a specified period or until further orders.

Under Section 1 (10), the Act would have no application to any dwelling house which was not the dwelling house of the spouses. The spouse's rights of occupation would continue until the marriage subsisted.

Under Section 9(1) of the Act, where any spouse has the right of occupation in a matrimonial home, he or she could apply for an order prohibiting, suspending or restricting the exercise of the right by the other or requiring the other spouse to permit its exercise by the Applicant.

Under Section 9(3) if the spouse had a right under a contract or an enactment to remain in occupation of the dwelling house, Section 9 would apply where they would be entitled by virtue of the legal estate vested in them jointly.

23. In India, the wife's right to reside in a shared household is under Section 17 of the Domestic Violence and Matrimonial Proceedings Act, 1976, for which orders under Section 19 thereof can be passed. Section 17 runs thus:

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:

Section 17, therefore, gives the wife the right to reside in the matrimonial home. The wife cannot be evicted or excluded from such residence. She can be evicted or excluded only in accordance with the procedure established by law.

24. The learned Judge of the Family Court has granted the wife the right to reside in the matrimonial home of the parties which is on the 13th and 14th floors of the aforesaid building. The learned Judge has not evicted or excluded her or allowed her to be evicted or excluded therefrom under the impugned order. In view of the above circumstances, however, it would otherwise not constitute sufficient compliance of the specific statutory rights given to the wife to reside in the shared house. She is expected to reside there peaceably and without the intrusion of a second wife or the domestic violence otherwise caused by an errant husband.

25. However, the last part of Section 17(2) 'save in accordance with the procedure established by law sets out the curtailment of the statutory right. A wife, therefore, may even be evicted or excluded from the matrimonial home, if the husband follows due legal process.

26. It has to be seen what the due procedure established by law constituting due legal process is. One such process is under Section 9 of the Family Courts Act, 1984 (FC Act).

27. The purpose and object for the enactment of the Family Courts Act was to promote conciliation and secure speedy settlement of disputes, relating to marriage and family affairs and matters connected therewith. These would include conciliation in a matter relating to the shared residence or the matrimonial home of the parties to a family dispute under Section 9 thereof, which is one of the procedures established by that law. The procedure of reconciliation of the parties by the conciliatory process in preference to the adjudicatory process is mandated. Section 9 runs thus:

9. Duty of Family Court to make efforts for settlement.-(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(3) The power conferred by Sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings:

This includes an effort at settlement even in cases relating to the shared residence or the matrimonial home of the parties for which protection or residence orders are claimed

under Sections 18 and 19 of the D.V. Act if that is the subject-matter of the Petition before the Family Court. Various reliefs may be granted thereunder. This case relates to the application for a residence order under Section 19 of the D.V. Act. Section 19 runs thus:

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 into any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent 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:

Under this section the wife's possession in her shared residence, which is her matrimonial home in this case, may be protected under Sub-sections (a) to (e). Alternatively, a residence may be provided for the wife under Sub-section (f) of Section 19 of the D.V. Act. The conciliatory process may reconcile the parties or may amicably bring to an end the matrimonial dispute even if the parties were not to continue in matrimony.

28. In an application for residence under Section 19 of the D.V. Act, an alternative premises being a residential home would be required to be provided to the aggrieved party under Section 19 (1) (f) thereof. If the spirit of the object of the FC Act and the procedure under Section 9 of the FC Act is to be heeded, in such a case, a reasonable offer of an alternate accommodation made to the wife or the woman in a domestic relationship who requires a right to reside in a particular premises is to be considered and accepted. If such an offer is made and found reasonable so as to comply with Sub-section (f) of Section 19 of the D.V. Act, no order can or need be passed under Sub-Section 19(a)(b) or (c) thereof. Of course, an order under Sub-section (d) or (e) may be passed as circumstances require.

29. The husband has offered two flats on the 12th floor to the wife ' with all facilities and comforts for her separate residence . Alternatively he has offered the wife their previous matrimonial home at flat No. 203, Versova Apartments, Andheri, Mumbai. Needless to state, these flats must be unencumbered and exclusively for the wife.

30. The right of the wife under Section 19 does not require to deal with the equality in distribution of the assets and properties of the husband. It is a protective legislation for an enabling purpose to allow a wife to reside exclusively and peaceably in such alternative premises which, of course, should be of the same level. Besides, since it would be unencumbered residence, exclusive for the wife, it would require to be about half the area of the shared residence of the parties.

31. Of course, granting the wife both the Versova flat and the two 12th floor flats in the same building would give her the most an equitable and almost equal half share of their shared residence or matrimonial home and may bring to a final end their dispute with regard thereto.

32. Though, therefore, the order allowing the wife to enter into the matrimonial home where the husband resides with his second wife (specially in view of the fact that he was, at least once, an alcoholic) would not meet the ends of justice, the offer of the husband for an unencumbered, exclusive, alternative premises would; it would be in compliance of the purport and import of this specific legislation. The wife would be entitled to reside peaceably in the two flats on the 12th floor of the same building or in their Versova flat to the exclusion of the husband, his servants and agents. Further her rights, if any, in the matrimonial home would have to be protected against alienation and encumbrance and renouncement of title by the Respondent-husband. Once such an offer is made and is seen to be a reasonable offer, the wife would not be entitled to insist upon residing in the shared household only and not be evicted or excluded therefrom.

33. Hence the following order:

Order

(i) The impugned order dated 15th June 2010 passed by the learned Judge, 2nd Family Court, Mumbai, requires to be modified.

(ii) The Respondent-husband's offer made in paragraph 6 of his Affidavit-in-reply filed in May 2009 to give the wife to reside in the two flats on the 12th floor of Oberoi Sky Garden, Lokhandawala Complex, Versova Andheri, Mumbai for her separate residence or their flat at 203, Ankita Apartments, Versova, Andheri, Mumbai, is seen to be reasonable and, therefore, accepted.

(iii) The Petitioner-wife would be entitled to choose to reside in either of the aforesaid premises.

(iv) Upon such a choice being exercised by the wife, the husband shall allow the wife to enter upon, reside and remain in such premises without any encumbrances, disturbance and interference.

(v) The Petitioner-wife shall be entitled to enter upon and reside either in the two flats on the 12th floor of Oberoi Sky Garden, Lokhandawala Complex, Andheri, Mumbai or in their previous matrimonial home at 203, Ankita Apartments, Versova, Andheri, Mumbai to the exclusion of the husband, his relatives, servants and agents.

(vi) The husband and his relatives shall not enter upon or disturb the occupation, use and enjoyment of the Petitioner-wife in the aforesaid premises.

(vii) The Respondent-husband shall not sell, alienate, encumber or otherwise create any third party rights or renounce the title claimed by him in the flats on the 13th and 14th floors of Oberoi Sky Garden, Lokhandawala Complex, Andheri, Mumbai, until the final disposal of their matrimonial dispute.

(viii) Under these circumstances, prayers (b) and (c) are refused.

(ix) Rule is granted accordingly.

(x) No order as to costs.

Sunitha v. State of Kerala, ILR 2011 (1) Kerala 152 (Kerala H.C.) (10.12.2010)

Judge: V. Ramkumar

Order

1. In this Revision filed under Section 397 read with Section 401 Code of Criminal Procedure the Revision Petitioner who was the applicant in C.M.P. 3532 of 2009 on the file of the J.F.C.M., Adimaly, challenges the order dated 2-2-2010 passed by the Magistrate dismissing the said C.M.P. filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ("the Act" for short).

2. In the aforesaid application filed by the Revision Petitioner against her husband who was the sole Respondent in the application, she claimed reliefs under Sections 18, 19 and 20 of the Act. The application was filed in Form No. II of the Protection of Women from Domestic Violence Rules, 2006 ("the Rules" for short). The learned Magistrate ordered notice on the application to the Respondent husband. He, however, refused to accept the notice which was returned unclaimed. Thereafter the learned Magistrate took up the application, proof affidavit and Exits. P-1 to P-11 (which were marked) and as per the impugned order dated 2-2-2010 dismissed the application as not maintainable holding inter alia that even though the applicant has filed the application in Form II no complaint is filed as contemplated by Section 2(d) Code of Criminal Procedure Hence, this Revision by the applicant.

3. The 2nd Respondent who is the husband of the Revision Petitioner has been duly served. But he has not chosen to enter appearance or oppose this Revision.

4. As mentioned earlier, the main ground on which the learned Magistrate has dismissed the application filed by the Petitioner is that no complaint as contemplated by Section 2(d) Code of Criminal Procedure has been filed by the Petitioner. In the course of the impugned order the learned Magistrate has observed as follows:

In this case even though the Petitioner has filed an application Under Section Form II and a domestic incident report in Form No. I no complaint is filed as contemplated in Section 2(d) of the Code of Criminal Procedure.

The learned Magistrate proceeded to hold as follows:

Section 5 of the Act specifically states that the Magistrate shall act upon a complaint of domestic violence. In this case no complaint is filed by the Petitioner and the Court cannot find out what are the allegations against the Respondent and the facts and circumstances of the case. As per the provisions of the Act the proceedings under this Act shall be commenced upon filing of a complaint either before a Police Officer. Protection Officer. Service Provider or before the Magistrate, as stipulated in Section 5. In this case no such complaint is filed by the Petitioner. She had sought for reliefs under Sections 18, 19 and 21 of the Act.

5. I am afraid that the learned Magistrate has misconceived the object and purpose of the Act in question. The expression "domestic violence" has been defined in a very elaborate manner under Section 3 of the Act. The reliefs which can be granted by the Magistrate in an application under Section 12 read with Rule 6 of the Rules and Form II are:

(i) Protection Order under Section 18

(ii) Residence Order under Section 19

(iii) Monitory Relief under Section 20

(iv) Compensation Order under Section 22

(v) Interim custody Order under Section 21

(vi) Compensation or damages for the injuries caused by the acts of violence committed by the Respondent-Section 12(2)

Even though as indicated by Sections 12 and 27 of the Act, the forum to be approached for the above reliefs is the Court of the Magistrate, the reliefs provided for are all civil remedies. (Vide Sulochana v. Kuttappan, 2007 (2) K.L.T. 1; Dr. V.K. Vijayalekshmi Amma and Anr. v. Bindu, V. and Ors., 2010 (1) K.H.C. 57; and Dr. Preceline George @ Antony Preceline George v. State of Kerala and Anr., 2010 (1) K.H.C. 417).

The application to the Magistrate under Section 12(1) can be made by:

(i) an aggrieved person or

(ii) a protection officer or

(iii) any other person on behalf of the aggrieved person

"Aggrieved person" has been defined under Section 2(a) as follows:

(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;

The word "Respondent" has been defined under Section 2(q) as follows:

"(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 complaint against a relative of the husband or the male partner."

It has been held that the words "relative of the husband" occurring in the proviso to Section 2(q) can include a female relative also. [See Ramadevi and Ors. v. State of Kerala and another, 2008 (1) K.L.T. 734].

The expression "shared household" as defined under Section 2(s) is 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 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 in a member, irrespective of whether the Respondent or the aggrieved person has any right, title or interest in the shared household.

The expression "domestic relationship" as defined under Section 2(f) reads as follows:

'Domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in the 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.

Thus, "domestic relationship" is a common ingredient of both "aggrieved person" and "the Respondent". Familial or conjugal relationship between the aggrieved woman and the perpetrator of domestic violence is a must before an application could be filed under Section 12.

While in the case of a criminal offence the place of trial is ordinarily before a Court within whose territorial limits the offence was committed, the forum for entertaining an application under Section 12 of the Act is the Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within the local limits of which:

(a) the aggrieved person permanently or temporarily resides or carries on business or is employed; or

(b) the Respondent resides or carries on business or is employed; or

(c) the cause of action has arisen.

(See Section 27)

Even though Section 28(1) of the Act provides that most of the proceedings under the Act shall be governed by the provisions of the Code of Criminal Procedure, 1973, Section 28(2) of the Act gives sufficient latitude to the Court to lay down its own procedure for disposal of the main application under Section 12 as well as the interlocutory application under Section 23(2) of the Act.

As has already been noticed, what Section 12 of the Act contemplates is only an application to the Magistrate and not a complaint. Section 2(d) Code of Criminal Procedure defines a complaint as follows:

(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Thus, in order to constitute a complaint there should be an allegation made to a Magistrate that some person has committed an offence. Here, except where a Respondent is prosecuted under Section 31 of the Act for committing breach of a protection order under Section 18 or where a protection officer is prosecuted under Section 33 of the Act for not discharging his duty, the Magistrate is approached by a person for any of the aforementioned reliefs by filing an application under Section 12 read with Rule 6 of the Rules and Form II. The Respondent who is the opposite party to such an application is not an accused [Vide Sreedivya v. Sudheer, 2009 (3) K.L.T. 477]. Since he is not an accused, he cannot be arrested and produced or ordered to be arrested and produced before the Magistrate. The expression "complaint" found in the Act and the Rules has been used in a generic sense and is not to be understood in the context of a complaint as defined under the Code of Criminal Procedure

6. Cruelty against woman, whether she be a grandmother, mother, wife, sister or daughter, is not a new species of crime. Reports indicate that every 20 minutes at least one woman is subjected to domestic violence in India. The modesty of woman continues to be outraged by man who considers himself to be an unquestionable dictator in this field of male chauvinism. The sad part of this institutionalized atrocity is that women themselves play a vital role in trivializing violence against their own folk. Despite inadequate data to capture the statistics, it is reasonably believed that the total number of separated and divorced women in our country is alarmingly increasing and may even touch 10 per cent of the total population. Marital breakdown and desertion are disconcertingly on the increase.

For a great majority of females it is safer to be on the Streets outside, than to be in the bosom of their own family, for, it is there that violence of the worst order awaits them. Domestic violence is the most common but least reported crime in India. Indisputably, it is a facet of human rights violation. Many women suffer the atrocities in silence for fear of graver offences that may be committed on them if they were to muster sufficient courage to divulge to others the acts of cruelties done to them during covertures. Separation or divorce between the connubial partners can never be the solution for this intra-mural atrocity mostly taking place at the matrimonial habitat. Indian women do not want a divorce since they have realized that they have no means of survival once they are alone. Separated or divorced women constitute the most vulnerable section in this male-dominated society. The problem of preventing, curbing and eradicating all forms of violence against women is a major concern of the nation. With the pronouncement of the Apex Court in Visaka's case, [Visaka v. State of Rajasthan, A.I.R. 1997 S.C. 3011] occupational violence against women in their workplaces stands, by and large, abated even though there are shortcomings, in that area also. It is not the dearth of adequate legal framework which is the cause for the escalating crimes against women but it is the disinclination of the victims to come out with complaints against the perpetrators of the crimes. To a woman who is bold enough to complain, offences like Sections 354, 294, 509, 498A and 376 etc. of the Indian Penal Code and even attempts to commit the said offences and punishable under Section 511 of I.P.C. are sufficient to take care of almost every situation. But to a timid and non-complaining woman, even Visaka's case may not provide sufficient protection. What is lacking is the bold and courageous disposition among the victims and the preparedness to shed all their fears and to boldly prosecute the wrongdoers by lodging complaints before persons in authority and relentlessly pursue the same. The words of Pandit Jawaharlal Nehru that success always goes to those who dare and act and seldom it goes to the timid should motivate every Indian woman in distress. Thus, the mindset of the Indian woman should change. What we need is a fearless class of women who will not take the disgrace silently. It was after taking note of the increasing prevalence of domestic violence in this country that the Parliament came out with this piece of legislation namely the Protection of Women from Domestic Violence Act, 2005 to combat this particular species of violence mainly occurring within the four walls of the home. This law has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India and provides for a speedier remedy under the civil law through the instrumentality of the Magistracy. Every person in authority dealing with victims of domestic violence has to approach the problem with a spirit of gender sensitivity. There is nothing wrong in the repositories of power showing empathy towards women in distress except in cases where the provisions of the Act are abused for self-aggrandizement or for obtaining undue advantage over the opposite party. This Act which was published in the

Gazette in the year 2005 came into force only on 26-10-2006. Even though by providing for very strong remedies to the victims of domestic violence, amelioration of the weaker sex and women empowerment have been uppermost in the mind of the Parliament, everyone concerned should not forget that violence is not to be met by violence. It is very easy to misuse the provisions of the Act and gain an unfair advantage over the adversary. Such tendencies will ultimately turn out to be counter-productive.

7. After bestowing my anxious consideration to the facts and circumstances of the case, I am convinced that the learned Magistrate approached the whole matter from a wrong angle resulting in miscarriage of justice. The impugned order is accordingly set aside and the matter is remitted to the Court below for disposal of the application (C.M.P. 3532 of 2009) afresh and in accordance with law.

In the result, this Revision is allowed and the matter remitted to the Court below as above.

Vishal Damodar Patil v. Vishakha Vishal Patil, 2009 Cr.L.J. 107 (Bombay H.C.) (20.08.2008)

Judge: A.S. Oka

Order

1. The submissions of the learned Counsel appearing for the parties were heard on the last date. With a view to appreciate the submissions, it will be necessary to refer to the facts of the case in brief.

The first respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the said Act). The learned Magistrate passed an order on 4th January, 2008 on the said application directing the petitioner-husband to pay interim maintenance at the rate of ₹ 1,000/- p.m. The learned Magistrate also directed that the first respondent-wife was permitted to reside in a shared house situated at village Shedung, Post Ajiwali, Taluka Panvel, District Raigad. An Appeal was preferred by the petitioner by invoking Section 29 of the said Act. The Appeal was dismissed by the learned Additional Sessions Judge by order dated 15th July, 2008.

2. The submission of the learned Counsel appearing for the petitioner is that there was no prayer made by the first respondent for grant of any interim relief. He submitted that in absence of any prayer in the main application in under Section 12 of the said Act or in absence of any separate application filed by the first respondent for grant of interim relief, the learned Magistrate could not have granted interim relief in favour of the first respon-

dent. He submitted that in absence of any interim application being made by the first respondent, there was no occasion for the learned Magistrate to consider the prayer for grant of interim relief. He submitted that as no opportunity was granted to the petitioner to oppose the prayer for grant of interim relief, the impugned order deserves to be set aside only on this ground. He submitted that the direction issued by the learned Trial Judge by order dated 4th January, 2008 by which the first respondent was permitted to reside in the shared house is in the nature of the final order which could not have been passed without giving an opportunity to the petitioner of adducing evidence. He submitted that the impugned order is therefore illegal and is required to be quashed and set aside. The learned Counsel for the first respondent supported the impugned Judgments and Orders and submitted that the learned Magistrate had jurisdiction to grant interim relief though there was no separate application containing a prayer for interim relief filed by the first respondent.

3. I have carefully considered the submissions. It will be necessary to refer to the relevant provisions of the said Act. Sub-section (1) of Section 12 of the said Act provides that an aggrieved person or any other person on behalf of the aggrieved person or a Protection Officer may present an application to the Magistrate for seeking one or more reliefs under the said Act. The reliefs which can be sought under the said Act are incorporated in Sections 17 - 22 of the said Act. Section 17 is regarding a right of a woman to reside in the shared household. Section 18 gives power to the learned Magistrate to pass a prohibitory order against the respondent in the application under Section 12(1) of the said Act. The said prohibitory order is essentially for preventing the respondent from committing an act of domestic violence or from preventing commission of any act as specified in the protection order. Section 19 empowers the Magistrate to pass a residence order. Under the said Section the learned Magistrate can restrain the respondent in the application under Section 12 from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household. Under the said Section the learned Magistrate can issue direction against the respondent to remove himself from the household. Under the said Section the learned Magistrate can direct the respondent to secure the same level of alternate accommodation for aggrieved person as enjoyed by her in the shared household. Section 20 confers power on the learned Magistrate to grant monetary reliefs such as loss of earning, medical expenses, maintenance etc. Section 21 provides for passing order regarding custody of children. Section 22 gives power to the learned Magistrate to order payment of compensation and damages. Thus, Sections 17 – 22 provide for various kinds of final reliefs which can be granted by the learned Magistrate on an application under Section 12(1) of the said Act.

4. Section 23 confers a power on the learned Magistrate to grant interim relief and ex parte interim reliefs. Section 23 reads thus:

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.

5. In view of Section 23, pending the final disposal of the application under Section 12 of the said Act, the learned Magistrate gets jurisdiction to pass an order of interim relief in terms of Sections 18, 19, 20, 21 or 22 of the said Act. Sub-section (2) of Section 23 empowers the learned Magistrate to grant an ex parte ad interim relief. Section 28 is also relevant on this aspect which reads thus:

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) 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 (2 of 1974).

6. There are rules framed by the Central Government in exercise of power conferred by Section 37 of the said Act. The said rules are known as the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as the said Rules).

In view of Sub-rule (1) of Rule 6, an application under Section 12 of the said Act is required to be filed in Form-II. The said form is an exhaustive form in which the aggrieved person is required to set out the specific nature of reliefs claimed with particular reference to the reliefs provided under Sections 17 to Section 22.

Rule 7 of the said Rules provides that every Affidavit for obtaining an ex parte order under Sub-section (2) of Section 23 shall be filed in Form-III. The language of Sub-section (2) of Section 22 is very clear. On an affidavit being filed in the prescribed form, the learned Magistrate can exercise power to grant an ex parte ad interim orders under Sections 18, 19, 20,21 or 22 of the said Act provided the learned Magistrate is satisfied that the application made by the aggrieved person prima facie discloses that the respondent to the said application is committing or has committed an act of domestic violence or there is a likelihood that the respondent may commit an act of domestic violence.

Sub-section (2) of Section 23 read with Rule 7 clearly shows that there is no requirement of filing a separate application for interim relief under Section 23 of the said Act. Apart from these two provisions, Sub-section (2) of Section 28 of the said Act provides that the Court is empowered to lay down its own procedure for disposal of an application under Section 12 or an application under Sub-section (2) of Section 23 of the said Act. Therefore, there is no requirement of filing a separate application for grant of interim relief under Section 23 of the said Act.

However, while considering the question of granting the ex parte ad interim or interim relief, the learned Magistrate will have to consider the nature of the reliefs sought in the main application under Section 12(1) of the said Act inasmuch as an interim relief under Section 23 of the said Act can be granted in aid of the final relief sought in the main application. On the basis of an affidavit in Form-Ill prescribed by the Rules, in a given case, learned Magistrate can grant ex parte ad interim relief. However, before granting an interim relief, an opportunity of being heard has to be afforded to the respondent. The respondent can always file a reply to the affidavit.

7. Perusal of the paragraph 8 of the judgment of the Appellate Court shows that the only contention raised by the petitioner was that the regular case number should not have been assigned to the application. The contention was that the application filed by the first respondent could not have been numbered as a regular criminal case.

The impugned order passed by the learned Magistrate shows that a reply was filed by the petitioner to the application under Section 12(1) filed by the first respondent. A copy of report submitted by the Protection Officer under Section 9(b) of the said Act has been annexed to the Affidavit in reply to this petition filed by the first respondent. Perusal of the application filed by the first respondent under Section 12(1) of the said Act which is in Form-II shows that the first respondent prayed for reliefs under Sections 18, 19 and 20 of the said Act. The petitioner has filed a reply to the said application under Section 12 and, therefore, he was aware that reliefs were claimed by the first respondent under the aforesaid sections. The learned Magistrate while passing the impugned order has referred to the reply filed by the petitioner. Perusal of the paragraph 3 of the order shows that the learned Magistrate was exercising a power of passing an interim order.

The said order shows that the petitioner was heard before passing the order. Perusal of the judgment of the Appellate Court shows that it was not even a case made out by the petitioner that he was not heard or that he was not aware that the learned Magistrate was considering the prayer under Section 23 of the said Act. On plain reading of the operative part of the order dated 4th January, 2008, it is very clear that the learned Magistrate has granted interim relief in terms of Section 23 of the said Act read with Section 19(1)(a) and Section 20(1)(d) of the said Act. The maintenance amount has been fixed only at ₹

1,000/- p.m. from the date of the application. There is a prima facie finding recorded that the first respondent was residing with the petitioner in his house. Therefore, an order as regards a shared accommodation was passed. It is pertinent to note that it is not the case of the petitioner that an affidavit which is required to be filed under Rule 7 of the said Rules was not filed by the first respondent.

8. Thus, it is not possible to accept the contention raised by the petitioner that the interim relief under Section 23 of the said Act can be granted only on a separate application for interim relief made by the aggrieved person. From the scheme of the provisions of the said Act and in particular Section 23 read with Section 28 of the said Act and Rule 7 of the said Rules, it is apparent that there is no such requirement of law. The only requirement of law is that the aggrieved person seeking ex parte ad interim relief will have to file an affidavit in prescribed form as provided under Rule 7 read with Sub-section 2 of Section 23 of the said Act. As stated earlier, in the facts of the case, no grievance has been made by the petitioner before the Appellate Court or in this petition that such affidavit was not filed.

9. Hence, no case is made out for interference. The petition is rejected. There will be no order as to costs. The main application under Section 12(1) of the said Act shall be decided by the learned Magistrate without being influenced by the grant of interim relief by the trial Court and the confirmation thereof by this Court.

10. In view of mandate of Sub-section (5) of Section 12, the main application under Section 12 shall be disposed of by the learned trial Judge as early as possible and preferably within a period of two months from the date on which an authenticated copy of this order is produced before the concerned Court.

Parties and the concerned Court to act upon an authenticated copy of this order.

P. Chandrasekhra Pillai v. Valsala Chandran, 2007 Cr.L.J. 2328, I (2008) DMC 83 (Kerala H.C.)(27.02.2007)

Judge: Brij Mohan Gupta

Order

1. The petitioner in this Crl. M.C. has suffered an ex parte interim order under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act'). That order was suffered by the petitioner in an application filed by the first respondent herein, admittedly his wife. She had approached the learned Magistrate with an application under Section 19 of the Act. The learned Magistrate, after considering the

affidavit filed by the petitioner along with the application under Section 12, where she claimed relief under Section 19, came to the conclusion that ex parte interim order is liable to be passed in favour of the first respondent herein. Accordingly, an order was passed invoking the powers under Section 23 r/w. Section 19 allowing the first respondent and her children to reside in the house "Chandra Bhavanam, Kuruppu's Lane, Sasthamangalam, Thiruvananthapuram. The City Police Commissioner, Trivandrum was further directed to give necessary protection to the first respondent for her peaceful residence in the home along with her children.

2. I shall hereafter refer to the parties in the manner in which they are ranked before the learned Magistrate. As stated earlier, marital tie is admitted. The petitioner and, the respondent are an estranged couple admittedly. The respondent /husband assails the impugned interim ex parte order passed under Section 23 of the Act and prays that the powers under Section 482 Cr. P.C. may be invoked to quash the order. Various grounds are urged in support of the prayer. I shall proceed to consider them later. The learned Counsel for the petitioner on the other hand contends that an appeal under Section 29 is maintainable and therefore the respondent, who has not chosen to invoke the right of appeal under Section 29 of the Act, cannot be permitted to request this Court to invoke the powers under Section 482Cr. P.C.

3. The learned Counsel Shri. Ramkumar, appearing for the respondent /husband fairly concedes that an appeal is maintainable under Section 29 of the Act against an interim ex parte order passed under Section23 r/w. Section 19 of the Act. On that aspect no dispute is raised in this petition. In another petition (Crl. M.C. 264 of 2007) which was also being heard along with this petition, a contention was raised that no such appeal is at all maintainable under Section 29 of the Act against an interim order under Section 23r/w. Section 19 of the Act. I have already held today as per the decision in the Crl. M.C. referred earlier that such an appeal is maintainable. At any rate, since the learned Counsel for the petitioner concedes the same, it is not necessary to advert to that controversy in this order.

4. The learned Counsel for the respondent contends that though an appeal is maintainable under Section 29 of the Act, this is a fit case where notwithstanding the availability of that remedy this petition under Section 482 Cr. P.C. can and ought to be entertained considering the peculiar nature and circumstances of the case. The counsel contends that the sweep of the powers under Section 482 Cr. P.C. is so wide that the mere availability of an alternative relief cannot and does not fetter the powers of this Court under Section 482 Cr. P.C. if the Court is satisfied that in the interests of justice the invocation of such power is necessary and warranted.

5. Normally the availablity of an efficacious alternative remedy will certainly prompt this court to look for an explanation as to why such available provisions are not being made use of and only if the Court is satisfied that there are compelling reasons of an exceptional variety will this Court choose to invoke the powers under Section 482 Cr. P.C. even when such alternative remedies are not invoked by a petitioner.

6. The learned Counsel for the respondent contends first of all that an appeal under Section 29 of the Act, (I extract the statutory provision below) will be available only after notice of the order is served on the respondent.

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

7. The crux of the contention of the petitioner is that in this case the ex parte interim order under Section 23 has not been served on the respondent. Consequently, he cannot claim a right of appeal under Section 29 of the Act. I am unable to accept this contention at all. The service of the order on the respondent has nothing to do with the right of appeal under Section 29 of the Act. The right of appeal is available to an aggrieved person or the respondent, but such right of appeal has to be exercised within the period of one month stipulated under Section 29 and such period of 30 days would start running fromthe date of service of the order on the respondent or the aggrieved person. I find it. absolutely unacceptable to assume that the right of appeal would depend on the service of the order on the respondent.

8. The learned Counsel for the petitioner submits that in fact the order has been served. The counsel for the respondent disputes the same. I am, in these circumstances, not embarking on that controversy at all. I unhesitatingly come to the conclusion that the right of appeal is not dependent on the service of the impugned order on the respondent. That contention cannot obviously be accepted. The respondent has himself produced the impugned order, which he has obtained from the learned Magistrate after making due application. Even assuming that the order under Section 23 has not been served on the respondent in the manner contemplated under Section 24, without dispute and concededly Annex. B, copy of the impugned order, has been received by the respondent. He cannot be heard to contend that he has no right of appeal because the order has not been served on him.

9. The learned Counsel for the respondent then contends that it is an illusory right of appeal. He relies on the provisions of Section 12(4) of the Act. He contends that the first date of hearing must be within three days of the date of receipt of the application by the Court and the ex parte interim order passed by the Magistrate cannot be challenged in appeal within the said period of three days. I find no merit in this contention at all. Provisions of Section 12(4) can have no bearing while considering the existence or not of the right of

appeal. The interim ex parte order may have a life longer than three days, which is referred to in Section 12(4). Section 12(4) uses the expression "ordinarily" and that itself shows that the provision has elasticity to cater to the needs of the facts of a particular case. In these circumstances, to say that the right of appeal will have to be exercised in respect of an order under Section 23 within three days and therefore it is not an effective remedy, cannot obviously be accepted.

10. The learned Counsel for the respondent contends that in this case the petitioner has not filed any separate application under Section 23 for grant of an interim order. Therefore the impugned order passed is legally unsutainable he urges. I extract Section 23 below:

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, Section19, Section 20, Section 21 or as the case may be, Section 22 against the respondent.

11. I am unable to understand the provisions of Section 23 as compulsorily insisting on any separate application for interim order under Section 23. An application referred to in Section 23(2) is obviously an application under Section 12 claiming relief under Sections 18 - 22. It is impossible to understand the expression "an application" in Section 23(2) as importing a requirement that a separate application must be filed to claim the relief of an interim order under Section 23. Doubts, if any, on this aspect pale into insignificance when we consider that Section 23 only insists on an affidavit in such form as may be prescribed to justify the claim for an interim order and ad interim order under Section 23. Rules prescribed the form of affidavit also. From the plain language employed by the statute in Section 23, it is impossible to spell out an insistance that a separate application under Section 23 must be filed in order to clothe the Court with the requisite jurisdictional competence and the claimant with a right to claim the relief of an interim order under Section 23. I do not agree with such interpretation, which is sought to be placed on the provisions of Section 23(2) by the learned Counsel for the petitioner.

12. The learned Counsel for the petitioner then contends that any interim order has to be passed only "on the basis of the affidavit of the aggrieved person". In the affidavit reasons must be shown as to why an interim order under Section 23 must be passed. The counsel contends that a reading of the affidavit, which has been produced as Ext. R1(a), can only show that the relief claimed in that affidavit is only the relief under Section 18 and not

the relief of an interim order under Section 23. The learned Counsel for the petitioner submits that this contention is factually and legally incorrect. Paragraph 11 of Ext. R1(a) is referred to by the learned Counsel for the petitioner to contend that separate prayer is made for an interim order under Section 23 also. Moreover, a reading of Ext. Rl(a) affidavit must convey to the Court that such affidavit is filed to satisfy the requirement of Section 23 as no such affidavit is necessary or insisted for an application under Section 18 simplicitor. The very purpose of filing the affidavit was to seek an order under Section 23. This contention raised that a separate application has not been filed under Section 23(2) and the affidavit filed is not sufficient to justify the grant of an interim order under Section 23(2) cannot, in these circumstances, succeed.

13. The learned Counsel for the respondent then contends that there has been gross non-application of mind by the learned Magistrate while granting the interim order, produced as Annex. B. This argument is built on the premise that relief is granted to the petitioner and her children whereas there is no contention that the children need a home or are without a home. They are actually residing with the respondent herein, it is contended. I do note that though there is no specific prayer in Ext. R1(a) for any residence so far as the children are concerned, such an interim order is granted by the learned Magistrate. But the crucial question is about the grant of interim order in favour of the petitioner-wife and in these circumstances the mere fact that relief has been granted in respect of the children also, though unsatisfactory, is not, according to me, sufficient to justify the invocation of the jurisdiction under Section 482, Cr. P.C.

14. The other contentions raised by the respondent are on merits of the dispute. Counsel contends that no domestic violence as defined under Section 3 of the Act has been proved. He further contends, that there is no shared household as specified in the expression in Section 2(s). These are, according to me, contentions, which can be urged by the petitioner after appearing before the learned Magistrate in his prayer for vacation or non-extension of the interim order. They can be subject-matter of appeal under Section 29 also in an appropriate case. At any rate, I am not persuaded that powers under Section 482, Cr. P.C. can or deserve to be invoked on these grounds in the facts and circumstances of this case.

15. I am, in these circumstances, of the opinion that there are no circumstances justifying the invocation of the powers under Section 482, Cr. P.C. against the impugned order at the instance of the petitioner, who has not invoked his right of appeal under Section 29 nor invoked his right to appear before the learned Magistrate and pray for vacation/ alteration/modification of the interim order already passed. I need only mention that it shall be open to the petitioner to raise appropriate contentions before the learned Magistrate and the learned Magistrate imbibing the sense of expedition, which is expected of him,

under Sections 12(4) and 12(5) of the Act must proceed to dispose of the petition on merits, expeditiously and in accordance with law.

16. With the above observations, this Crl. M.C. is dismissed.

Milan Kumar Singh v. State of UP, 2007 Cr.L.J. (Allahabad H.C.) 4742 (18.07.2007)

See page 336 for full text of judgment.

Samten Tshering Bhutia v. Passang Bhutia, 2014 Cr.L.J. 149 (Sikkim H.C.) (13.09.2013)

Judge: Pius C. Kuriakose

Order (Oral)

Under challenge in this writ petition filed under Article 226 of the Constitution of India is Annexure-P1, Order passed by the learned Judge, Family Court, East and North Sikkim at Gangtok.

2. The petitioner, Sri Samten Tshering Bhutia, was the sole respondent in Annexure-P2, Petition submitted by respondents no. 1, 2, 3 and 4 before the Family Court under Section 125 of the Cr.P.C.

The prayers which the respondent nos. 1, 2, 3 and 4 made in Annexure-P2, Petition, are only the following:

a. To pay a cost of ₹ 10,000/- (Ten thousand) per month by way of interim measure so that petitioners can peruse the case.

b. To pay at least half of the net salary i.e. ₹ 16,000/-(Sixteen Thousand) per month as maintenance allowance to the petitioners and the same may be passed after hearing the parties.

c. The petitioner No.4 being unmarried and unemployed daughter she may be given extra amount of ₹ 10,000/- (Ten thousand) maintenance cost apart from 50% salary as claimed above.

d. Direct the Opposite Party to return all the documents including educational testimonials and Certificate of Identification of the Petitioner No.4.

3. The Annexure-P2, Petition stood posted before the Family Court, East and North Sikkim at Gangtok on 05.08.2013 for appearance of the petitioner, the sole respondent. On that day, the respondent nos. 1, 2, 3 and 4 (the petitioners in Annexure-P1) and the present

petitioner were present in person. The petitioner is aggrieved by Annexure-P1, Order which was passed by the Family Court on 05.08.2013. Under Annexure-P1, learned Family Court has passed a residence order as contemplated under Section 19 of the Protection of Women from Domestic Violence Act, 2005 (in short, D.V. Act) and has also directed the Officer In-charge of the Police Station concerned to ensure the safety of the petitioners while they are occupying the household in respect of which the residence order has been given.

4. The ground which is prominently raised in the writ petition is that Annexure-P1 is perse bad as in Annexure-P2, application, there is no prayer for a residence order under Section 19 of the D.V.Act. It is urged that the Court below has passed the Annexure-P1, Order even without giving an opportunity to the petitioner to defend an application by the respondents for relief under Section 19 of the D.V. Act. It is urged that there was no application either written or even oral from the part of the respondents. It is urged that the learned Judge on the fateful date "informed" the petitioners (respondents herein) that "they may also avail remedies under the Protection of Women from Domestic Violence Act, 2005". After conveying the information to the respondents, the learned Judge has hurriedly granted relief even without bothering to find whether the respondents are inclined to act on the basis of the information conveyed by the learned Judge.

5. Mr. Eklovya Rai Nagpal, learned counsel for the petitioner would address me on the basis of the grounds raised in the memorandum of the writ petition and submit that the impugned order Annexure-P1 cannot stand judicial scrutiny even for a moment. The order is so wholly unreasonable that the same is liable to be corrected under the supervisory jurisdiction of this Court if not under Article 226.

6. Mr. B. Sharma, learned Senior Counsel for the respondents would defend Annexure-P1. He drew my attention to Section 26 of the D.V. Act and submitted that the Family Court has every jurisdiction to pass residence order which is contemplated under Section 19 of the above Act. He also highlighted that the shared household in respect of which the Annexure-P1 is passed by the learned Family Court was, in fact, built jointly by the respondent and the first petitioner. When the first petitioner has two buildings which are built jointly by her and her husband, she has every right to occupy at least one of them along with her daughters who have now been abandoned by their father.

7. Even though the learned Counsel for the petitioner and the learned Senior Counsel for the respondents addressed submissions before me touching the merits of claim of the respondents to maintenance from the petitioner and also to residence right in the building Annexure-P1 shared household. I do not think it necessary for me to take a decision or even to observe one way or the other regarding the merits. I am on complete agreement

with Mr. Nagpal, learned Counsel for the petitioner that the fundamental rules of judicial procedure have not been followed by the learned Court below.

Annexure-P2 was the application which the petitioner was called upon to decide on 05.08.2013. The posting of Annexure-P2 was for appearance of the petitioner. The petitioner had not even been served with a copy of Annexure-P2. Annexure-P1 will show that the learned Judge, Family Court only passed a direction to the respondent to serve a copy of Annexure-P2 to the petitioner. While trying proceedings before the Family Court, the learned Judge is competent to grant reliefs which are available to the aggrieved persons under Sections 18, 19, 20, 21 and 22 of the D.V. Act. But I have no doubt in mind that the action on the part of the learned Judge in granting relief to the respondents under Sections 19 of the D.V. Act on the basis of Annexure-P2 was thoroughly irregular. Section 26 of the D.V. Act can be conveniently quoted as follows:

"26. Relief in other suits and legal proceedings. –

(1) Any relief available under section 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 beforea civil or criminal court."

8. In the instant case, there is nothing on record to indicate that the respondents have sought for a relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act. I find from the materials on record that the learned Judge informed the respondents no. 1, 2, 3 and 4 of the availability of the remedies under Section 18, 19, 20, 21 and 22 of the D.V. Act. If the respondents wanted to avail the remedies under Sections 18, 19, 20, 21 and 22 of the D. V. Act, they should have sought for the same ideally by filing a written application.

9. In the absence of any application from the part of the respondents no. 1, 2, 3 and 4 for relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act, the impugned order cannot be sustained. I set aside the same and remit the matter back to the Family Court, East and North Sikkim at Gangtok.

10. It is open to the respondents no. 1, 2, 3 and 4 to make requisite application before the Family Court, East and North Sikkim at Gangtok for getting relief under Sections 18, 19, 20, 21 and 22 of the D.V. Act. If any application is filed by them in that regard, the Court below will expedite the matter and will take a decision on such application at the earliest and at any rate within one month of receiving the application on file. It is needless to mention that the disposal of the application should be in accordance with law after giving an opportunity to the petitioner to resist the application.

11. I make it clear that nothing stated in this order should be understood as expression of opinion and the merit of the claims and contentions of the respondents against the petitioner. If the respondents are desirous to file any application under the D.V. Act, they may do so on or before 19.09.2013 the date to which the Annexure-R2 is being posted. The parties will appear before the Family Court, East and North Sikkim at Gangtok on 19.09.2013.

SERVICE OF NOTICE

Amar Kumar Mahadevan v. Kathiyayini, Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Madras H.C.) (28.11.2007)

Judge: K. Mohanram

Order

1. The petitioner herein is the respondent in STC. No. 1607 of 2007 on the file of the learned Judicial Magistrate No. VI, Coimbatore. The respondent herein is the wife of the petitioner. The respondent filed an application under Section 12 of the The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act") making certain allegations against the petitioner herein. The said application seems to have been filed on 25.7.2007 and on the same date, the sworn statement has been recorded. The learned Magistrate being satisfied that a prima facie case has been made out, has taken the application on file under Section 12 of the Act and posted the application to 30.7.2007, directed the issue of summons to the accused/petitioner herein and also private notice to the petitioner herein. The petitioner has filed the above criminal original petition under Section 482 of Cr.P.C. seeking to quash the proceedings in STC. No. 1607 of 2007.

2. The contention of the petitioner is that the sworn statement of the respondent herein was recorded only on 25.7.2007 and the hearing was adjourned to 30.7.2007 in gross violation of the mandatory provisions of Section 12(4) of the Act. It is further contended that the service of notice of the date of hearing fixed under Section 12 of the Act is not in accordance with the procedure prescribed under Section 13(1) of the Act namely, the notice was not served by the Protection Officer and private notice has been permitted. Further, a declaration of service of notice made by the Protection Officer has not so far been filed as per the provisions contained under Section 13(2) of the Act.

3. The learned Counsel for the petitioner further contended that the learned Magistrate erred in taking cognizance of the application filed by the respondent herein without calling for the report from theProtection Officer.

4. Heard Mr. C.S. Dhanasekaran, learned Counsel for the petitioner.

5. The learned Counsel for the petitioner while reiterating the above said contentions put forth in the petition submitted that the proceedings pending on the file of the learned Magistrate are liable to be quashed for not following the mandatory provisions contained in the Act.

6. Before considering the above said contentions put forth by the petitioner, it is necessary to refer the relevant provisions of the Act. Sections 12 and 13 of the Act read as follows:

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 theProtection 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.

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

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

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

13. Service of notice (1) A notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the

Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

7. Before making an endeavour to ascertain the purport and scope of the provisions contained in Sections 12 and 13 of the Act, it will be useful to refer to the objects in enacting the above said Act. The statement of objects and reasons reads as follows:

Statement of Objects and Reasons.- 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 cruelly 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.

8. In construing the provisions of the Act, the Court has to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the aggrieved persons and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. It must be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim.

9. Keeping the above said principles in mind, if the provisions contained in Sections 12 and 13 of the Act are considered with reference to the contentions put forth by the learned Counsel for the petitioner, this Court without any hesitation comes to a conclusion that the said contentions put forth by the counsel for the petitioner have to be rejected at a threshold. A reading of Section 12(4) of the Act shows that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. Section 12(5) of the Act stipulates that the Magistrate shall

endeavour to dispose of every application made under Sub-section (1) within a period of sixty daysfrom the date of its first hearing. Since the Act provides for the disposal of the application filed by the aggrieved person in a time bound manner, to achieve that object, certain enabling provisions have been incorporated under Section 13 of the Act. Section 13 of the Act provides that a notice of the date of hearing fixed under Section 12 of the Act shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice. Since as per Section 12(5) of the Act, it is the bounden duty of the Magistrate to make an endeavour to dispose of the application within a period of sixty days from the date of its first hearing, unless the service of notice is completed at the earliest, it may not be possible to dispose of the application within the above said stipulated time. Therefore, Section 13 of the Act provides for service of notice on the respondent through the Protection Officer and such notice shall be served within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate. In this context, it will be useful to refer Section 28 of the Act, which reads as follows:

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-sections (2) of Section 23.

10. A reading of the above said provision shows that Sub-section 2 envisages that the Court may lay down its own procedure for disposal of an application. Thus, it is clear that apart from following the procedure provided under Sections 12 and 13 of the Act, it is open to the Magistrate to follow its own procedure for disposal of applications filed under this Act.

11. It is seen from the diary extract that the complainant was present on 25.7.2007 and the sworn statement of the respondent had been recorded on the same day and after perusing the records and on being satisfied that a prima facie case has been made, the learned Magistrate has taken the application on file under Section 12 of the Act and posted the application to 30.7.2007. The learned Magistrate has noted that 28th and 29th of July, 2007 happened to be holidays and therefore, has directed to issue summons to the accused (respondent) on payment of process fee and also private notice to the accused (respondent). Thus, it is clear that the learned Magistrate was conscious of the time limit

prescribed under Section 12(4) of the Act. On 30.7.2007, the complainant/respondent herein was present but the accused/petitioner was not present and therefore, summons was ordered on 1.8.2007. On 1.8.2007, the complainant/respondent herein was present but the accused/petitioner herein was not present and it had been brought to the notice of the Court that the petitioner is working at Visakapattinam and at the request of the counsel for the respondent herein, notice has been ordered to be issued to the Protection Officer and on the next date of hearing was fixed for 10.8.2007. On 10.8.2007, as the accused/petitioner herein was not present, once again, summons have been directed to be issued to the petitioner and a private notice has also been ordered returnable by 17.8.2007. On 17.8.2007, the respondent herein was present but the petitioner herein was absent. The postal cover had been returned as "unclaimed". Hence, the non bailable warrant was issued against the petitioner herein returnable by 31.8.2007. On 18.8.2007, i.e., the very next day, the petitioner had surrendered before the Court and on a petition filed by him, non bailable warrant had been cancelled and the copies have been given to him and had been questioned.

12. From the above said diary extract, it can be seen that the learned Magistrate has taken every effort to serve the notice on the petitioner and in fact on 1.8.2007, the learned Magistrate has directed the issue of notice to the Protection Officer. It further reveals that on the first date of hearing namely, 25.7.2007 itself private notice has been directed to be issued to the petitioner herein. Such order directing the issue of private notice to the petitioner herein cannot be said to be against the provisions contained in the Act but it can only be taken to be in consonance with Section 28 of the Act, since Section 28 of the Act enables the Magistrate to lay down his own procedure for disposal of the application. By the issue of private notice to the petitioner, it is not understandable as to how the petitioner is prejudiced. If the learned Magistrate had not directed the service of the notice through the Protection Officer, it is the respondent herein who should really be the aggrieved person by non-observance of the provisions contained in Section 12 and Section 13(1) of the Act.

13. The declaration of service of notice by the Protection Officer shall be the proof that such notice was served upon the respondent as per Section 13(2) of the Act. The absence of such declaration from the Protection Officer has not in any way affected the proceedings pending before the learned Magistrate or it has in any way prejudiced the interest of the petitioner herein. He had admittedly appeared before the learned Magistrate on 18.8.2007. Therefore, the necessity to file a declaration of service of notice by the Protection Officer has not arisen. Therefore, the contentions of the learned Counsel for the petitioner is liable to be rejected and accordingly rejected.

14. The proviso to Section 12 of the Act provides that before passing any order on the application filed under Section 12(1) of the Act, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. In this case, admittedly, the Protection order has not so far been passed and it is yet to be passed. The contention of the learned Counsel for the petitioner is that the application itself should not have been taken cognizance in the absence of the domestic incident report from the Protection Officer. A reading of Section 12 of the Act does not warrant such an interpretation. Nowhere, it is provided in the Act that even for taking cognizance of the application filed by the aggrieved person, the receipt of the domestic incident report from the Protection Officer is a condition precedent. Therefore, the contention of the learned Counsel for the petitioner is untenable and does not merit acceptance.

15. As stated above, this Act being a beneficent piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note off and on that ground, the proceedings pending under the Act cannot be quashed.

17. In the considered view of this Court, the above petition is vexatious in nature and it amounts to clear abuse of process of the Court and hence, the same is liable to be dismissed and accordingly dismissed. Consequently, connected miscellaneous petitions are also dismissed.

PROCEDURE UNDER PWDVA SECTION 28

PROCEDURAL GUIDELINES INTRODUCED BY THE JUDICIARY

Jaydisinh Prabhatsinh Jhala v. State of Gujarat, 2010 Cr. LJ 2462, (2010) 51 GLR 635 (Gujarat H.C.)(22.12.2009)

Judge: Akil Abdul Hamid Kureshi

Judgment

1. Both these petitions arise out of the proceedings under the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as 'the Act'). Since, two important and repetitive questions are common in these proceedings, they have been heard together and are being disposed of by this common judgment.

2. First question of considerable importance is the meaning of term 'respondent' as defined in Section 2(q) of the Act. In other words, the question is whether a female member of the family can be a respondent in the proceedings under the Act.

2.1. Second question is the nature of proceedings that the Magistrates conduct under the Act and the procedure that has to be adopted for the same. In other words, question is whether the proceedings under the Act are strictly of criminal nature, and that therefore, as held by the Supreme Court in several decisions particularly in case of Adalat Prasad v. Rooplal Jindal reported in 2005 (1) GLR 546 (SC) : 2004 (7) SCC 338, the Magistrate once having issued summons cannot recall the same even if it is found later on that ex-facie no case for proceeding further against all or any of the respondents is made out.

3. Questions arise in the factual background, which are slightly different in each case. We may notice such facts at this stage.

3.1. In Special Criminal Application No. 2068 of 2009, though at the outset, the petition was filed by five petitioners all the original respondents under an order dated 16-12-2009, same was confined to petitioners Nos. 3 and 4 only. Original applicant before the Magistrate is wife of one Jaydeepsinh. The petitioner Nos. 3 and 4 are the mother-in-law and sister-in-law respectively of the applicant. The applicant earlier filed an application before the Protection Officer on 4-4-2009 complaining of several acts of domestic violence by the respondents. The Protection Officer made a report before the Magistrate concerned, who after taking cognizance of the report, issued summons to all the respondents on 6-4-2009. The petitioners filed application, Exh. 4 in the said proceedings and contended that the proceedings are not maintainable. This application was turned down by an order dated 26-6-2009 by the learned Magistrate and Criminal Appeal filed by the petitioners was dismissed by the learned Sessions Judge on 21-7-2009. The petitioners, have therefore, filed the present petition challenging above orders.

3.2. This petition is argued only on one ground namely that female members of the family could not have been joined as respondents by the applicant in the said proceeding.

4. In Misc. Criminal Application No. 9940 of 2009, the petitioners are the original respondents in an application under Section 12(1) of the Act filed by the respondent No. 2, who is wife of the petitioner No. 1. The petitioner Nos. 3 and 4 are the female members of the family. All the petitioners contend that the complaint is not maintainable. In particular, the petitioner Nos. 3 and 4 contend that as female members of the family, they could not have been joined as respondents in the proceedings under the Act.

5. In this factual background, some of the provisions of the Act may be noticed. Before that, however, one may peruse the Statement of Objects and Reasons for enacting the Act.

6. In Para Nos. 2 and 3 of the said statement, it is stated as under:

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 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 victim of domestic violence and to prevent the occurrence of domestic violence in the society.

7. With above background, the bill was introduced to provide for various things including:

4(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 or adoption. 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 relative of the 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.

7.1. This Act was therefore enacted "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 thereof".

7.2. Clause (a) of Section 2 of the said Act defines term as "aggrieved person" as follows:

(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;

7.3. Term domestic relationship has been defined in Clause (f) of Section 2 of the said Act as follows:

(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 were related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

7.4. In Clause 2(g) of the said Act, term 'domestic violence' has been given same meaning as assigned to it in Section 3.

7.5. Term 'Protection Officer' has been defined in Clause (n) of Section 2 of the said Act as follows:

(n) 'Protection Officer' means an officer appointed by the State Government under Sub-section (1) of Section 8.

7.6. 'Protection order' as per Section 2(o) of the Act means an order made in terms of Section 18 of the Act.

7.7. Clause (q) of Section 2 of the said Act defines term 'respondent', which reads as follows:

(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.

7.8. Section 3 of the Act contains detailed definition of 'domestic violence' and includes large number of acts and omissions, which harms or injures or endangers the health, safety, life, limb or well being whether mental or physical, of the aggrieved person. It includes physical abuse, sexual abuse, verbal and emotional abuse as well as economic abuse. Thus, variety of the acts and omissions are included within the meaning of term domestic violence.

7.9. Section 8 of the Act casts duty on the State Government to appoint such number of Protection Officers as it may consider necessary.

7.10. Section 9 of the Act prescribes duties and functions of the Protection Officer. Such duties include to assist the Magistrate in the discharge of his functions under the Act, to make a domestic incident report to the Magistrate, to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires and such similar duties.

7.11. Section 12 of the Act pertains to application to the Magistrate. Sub-section (1) of Section 12 provides that 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 the Act.

7.12. Sub-section (4) of Section 12 of the Act provides that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

7.13. Sub-section (5) of Section 12 of the Act provides that the Magistrate shall endeavour to dispose of every application made under Sub-section (1) within a period of sixty days from the date of its first hearing.

7.14. Section 18 of the Act pertains to protection orders and reads 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 me 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 person, 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 nor any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(h) causing violence to the dependents, 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.

7.15. Section 19 of the Act pertains to residence order and permits the Magistrate to pass orders such as restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household, restraining the respondent or any of his relatives from entering into any portion of the shared household etc. In particular Clause (b) of Sub-section (1) of Section 19 permits the Magistrate to pass order 'directing the respondent to remove himself from the shared household'. Proviso to Sub-section (1) of Section 19, however, states that 'provided that no order under Clause (b) shall be passed against any person, who is a woman.'

7.16. Section 20 of the Act pertains to monetary relief, which the Magistrate can grant while disposing of an application under Sub-section (1) of Section 12.

7.17. Section 21 of the Act pertains to custody orders, which the Magistrate may pass with respect to the children.

7.18. Section 22 of the Act pertains to compensation orders, which the Magistrate may pass.

7.19. Section 23 of the Act empowers the Magistrate to grant interim and ex parte orders as he may deem, just and proper including orders under Sections 18 to 22 of the Act.

7.20. Section 26 of the Act provides inter alia that any relief available under Sections 18, 19, 20, 21 and 22 of the Act 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.

7.21. Section 28 of the Act lays down procedure, which the Magistrate may follow in all proceedings under the Act and 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.

7.22. Section 31 of the Act provides for penalty for breach of protection order by respondent. Sub-section (1) of Section 31 of the Act in particular provides that breach of protection order, or of any 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.

7.23. Sub-section (1) of Section 32 of the Act makes offence punishable under Sub-section (1) of Section 31 of the Act cognizable and non-bailable.

7.24. Section 33 of the Act provides for imposition of penalty on Protection Officer for not discharging his duties.

7.25. Section 36 of the Act provides that provisions of the Act shall be in addition to, and not in derogation of the provisions of other laws for the time-being in force.

8. These in short are the relevant provisions, which shall have to be borne in mind while interpreting term 'respondent' as contained in Section 2(q) of the said Act.

9. The said act makes some important provisions for protecting women from domestic violence as already noticed. Term domestic violence has been given very wide amplitude and covers variety acts and omissions including physical abuse, sexual abuse, verbal and emotional abuse and economic abuse within the term domestic violence. The statement of objects and reasons makes it clear that though there are provisions under Section 498A of the Indian Penal Code to deal with menace of domestic violence on criminal side, civil law does not however address this phenomenon and keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India, the Act has been enacted to provide for a remedy under the civil law, which is intended to protect a woman from being victims of domestic violence and to prevent the occurrence of such domestic violence.

10. For the purpose of securing justice to such oppressed women, who complain of domestic violence, wide powers are given to the Magistrate permitting him to pass appropriate orders, which the Magistrate can pass in an application under Sub-section (1) of Section 12 of the said Act. Said powers include passing an order for residence to an aggrieved person or even removing the respondent from the shared household. Such powers include grant of monetary relief and compensation, powers of handing over the custody of children to the aggrieved person. The Act specifically empowers the Magistrate to pass such orders by way of interim direction or even ex-pane interim orders. Section 26 of the Act as already noted permits the Civil Court, Family Court or Criminal Court, where any legal proceeding are pending to grant any of the reliefs available under Sections 18 to 22 of the said Act.

Though, Section 28 of the Act provides that all proceeding under Sections 12 and 18 to 23 and for the offence under Section 31 of the said Act shall be governed by the provisions of the Code of Criminal Procedure, 1973, Sub-section (2) of Section 28 clearly provides that nothing contained 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 of the said Act. In other words, though procedure to be followed in the said proceedings is that provided under the Code of Criminal Procedure, the Magistrate can still lay down his own procedure while dealing with the applications under Sub-section (1) of Section 12 or while considering grant of interim or ex-parte ad-interim relief orders under Sub-section (2) of Section 23 of the Act. Thus, whole purpose of this legislation appears to be to provide for a smooth machinery to ensure justice to oppressed women by cutting through legal red-tapism and passing such orders as may be found necessary in the interest of justice in the facts of the case.

11. Statement of Objects and Reasons, purpose for which the Act is enacted and several provisions already noticed leave no manner of doubt that the Act is a social welfare legislation aimed at securing better position for women in the society, for their independence and dignity and to fulfil an important constitutional goal of equality amongst all citizens.

Dated 22-12-2009:

12. From the combined reading of the above provisions of the Act, it emerges that the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate under Sub-section (1) of Section 12 of the Act, seeking any of the reliefs under the Act.

12.1. An aggrieved person is a woman, who is or has been in a domestic relation with the respondent and who alleges to have been subjected to an act of domestic violence by the respondent.

12.2. Term respondent as defined in Clause (q) of Section 2 of the Act means adult male person, who is or has been in a domestic relation with the aggrieved person and against whom any relief is sought under the Act. Proviso to Clause (q) of Section 2 of the Act, which is of an extreme importance, however, provides that aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against the relatives of the husband or the male partner.

12.3. Proviso, it is well settled ordinarily would provide for an exception to the main clause in a statutory provision.

12.4. In case of S.B.K. Oil Mills v. Subbash Chandra reported in AIR 1961 SC 1596, it was observed that "The law with regard to provisos is well-settled and well-understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to

what is in the enactment, and ordinarily, 'a proviso is not interpreted as stating a general rule".

12.5. In case of I.T. Commissioner v. I.M. Bank Ltd. reported in AIR 1959 SC 713, it was observed that "the proper function of proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment."

13. As per the definition of term respondent, it means any adult male person. This prescription would apply in all cases of applications filed by an aggrieved person. An aggrieved person as already noted includes not only wife or a female living in a relationship in the nature of marriage, but also other women members of a household. Thus, a mother, sister or even a daughter can be an aggrieved person under the Act. Therefore, ordinarily when an aggrieved person approaches the Magistrate, the respondent would be any adult male person, who is or has been in a domestic relationship with such an aggrieved person. However, when the aggrieved person is a wife or the female living in a relationship in the nature of marriage, she can also file an application against any relatives of the husband or male partner as the case may be. Term any relative would include a male or even a female relative. This is the plain and simple meaning and implication of proviso to Clause (q) of Section 2 of the Act. Any other interpretation or meaning assigned to it would virtually destroy as would be discussed hereinafter; the very purpose of enacting the proviso. It is one of the basic principles of interpretation of statute that the legislature does not waste words and no interpretation of a provision should be adopted, which would render any Section or part thereof redundant. In case of Aswini Kumar v. Arabinda Bose reported in AIR 1952 SC 369, it was observed that 'It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute'. In case of Rao Shiv Bahadur Singh and Anr. v. State of Vindhya Pradesh reported in AIR 1953 SC 394, it is observed that 'it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application'.

14. If as contended on behalf of the petitioners even in case of a wife or a person living in a relationship in the nature of marriage seeking any reliefs under the Act, only male members could be respondents, the entire proviso would have no meaning or purpose left. To my mind, only to carve out an exception to the main rule of respondent being only a male member, proviso has been added.

14.1. As per Section 2(q) of the Act, the respondent is one against whom an aggrieved person has sought any relief under the Act provided following two conditions are satisfied: (1) that he is adult male person, and (2) that he is or has been in a domestic relationship

with the aggrieved person. Proviso however permits aggrieved wife or female living in a relationship in the nature of marriage to file a complaint against a relative of the husband or male partner. Proviso is thus enacted to carve out an exception to the above-noted requirements. In my view, expressed hereinabove such exception is to the requirement of the main provision of the sub-section that a respondent must be an adult male person. An argument may however be advanced that proviso seeks to make an exception regarding the second requirement namely that the respondent must be a person, who is or has been in a domestic relationship with the aggrieved person. Put differently, it may be argued that insofar as the aggrieved person is concerned other than wife or a female living in a relationship in the nature of marriage, the respondent can only be a person, who is or has been in a domestic relationship with the aggrieved person. But in view of the proviso if the aggrieved person happens to be a wife or person living in a relationship in the nature of marriage, respondent need not be a person, who is or has been in a domestic relationship with her. To my mind, this contention cannot be accepted in view of the definition of 'aggrieved person', which as already noted 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. Therefore, to understand the proviso to Section 2(q) of the Act as to permit a wife or female living in a relationship in the nature of marriage to file a complaint against any male person, who may not be in a domestic relationship with such an aggrieved person, would lead to logical fallacy. To emphasise, term aggrieved person necessarily requires that there must be a woman, who is or has been in a domestic relationship with the respondent.

15. In case of Ajay Kant and Ors. v. Smt. Alka Sharma reported in 2008 (2) Crimes 235 (MP), reference to which decision will be made again later, learned Single Judge of Madhya Pradesh High Court has however adopted the line of reasoning that the term 'complaint' used in proviso to Section 2(q) of the Act has to be understood as defined in Code of Criminal Procedure for want of any definition under the Act. Such complaint according to the learned Judge can only be for an offence punishable under any penal statute and since the Act provides for only two offences namely for breach of protection order by the respondent under Section 31 of the Act and for the Protection Officer not discharging his duty as provided under Section 33 of the Act, only in case of complaint of commission of such offences that the aggrieved person if is a wife or person living in a relationship in the nature of wife can join a female as respondent.

15.1. Though, at first glance the reasoning appears attractive and I had also found it acceptable, on a closer look at various provisions of the Act, with profound respect, I am unable to concur with this view. Primarily because Section 31 of the Act makes punishable breach of a protection order or an interim protection order by the respondent. If as argued, a female cannot be a respondent in any of the proceedings under the Act in which

the protection order can be passed, it would immediately follow that a woman can also, therefore, not be an accused in a case of breach of the protection order. This, in my view is a logical fallacy.

16. On the other hand, I find other indications under the Act itself provided by the legislature, which would lead to only one conclusion that under certain circumstances, a woman can also be a respondent in the proceedings under the Act.

16.1. First and foremost as already noticed, in the Statement of Objects and Reasons, it is provided inter alia that 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 relative of the 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. This clearly brings out legislative intent of permitting a wife or female living in a relationship in the nature of marriage to file complaint against other women also.

16.2. Secondly, under Sub-section (1) of Section 19 as already noted the Magistrate has powers to pass various orders referred to as residence orders. Under Clause (b) of Sub-section (1) of Section 19, the Magistrate has power to direct the respondent to remove himself from the shared household. Proviso to Sub-section (1), however, states that no order under Clause (b) of the Act shall be passed against any person, who is a woman. In other words, rest of the orders under Clauses (a) and (c) to (f) of Sub-section (1) of Section 19 of the Act may be passed against any person including in a given case against a woman. One may also notice that under all Clauses (a) to (f) of Sub-section (1) of Section 19, the power of Magistrate is to give certain directions to the respondent. Thus, except Clause (b) of Sub-section (1) of Section 19 in all other cases, the Magistrate may pass appropriate orders against the respondent even if the respondent happens to be a woman. If as argued, in an application under Section 12(1) of the Act, a woman can never be joined as a respondent, proviso to Sub-section (1) of Section 19 of the Act was not necessary.

17. It is true that under proviso to Section 2(q) of the Act, word used is 'complaint' and under Sub-section (1) of Section 12 of the Act, aggrieved person is allowed to file an 'application'. However, to my mind, term complaint has been used in a general sense of a woman complaining of domestic violence and not in the sense of only a complaint of criminal offence. Under the Rules i.e. the Protection of Women from Domestic Violence Rules, 2006, term complaint has been defined under Rule 2(b) to mean any allegations made orally or in writing by any person to the Protection Officer. Thus, term complaint used in proviso to Clause (q) of Section 2 of the Act need not be given a restricted meaning and should be understood to have reference to any proceeding or application made by aggrieved person complaining of domestic violence. In seeking to interpret various provisions of the Act and trying to understand the legislative intent, besides the plain meaning

of the different statutory provisions, I have also borne in mind the historical background and the Objects and Reasons for enacting the Act as also the purpose it seeks to achieve.

18. Different High Courts have taken different views on this issue. I would like to refer to these decisions at this stage.

18.1. In case of Ajay Kant and Ors. v. Smt. Alka Sharma reported in 2008 (2) Crimes 235 (MP), the learned Single Judge of Madhya Pradesh High Court, as noted earlier, relied upon the definition of term complainant in Code of Criminal Procedure to hold that proviso to Clause (q) of Section 2 of the Act pertains only to complaint regarding commission of an offence. Learned Judge has observed as under:

It is clear by this definition that a complaint as provided in Cr.P.C. can only be for an offence. As mentioned hereinabove only two offences have been mentioned in this Act and those are (1) under Section 31 and (2) under Section 33. It appears that this word complaint appeared in the definition of respondent has been used for initiating proceedings for these two offences and an aggrieved wife or female living in a relationship in the nature of a marriage has been given a right to file a complaint against a relative of the husband or the male partner. This word complaint cannot be considered beyond the scope of the main provision of this Section which has been defined in first part of Section 2(q) that is for any relief under this Act. As provided in Section 31 of the Act, a complaint can be filed against a person who has not complied with a protection order or interim protection order.

18.1.1. As discussed earlier, I am unable to adopt the said view since in my humble opinion, the complaint under Section 31 of the Act can be lodged only against the respondent for not complying with the protection order or interim protection order. If the respondent cannot be a woman, it is difficult to see, how even a complaint can be filed against a woman.

18.2. Decision of Madhya Pradesh High Court in Ajay Kant v. Smt. Alka Sharma (supra), has been followed by the Calcutta High Court in case of Smt. Rina Mukherjee v. State of West Bengal reported in 2009 (4) Crimes 180 (Cal.). Learned Judge has observed in Para No. 5 as under:

5. Now, the statute is very clear that application claiming residence order or protection order has to be made against the 'respondent' and as we have seen above, respondent has to be a male adult person or a relative of the husband of the male partner. Therefore, the scheme of the Act a female does not come within the ambit of the expression 'respondent' against whom an order can be passed under Sections 18/19 of the Act.

18.3. Learned Single Judge of Andhra Pradesh High Court in case of Smt. Menakuru Renuka v. Smt. Menakuru Mohan Reddy reported in 2009 (3) Crimes 473 (AP), though

did not accept the line of reasoning adopted in case of Ajay Kant (supra) nevertheless came to the same conclusion by making following observations

Thus, the question a self-same female member in domestic relationship excluded as respondent in view of the contents of the main provision again being included under the proviso to be Section may not arise. Therefore, it has to be treated that the proviso intends to include only male persons other than those in domestic relationship also. There appears to be unintentional omission to specifically excluding women in the proviso or it may be because main Section makes it clear that only male persons can be respondents, it is not again specified in the proviso.

18.3.1. To this analysis also, with profound respect, I am unable to concur for reasons elaborated hereinabove.

18.4. Learned Single Judge of Madras High Court in a decision dated 1-8-2008 in Criminal Original Petition No. 9277 of 2008 in case of Uma Narayanan v. Mrs. Priya Krishna Prasad, also followed the decision of Madhya Pradesh High Court in case of Ajay Kant 2008 (2) Crimes 235 (MP) making following observations:

6. I have carefully considered the aforesaid submissions made by the learned Counsel on either side. The term respondent has been clearly defined in Section 2(q) of the Act which un-doubtedly refers only to an adult male and does not include any woman. The decision of the Madhya Pradesh High Court reported in Ajat Kant 2008 (2) Crimes 235 (MP) (referred to supra) after an elaborate consideration of all the relevant provisions of the Act and the scheme of the Act has lucidly laid down that in view of the definition of the term respondent in Section 2(q) of the Act for obtaining any relief under the Act an application can be filed or a proceeding can be initiated against only adult male person and only as against such person protection orders can be passed. I am in respectful agreement with the above said decision of the Madhya Pradesh High Court.

18.5. On the other hand, learned Single Judge of Rajasthan High Court in an order dated 23-11-2007 passed in Criminal Revision Petition No. 1112 of 2007 in case of Sarita v. Smt. Umrao, has held as under:

5. From a plain reading of the proviso to Section 2(q) of the Act of 2005, it is apparent that a complaint by a wife or a female living in relationship in the nature of marriage may also file a complaint against a relative of the husband. The term relative is quite broad and it includes all relations of the husband irrespective gender or sex. The Courts below have over-looked the proviso referred above, and thus, erred while withdrawing proceedings against non-petitioners Smt. Umrao and Kumari Gayatri.

18.6. Similar view has been taken by another learned Single Judge of Rajasthan High Court in a decision dated 29-5-2008 in case of Nand Kishore v. State of Rajasthan, in which, following observations have been made:

Proviso to Section 2(q) of the Act says 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(q) of the Act and its proviso if read together nowhere suggest that the relative of the husband or the male partner has to be a male. In proviso to Section 2(q) of the Act, the word is 'relative' and not 'male relative'. I am therefore, of the opinion that a female relative is not excluded from the definition of respondent contained in Section 2(q) of the Act.

19. For the reasons stated hereinabove, I concur with the view adopted by the Rajasthan High Court. Under the circumstances, I am of the view that it cannot be held that under the Act, the respondent can only be a male member. In case, aggrieved person is a wife or a woman living in a relationship in the nature of wife, in an application under Section 12 of the Act, if the facts so warrant, a female relative of the husband or the male partner as the case may be can also be joined as respondent. This answers the first question.

20. Insofar as the second question is concerned, introduction to the objects and reasons provides that in order to provide a remedy in civil law, Bill is introduced in the Parliament. Again in Para Nos. 2 and 3 of the objects and reasons also, it is stated that existing civil law does not address to the phenomenon of domestic violence, and therefore, to provide a remedy under civil law to protect a woman from being victim of domestic violence, the Bill is introduced. Predominantly thus aim of the legislature is to provide civil remedies to a woman who is subjected to domestic violence.

21. Apart from the Statement of Objects and Reasons even the different provisions contained in the Act make it clear that predominantly the rights and remedies created under the Act are in the nature of civil rights. Barring Sections 31 and 33, which provide for penalty for breach of protection order and Protection Officer not discharging his duties respectively, there are no other penal provisions in the Act. On the other hand, the act provides for remedies to a woman subjected to domestic violence, empowers the Magistrate to pass variety of orders to make such remedies effective. All these proceedings are in the nature of civil remedy.

22. It is true that the procedure to be adopted by the Magistrate while dealing with the application under Section 12 of the Act and other provisions are governed by the provisions of the Code of Criminal Procedure as provided under Sub-section (1) of Section 28 of the Act. However, under Sub-section (2) of Section 28 of the Act, it is clarified that the Magistrate while disposing of the application under Section 12 of the Act or under Sub-section (2) of Section 23 of the Act may also lay down his own procedure for disposal.

23. In view of the nature of the proceedings before the Magistrate and in view of the procedural flexibility provided by the legislature to the Magistrate in deciding the applications under Section 12(1) of the Act, it cannot be stated that the Magistrate is bound by the

straight-jacket formula or procedure laid down under the Code of Criminal Procedure. In a given case, it would be open for the Magistrate to make deviation therefrom as may be found necessary in the interest of justice.

24. Under the circumstances, it cannot be accepted that in all cases, once the Magistrate issues summons while entertaining application under Section 12(1) of the Act, he would have no power to recall the summons or to drop the proceedings against any of the respondents even if it is demonstrated that such a respondent has been wrongly or erroneously joined. The compulsion on the Magistrate to go through the entire gamut of concluding the trial once the summons is issued as imposed by the Hon'ble Supreme Court in case of Adalat Prasad, 2005 (1) GLR 546 (SC) : 2004 (7) SCC 338, need not be read in the provisions contained under the Act.

24.1. In other words, if in a given case upon service of summons, any of the respondents in an application under Section 12(1) of the Act can demonstrate before the Magistrate that he or she has been wrongly joined or that there are no allegations against him or her to proceed further, it would be open for the Magistrate to delete such respondent from the proceedings and to drop further proceedings against him/her. Of course, such powers need to be exercised with due care and circumspection and unless it is pointed out on admitted or undisputable facts or on application of law on admitted facts that the proceeding against such a respondent are not maintainable, such powers should not be exercised. This would also be in the larger interest of justice since in a case, it is so demonstrated, the Magistrate would not have to perforce proceed against such respondents where no case at all has been made out, nor would such respondents be compelled to approach the High Court for quashing thereby causing harassment and prejudice to such parties and increasing the work burden of the High Court.

25. With these conclusions, coming to facts of the individual cases, Special Criminal Application No. 2068 of 2009 is sought to be sustained only on the ground that the petitioners are female relatives of the husband of the applicant. Since, the application before the Magistrate has been filed by the wife, complaint cannot be quashed only on this ground. The petition is therefore dismissed.

26. In case of Misc. Criminal Application No. 9440 of 2009, learned Counsel stated that in view of the interpretation that this Court has adopted the petitioners would not press other contentions with a view to apply for discharge at an appropriate stage. Disposed of accordingly. Notice is discharged. Interim relief stands vacated.

Amar Kumar Mahadevan v. Karthiyayini, Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Madras H.C.) (28.11.2007)

See page 439 for full text of judgment.

Jovita Olga Ignesia Mascarehas e Coutinho. v. Mr. Rajan Maria Countinho, 2011 Cr.L.J. 754, I (2011) DMC 257 (Bombay H.C. (Goa Bench)) (24.08.2010)

See page 104 for full text of judgment.

Lakshmanan v. Sangeetha, Crl. R.C. No. 576 of 2009 (Madras H.C.) (12.10.2009)

Judge: T. Sudanthiram

Order

1. The revision petitioner herein is the respondent in proceedings in M.C. No. 11 of 2008, on the file of the Judicial Magistrate-I, Panruti, and the respondent herein filed an application before the learned Magistrate under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeking certain reliefs.

2. In the proceedings, the respondent herein to examine herself as P.W.1 by way of giving evidence, filed a proof of affidavit. At that stage, the petitioner herein filed a memo of objection stating that there is no provision either in the Criminal Procedure Code or in the Indian Evidence Act to file an affidavit as a substitute for the oral evidence. The objection memo was dismissed by the learned Judicial Magistrate-I, Panruti. Aggrieved by the said order, the petitioner herein has preferred this criminal revision petition.

3. The learned Counsel appearing for the petitioner submitted that as per Section 60 of the Indian Evidence Act, the oral evidence must be direct and there is no specific provision like the Negotiable Instruments Act to let in evidence by way of filing proof of affidavit. The learned Counsel for the petitioner further submitted that the evidence includes Chief examination and Cross examination. The Chief examination should be by way of oral evidence and, if any deviation from the said procedure, a prejudice would be caused to the parties.

4. Per contra, the learned Counsel appearing for the respondent submitted that the remedy is provided under the Protection of Women from Domestic Violence Act, is only a civil remedy, but at the same time, the Act provides for speedy disposal and as per Section 12(5) of the Protection of Women from Domestic Violence Act, the application should be disposed of within a period of sixty days from the date of its first hearing.

5. The learned Counsel for the respondent further submitted that as per Section 28 of the Protection of Women from Domestic Violence Act, 2005, the normal procedure to be adopted is governed by the provisions of Code of Criminal Procedure, but under Section 28(2) of the Act, the Court can lay down its own procedure for disposal of an application under Section 12 or under Sub-section (2) Section 23 of the Act. The right to give evidence on affidavit had been introduced even in the Code of Civil Procedure in the year 2002 itself.

6. This Court considered the submissions made by both parties and perused the records. The procedure to be adopted as per Section 28 of the said Act is as follows:

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.

This clause provides that proceedings under the proposed legislation relating to application and orders for reliefs and offence of breach of protection order or interim protection order by the respondent shall be governed by the provisions of the Code of Criminal Procedure, 1973. Sub-clause (2) envisages that the Court may lay down its own procedure for disposal of applications for any relief or for ex parte order.

7. It is true that as per Section 60 of the Indian Evidence Act, the oral evidence has to be let in directly in all cases. The right to give evidence on affidavit was introduced in the Code of Civil Procedure also and Order XVIII Rule 4 of the Code reads as follows:

[1][4. Recording of evidence

(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence.

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the orders of the Court.

(2) The evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court, shall be taken either by the Court or by the Commissioner appointed by it:

Provided that the Court may, while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.

8. An amendment was also brought with regard to the procedures in the Negotiable Instruments Act under Section 145 of the Act which is as follows:

145. Evidence on affidavit: (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

9. The Division Bench of this Honourable High Court in the decision of P. Janakumar v. G. Pandiyaraj reported in 2009(1) CTC 763, while dealing with the provision under Section 145 of Negotiable Instruments Act has observed as follows:

7. Evidence on affidavit is not unknown to criminal jurisprudence and similar provisions are found in Section 295 and Section 296 of the Code of Criminal Procedure. Therefore, the evidence of witnesses is, as a rule, recorded in open court in the presence of the presiding officer, as seen from Section 274, Section 275 and Section 276 of the Code. In fact, Section 273 stipulates that except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or when his personal attendance is dispensed with, in the presence of his pleader. Therefore, the rule is that evidence shall be recorded in open court. Clearly, the provisions in the Code of Criminal Procedure permitting evidence by affidavit are exceptions. When any application containing allegations against any public servant is made during the course of trial, the Court may direct the applicant to give evidence by affidavit. Evidence of a formal character also may be given by affidavit. The scheme of the Code of Criminal Procedure also shows that this rule that every witness should be examined on oath in open court in the presence of the accused is applicable to private complaint cases also. The prosecution that follows pursuant to a complaint under Section 138 of the Act is a private complaint case. So, Section 145(1) of the Code is a departure from the norm. The complainant would otherwise have been bound to give his chief-examination on oath, but he is given the option to decide whether he would enter the witness box for his chief-examination or whether he would give his evidence on affidavit. This provision has been introduced only to reduce the time factor, considering the pile-up of cheque cases.

19. Section 145 of the Code was introduced to reduce the time taken to complete the trial in these cases. So, our construction must advance the object, without violating the language. The chief-examination of the complainant can be furnished by affidavit. The

court shall permit him to do so. The chief-examination of all other witnesses, including the accused if he chooses to be a witness, can be furnished in the form of an affidavit. Any person who gives evidence on affidavit, and it includes the accused, may be examined by the court if it thinks fit, and shall be summoned to give his evidence in cross-examination or re-examination, on application by the prosecution or the accused, as the case may be.

10. Though like Negotiable Instruments Act, in the Protection of Women from Domestic Violence Act, 2005, it is not specifically stated that the evidence may be given by the witness on affidavit, Section 28(2) provides for the deviation from the normal procedures as contemplated under the Code of Criminal Procedure, 1973.

11. As observed by this Honourable High Court in the decision cited supra, Section 145 of the Negotiable Instruments Act was introduced to reduce the time taken to complete the trial, wherein under this Act, as per Section 12(5) of the Protection of Women from Domestic Violence Act, the Magistrate shall endeavour to dispose of the application made under Sub-section (1) within a period of sixty days from the date of its first hearing. As such, it is open to the Court in order to reduce the time of consumption for the proceedings, the Court may allow the chief examination of the witnesses to be furnished by affidavit, which is permissible as per Section 28(2) of the said Act.

12. For the above said reasons, this Court does not find any infirmity in the order passed by the learned Magistrate permitting the respondent herein to let in evidence by way of filing proof of affidavit. The Criminal Revision Petition is dismissed. Consequently, M.P. No. 1 of 2009 is closed.

Saramma v. Shyju Varghese, III (2011) DMC 390 (Kerala H.C. (Ernakulam)) (28.06.2011)

Judge: Thomas P. Joseph

Judgment

1. Petitioner filed M.C.No.106 of 2009 in the court of learned Judicial First Class Magistrate-I, Mavelikkara under Section 12 of the Protection of Women from Domestic Violence Act (for short, "the Act"). While so, petitioner filed Ext. P3, petition for amendment to incorporate reliefs under Sec. 19 of the Act and for awarding monthly allowance to her by way of maintenance. That petition was opposed by the respondents on various grounds including that there is no provision for amendment of the petition provided under the Act or the Code of Criminal Procedure (for short, "the Code") and that petition for amendment is only a counter blast for a prosecution that second respondent, mother-in-law of petitioner has launched against petitioner for forging her certificates. Learned Magistrate

was not inclined to allow the prayer of petitioner and dismissed the petition as per Ext. P3, order dated December 13, 2010. That order is under challenge. Learned counsel for petitioner contends that proceeding before learned Magistrate under the Act is quasi civil in nature and hence it is within the power of learned Magistrate to allow amendment in appropriate cases.

Learned counsel contended that it was by a mistake that petitioner omitted to claim relief under Sec. 19 of the Act and for maintenance. Reliance is placed on the decision of the Bombay High Court in Raosaheb P. Kamble v. Shaila Raosaheb Kamble (2010 [4] KLT 331). Learned counsel for respondents per contra contended that the procedure which learned Magistrate has to follow is laid down in Sec. 28 of the Act as one under the Code and in the circumstances question of allowing amendment by the Criminal Court does not arise. It is also contended that it is after the evidence of petitioner was recorded and it was posted for evidence of respondents that the petition came, that too after the second respondent had initiated prosecution against petitioner. It is contended by learned counsel that though relief under Sec. 19 of the Act is sought to be incorporated by amendment, there is no mention about that in the affidavit of petitioner. In the circumstances there is no reason to interfere with the order under challenge, it is argued.

2. No doubt, the Act confers jurisdiction on the Magistrate to grant reliefs referred to therein and the expression "Magistrate" is defined in Sec.2(i) of the Act as meaning the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.

Having regard to the relevant provisions of the Act including Sec. 29 which provides an appeal to the court of Sessions from the order passed by the Magistrate though it is possible to say that the Magistrate functions as a Criminal Court, question arises as to whether proceedings before the Magistrate while exercising functions under the Act are Criminal or Civil in nature. The consistent view taken is that proceedings before the Magistrate and reliefs (except for punishment) provided under the Act are of a civil nature nature. Authority for that proposition is contained in the decisions in Dr. Preceline George v. State of Kerala (2010 [1] KHC 417) and Vijayalekshmi Amma v. Bindu (2010 [1] KHC 57). It has been held that proceedings before the Magistrate are of a civil nature. In Dr. Preceline George v. State of Kerala (supra) it has also been held that service of notice on an application under Sec. 12 or interim relief under Sec. 23 of the Act has to be in the manner provided under the Code of Civil Procedure. Certainly it is because proceedings before the Magistrate are of a civil nature.

That exactly is what the Bombay High Court also has stated in Raosaheb P.Kamble v. Shaila Raosaheb Kamble (supra). There, it was held that proceedings under the Act are of a quasi civil nature and the court has power to allow the application for amendment and written statement. Learned counsel for respondents contended that the decision of the Bombay High Court is per incuriam as it goes against Sec.28 of the Act which deals with the procedure to be followed by the Magistrate while entertaining proceedings under Secs. 12 and 18 to 23 of the Act. But I must also bear in mind that sub-sec. (2) of Sec.28 of the Act says that nothing in sub-sec.(1) shall prevent the court from laying down its own procedure for disposal of an application under Sec.12 of the Act or under sub-sec.(2) of Sec.23 of the Act. In other words, in any application under Sec. 12 or Sec. 23(2) of the Act notwithstanding the procedure prescribed under sub- sec.(1) of Sec. 28 it is within the power of court to lay down its own procedure for its disposal. Certainly that power includes the power for amendment also. In these circumstances I do not find reason to disagree with the view taken by the Bombay High Court in Raosaheb P.Kamble v. Shaila Raosaheb Kamble (supra). It follows that when dealing with a petition under Sec. 12 of the Act the Magistrate has the authority in appropriate cases to allow a petition for amendment or written statement as the case may be provided of course circumstances justified such a course of action.

3. The next question is whether on the facts of the case request for amendment of the petition ought to have been allowed. Learned counsel invited my attention to Ext.P3, affidavit of petitioner where it is stated that she had instructed her counsel (who originally filed the petition under Sec.12 of the Act) to incorporate relief under Sec. 19 of the Act and a claim for monthly maintenance, she was examined in court and only when she entrusted the case to another counsel she learned that those claims are not included in the petition. Hence she wanted the petition under Sec. 12 of the Act to be amended to incorporate relief under Sec. 19 and for monthly maintenance.

4. Learned counsel for second respondent contended that in the meantime alleging forgery of certificates the second respondent had preferred a complaint against petitioner and the police had registered a case and it s only thereafter that Ext.P3, application for amendment was filed. Learned counsel would contend that attempt of petitioner is to pressurise the second respondent to withdraw the criminal complaint.

5. When dealing with a petition for amendment it is not necessary for the court to prejudge merit of the claim sought to be incorporated by amendment. What is required to be considered is whether the amendment is necessary to adjudicate all disputes between parties. The claim of petitioner under Sec. 19 of the Act and for monthly maintenance has to be adjudicated. If amendment is not allowed, it will result in multiplicity of proceedings which has to be avoided. I bear in mind that it is open to the respondents to file addi-

tional written statement in answer to the amended petition and raise all their contentions to the reliefs sought in the petition for amendment. The mere fact that originally there was no claim under Sec. 19 of the Act or for monthly maintenance by itself need not deprive petitioner of an opportunity to make those claims having regard to the facts and circumstances of the case. These aspects of the matter has not been considered by the learned Magistrate. Having regard to the circumstances of the case I am inclined to allow the request. But I make it clear that it is open to the respondents to file additional written statement to the amended petition and raise their contentions.

Original Petition is allowed. Impugned order (Ext.P4) on Ext.P3, application is set aside and C.M.P. No.625 of 2010 will stand allowed. Petitioner shall carry out amendment in the petition within three weeks from this day. On the amendment being carried out, learned Magistrate shall give opportunity to the respondents to file additional written statement, if any. In case first respondent wants to adduce evidence even before amendment is carried out and additional written statement is filed, it is open to the respondents to make a request before learned Magistrate in that regard and at the risk of respondents examine the first respondent as witness on their side or if necessary recall first respondent for further evidence after amendment is carried out and additional written statement is filed.

Sarbjyot Kaur Saluja v. Rajender Singh Saluja, 148 (2008) DLT 650 (Delhi High Court) (20.11.2007)

Judge: Anil Kumar

Judgment

IA No. 3544/2007

1. The learned Counsel for the plaintiff/applicant states that another application under Order 6 Rule 17 has also been filed by the plaintiff and consequently she does not press the present application. Dismissed as not pressed.

IA No. 12297/2007

1. This is an application by the plaintiff seeking amendment to the plaint under Order 6 Rule 17 of the Code of Civil Procedure.

2. The plaintiffs/applicants contend that they have filed a suit for permanent injunction and maintenance against the defendants under Sections 18, 20 and 23 of Hindu Adoption and Maintenance Act.

3. According to the plaintiffs the defendant No. 1 has filed his written statement and has categorically admitted his obligation to maintain the plaintiffs and has conceded his liability to pay the maintenance to the plaintiffs. It is also disclosed that the defendant No. 1 in order to establish his alleged bonafides has stated that he is paying ₹ 20,000/- per month to the plaintiff towards maintenance.

4. According to the plaintiffs they have pleaded elaborately their entitlement for ₹ 1.5 lakhs per month as maintenance and according to the plaintiffs they have set out material averments in respect thereto in the plaint, however, on account of an inadvertent error the prayer clause of the plaint does not specifically include a prayer for relief of maintenance of ₹ 1.5 lakhs per month. Consequently, the plaintiff wants to amend the plaint by incorporating the prayer (aa) as detailed in para 7 of the application. The plaintiff consequently also seeks to amend the title of the plaint so as to incorporate the provisions of 'The protection of Women from Domestic Violence Act, 2005' which has been invoked on 17th October, 2006 as the Court is competent to exercise its power conferred under Sections 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005.

5. The plaintiff also wants to amend para 53 of the plaint so as to contend that the guest house built at property No. 1/65, Ganga Ram Hospital Road, Old Rajinder Nagar, New Delhi known as 'Hotel Royal Palace' is entirely owned by him in place of the averment already made that the defendant No. 1 owns 50% share in the guest house, as later on the plaintiffs came to know of the said fact and plaintiffs also want to incorporate para 53A to 53F incorporating averments regarding entitlement of the plaintiff for a maintenance of ₹ 1.5 lakhs per month and the fact that the plaintiffs have insufficient means to pay the ad- valorum Court Fees on the suit which is valued at ₹ 1,80,00,000/-. By incorporating para 53A to 53F the plaintiff wants to incorporate the facts that they are indigent persons with insufficient means to pay the Court fees.

6. plaintiffs have contended that the application is bonafide and amendments proposed to the plaint by the plaintiffs are necessary for determination of real controversies between the parties. An affidavit has also been filed along with an application, however, in the affidavit dated 12th November, 2007 the application has been referred to as a reply.

7. The application is contested by the defendants contending that application is incompetent, wanting in bonafide and causes prejudice to the non applicant as the amendment sought are both unjust and unnecessary and the application has been moved not to correct an oversight or omission but only to sustain the suit by supplying a cause of action which has been missing in the plaint. According to the defendants in the written statement objection has been raised not only to absence of the prayer of maintenance but also to the non compliance of the provision of Order 33 of the Code of Civil Procedure and consequently, rejection of the application under Order 33 Rule 5 has been sought which

is mandatory according to the defendants. The various allegations made by the plaintiffs on merits of the case have been emphatically denied by the defendants contending that the defendants have been meeting their obligations and has been regularly paying not only the school fees of his children but also the household expenses including the electricity and water consumed therein.

8. Along with the suit the plaintiffs had filed an application under Order 33 Rule 1 being is No. 6240/2005 seeking permission to sue as an indigent person. According to the defendants this application is not verified in accordance with the requirement of Rule 2 of Order 33 which contemplates that the application should be signed and verified in the manner prescribed for signing and verification of pleadings. For signing and verification of the pleadings the learned senior counsel for the defendants, Mr. Lekhi has relied on Order 6 Rule 15 of the Code of Civil Procedure contemplating that the pleadings has to be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. According to the learned senior counsel, since the application under Order 33 to sue as an indigent person has not been filed in compliance with law by the plaintiffs, the application is liable to be rejected under Order 33 Rule 5 of the Code of Civil Procedure. It has also been contended that the affidavit filed with the application under Order 33 will not be valid for the amendment sought in the plaint and consequently the amendment cannot be allowed. The learned senior counsel has also emphasized relying on [1976] 2 SCR 246 that no material facts have been given by the plaintiffs in support of their claim for maintenance of ₹ 1.5 lakhs per month and, Therefore, the proposed amendment should not be allowed.

9. The learned Counsel for the plaintiffs, Ms. Geeta Luthra has countered the pleas of the learned senior counsel for the defendants Mr. Lekhi contending that paras 18, 20, 34 and 40 of the plaint disclose cause of action and documents filed by the plaintiffs also show the cause of action in favor of plaintiffs and amendment has been sought in the plaint incorporating the pleas regarding the fact that the plaintiffs are indigent persons and seek to sue as indigent person and the plaint has been verified properly and is also supported by an affidavit and the list of properties of the plaintiffs are given in Schedule A which Schedule has also been verified. The learned Counsel for the plaintiffs has also relied on Jethu Ram Rice Mill v. Ashok Kumar Verma and Anr. to contend that Order 33 of the Code of Civil Procedure does not warrant technical but only proper compliance and an application along with the copy of the plaint should be deemed as properly framed which is supported by an affidavit. In case the annexed plaint is duly verified and the annexed Schedule of properties with the value thereof have also been duly verified as true by the applicants, in such circumstances it should be deemed that it has been properly framed and duly verified. The learned Counsel for the plaintiffs very emphatically contended that

Order 33 does not warrant a meticulous hyper technical interpretation against a pauper applicant but only proper and substantial compliance by him.

10. The learned Counsel has also relied on AIR 1990 AP 115, Bommineni Laxmi Devamma v. Bommineni Konappa where a Division Bench of the A.P High Court had held that the requirement as contemplated under Order 33 Rule 5 relates to pleading and if the application does not conform to Rule 2 and 3 it cannot be treated as fatal, as Order 33 Rule 5 relates to procedure and is, Therefore, directory and not mandatory and in such circumstances the application cannot out rightly be rejected as sometimes mistake may occur deliberately and sometimes accidentally.

11. The application under Order 33 filed by the plaintiffs being is No. 6240/2005 pleads the facts regarding the plaintiffs being indigent persons along with the Schedule of properties of the plaintiffs which has been duly verified. The application is duly supported by an affidavit of the plaintiff with a proper verification which verifies the facts stated in the application. A Division Bench of this Court in Jethu Ram Rice Mill (Supra) had held that Order 33 Civil Procedure Code does not warrant technical but only proper compliance. An application filed under Order 33 of Code of Civil Procedure according to the plaintiff must incorporate all the particulars as required in the suit along with the schedule of movable and immovable properties belonging to the applicant and should be signed and verified in the manner prescribed for signing and verification of the pleadings.

12. It has been held that an application filed with a copy of the plaint is also a properly framed application though the particulars of the plaint are not specifically incorporated in the application. An application under the Code of Civil Procedure is normally not to be verified but Order 33 contemplates that the application should be verified as it is also to contain particulars required in regard to plaint in the suit. In case the application contains particulars required in regard to plaint in suit then such an application, in compliance with Order 33 Rule 2, should be verified but where along with an application a plaint is filed separately which contains the particulars of the plaint with verification, such an application may not require verification as it will be too technical an interpretation of the rule. In any case the rule is directory and not mandatory as has been held by a Division Bench of A.P High Court in Bommineni Laxmi Devamma (Supra) as it relates to procedure and in a welfare state the poverty should not come in the way of person for enjoyment of his right to sue as an indigent person and a beneficial provision like Order 33 cannot be negated on such hyper technical interpretations. The object behind Order 33 Rule 2 for verification of the application is that the facts which are to be pleaded in the plaint,if are pleaded in the application, then they should be properly verified, however, if the plaint is filed separately along with an application and the facts stated in the plaint have been verified then the application even though it is not verified shall be maintainable

and cannot be rejected under Order 33 Rule 5 as contended by the learned Counsel, Mr.Lekhi for the defendants.

13. Consequently, the plea of the learned Counsel for the defendants that since the application under Order 33 is not maintainable, the plaint filed along with the application will also be not maintainable and the amendment to such plaint can not be allowed is rejected.

14. The plaintiff has sought amendment in the plaint by incorporating the facts pleaded in the application about their indigent status in the proposed amended plaint which has been properly verified. They also want to include the prayer regarding claim of maintenance of ₹ 1.5 lakhs from the defendants which was left inadvertently by them though various paras show that the plaintiffs have pleaded material facts seeking claim of maintenance from the defendant No. 1.

15. The learned Counsel for the defendants have also relied on Section 23 of the Hindu Adoption and Maintenance Act, 1956 to contend that the amount of maintenance to be awarded to a wife, children is to be based on various factors which are detailed in para 23(2) and (3) of the said Act. According to the learned Counsel for the defendants since the plaint does not disclose these facts the amendment should not be allowed.

16. The plaintiffs contention, however, is that the material facts entitling the plaintiffs for maintenance are already pleaded in the plaint and in any case further clarifications are given in paras 53A to 53F which are sought to be included by the proposed amendment.

17. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down in various precedents. This is no more rest integra that the purpose and object of Order 6 Rule 17 is to allow either party to alter or amend his pleading in such manner and on such terms as may be just but it is equally true that the amendment cannot be claimed as a matter of right and under all circumstances. However, the Courts while deciding prayer for amendment should not adopt a hyper technical approach and liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. It is also no more rest integra that pretrial amendments are allowed more liberally than those which are sought to be made after the commencement of trial or after conclusion thereof. Mere delay usually cannot be a ground for refusing a prayer for amendment because merits of amendment sought to be incorporated by way of amendments are not to be judged at the stage of allowing prayer for amendment. The Apex Court in G. Nagamma v. Siromanamma. (1996) 2 SCC 25 had held that it is settled law that the plaintiff is entitled to plead even inconsistent pleas. In this case, the plaintiff were seeking alternative reliefs. The application for amendment of the plaint

whereby neither cause of action could change nor the relief could be materially affected, was allowed. In another case, AIR 1995 SC 1498 , Akshay Restaurant v. Panjanappa and Ors. the matter pertained to amendment of plaint and the application for amendment was allowed though different stands were taken by the plaintiff.

18. This cannot be disputed that the plaintiff is entitled to incorporate the relief to claim maintenance in the suit already filed by the plaintiff as the facts have already been pleaded and the claim has not become barred by time and no other impediment has been shown by the defendants to allow the amendment of the plaint incorporating the relief for maintenance. Whether the plaintiffs shall be entitled to the claim of maintenance on the basis of the facts already disclosed in the plaint and which are sought to be incorporated by amending para 53 and incorporating paras 53A to 53F is not to be decided at the time of deciding whether the amendment should be allowed or not.

19. This also can not be disputed that the amendment proposed to the plaint which is filed along with the application to sue as indigent persons are material and relevant for the determination of real controversies between the parties. The application to sue as indigent person is maintainable though it is not verified because the particulars of plaint/pleadings have not been incorporated in the application but a separate plaint has been filed which has also been verified and on this ground the amendment proposed to the plaint can not be declined. The suit is still at a pretrial stage, as even the indigent status of the plaintiffs has not yet been determined. No prejudice shall also be caused to the defendants in the facts and circumstances, if the amendment sought by the plaintiffs is allowed.

20. Consequently the application of the plaintiffs seeking amendment to the plaint is allowed and the plaintiffs are allowed to amend the plaint incorporating the amendments proposed in the application for the amendment under order VI rule 17 of the Code of Civil Procedure. However, no cost is imposed for allowing amendment on the plaintiffs in the present facts and circumstances and also because the plaintiffs in this case are seeking to sue as indigent persons. Parties are also left to bear their own costs for the application for amendment. Amended plaint be filed.

IPA No. 15/2005

21. The amended plaint already filed by the plaintiffs is taken on record. The learned Counsel for the defendants seek time to file the written statements/reply. The same be filed within three weeks. Rejoinder/replication, if any, be filed within two weeks thereafter. List on 9.1.2008.

RETROSPECTIVE EFFECT OF PWDVA

V.D. Bhanot v. Savita Bhanot, AIR 2012 SC 965, I (2012) DMC 482 SC (07.02.2012))

Judges: Altamas Kabir, J. Chelameswar

Order

Altamas Kabir

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 ₹ 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 ₹ 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 ₹ 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 ₹ 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 ₹ 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 ₹ 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 ₹ 10,000/- to ₹ 4,000/-, which will be paid to the Respondent in addition to the sum of ₹ 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 ₹ 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.

Saraswathy v. Babu, 2014 Cr.L.J. 1000 (SC), A (2014) (SC) 857, I (2014) DMC 3 (SC) (25.11.2013)

Judges: Sudhansu Jyoti Mukhopadhaya and V. Gopala Gowda

Judgment

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 ₹ 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 ₹ 2,000/- per month to the appellant to meet out her medical expenses, food, shelter and clothing expenses. The Magistrate Court's 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 respondent's mother and upheld the order granting maintenance of ₹ 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 respondent's 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 respondent's 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 court's 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 court 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:

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 came 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 ₹ 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 ₹ 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 ₹ 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.

6. RELIEFS UNDER PWDVA

EX PARTE ORDERS

Swapan Kr. Das v. Aditi Das, 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011)

Judge: Kanchan Chakraborty

Judgment

1. This revisional application is pertaining to a proceeding under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "said Act of 2005"). The Opposite Party herein Smt. Aditi Das Filed an application under section 12 of the said Act of 2005 in the Court of Learned, Chief Judicial Magistrate at Burdwan praying for monetary relief as she was ill-treated and ousted from her matrimonial house by the petitioner-husband herein. That matter was ultimately heard by the learned Chief Judicial Magistrate at Burdwan in Miscellaneous Case No. 455 of 2008. The Chief Judicial Magistrate allowed the prayer of the Opposite Party ex parte and awarded ₹ 8000.00 per

month as monetary relief and in addition to that the learned Chief Judicial Magistrate also awarded compensation ₹ 50,000.00 to the Opposite. Party-Wife for ill-treatment. The petitioner herein challenged the order in an appeal being Criminal Appeal No. 7 of 2009 ultimately heard by Mr. A.K. Bhattacharjee, learned Additional Sessions Judge, Second Court at Burdwan. The learned Judge dismissed the, appeal on contest and thereby affirmed" the order passed by the learned Chief Judicial Magistrate. The petitioner-husband has come up with this application challenging the legality, validity and propriety of the order passed in the Court, of Appeal. Mr. Sourav Sen, learned counsel appearing on behalf-of the petitioner, submits that he has no objection what so ever in respect of the monthly monetary relief awarded by the learned, Court but it would be taxation on him if he is directed to pay ₹ 50,000.00 towards compensation. He submits further that compensation was awarded by the learned Chief Judicial Magistrate and affirmed by the learned Appeal Court without assigning any reason whatsoever. He takes me to under section 22 of the act and contends that the order was passed ex-parte without assigning any reason. Therefore, according to him, the order impugned is liable to be set aside and interfered with.

2. Mr. Uday Shankar Chatterjee, learned counsel appearing on behalf of the opposite party-wife submits that the petitioner herein could have prayed for setting aside the ex parte order in the learned Trial Court in view of the provisions said down in section 28 of the Act itself. Instead of doing so, he preferred an appeal which had gone against him; Mr. Chatterjee submits further that in view of the provisions of section 22 of the Act Court can award compensation in addition to any relief as provided in the Act when it comes to a conclusion that the aggrieved person was ill-treated. Mr. Chatterjee submits that the order is not suffering from any illegality, impropriety and' incorrectness and, as such, no interference is required.

3. I have carefully gone to the order of the learned Chief Judicial Magistrate as well as the learned Appeal Court; There is concurrent findings of fact and on the first blush, this Court does not like to interfere and upset the order. However, since a legal question as to necessity to assign reason has been raised, this Court is duty bound to explain the position of law.

4. Under section 28 of the Act, a proceeding under the Act is to be conducted according to the provision of the Code of Criminal Procedure. This Act "Protection of Women from Domestic Violence Act, 2005" is akin to a procedure a wife can initiate under section 125 of the Code of Criminal Procedure. The reason behind it that both the proceedings either under Code of Criminal Procedure or under this Act are quasi-civil in nature. In such a case when a party is entitled to ask for setting aside an ex parte order, a prayer of like nature can well be made in a proceeding under this Act. That has not been done by the petitioner-husband in the case in hands.

5. Apart from that, I find that the provisions of section, 22 of the act does not make obligatory on the part of the Court, to assign specific reason for awarding compensation in addition to, any relief. In case Court find that the aggrieved person, is ill-treated mentally or physically or emotionally distressed in "shared household", Court can pass an order of compensation. In the instant case, the judgment challenged in the Court of appeal clearly indicates that the learned Trial Court come to a finding that the petitioner therein was ill treated, neglected and refused to be maintained. That part of the case of the respondent-wife remained unchallenged. The Court also came to a finding that the wife was having no source of income also. Admittedly, the petitioner herein earns ₹ 70,000.00 per month as salary, if not more. Therefore, award of compensation does not appear to be astronomical or exorbitant.

6. There is no apparent and manifest illegality, impropriety and irregularity in the order passed. I find no reason to upset the order. Accordingly, the revisional application is- dismissed and, thus, disposed of. The petitioner is, however, given liberty to file an application to the learned Trial Court for installment in the matter of pending compensation.

Urgent photostat copy of the order, if applied for, shall be given to the parties on the usual undertakings-

PROTECTION ORDERS

Kanaka Raj v. State of Kerala, ILR 2009 4 (Ker) 255 (Kerala H.C) (24.06.2009)

Judge: M. Sasidharan Nambiar

Order

1. Whether a Magistrate is competent to direct registration of a case and investigate an offence under Section 31 of Protection of Women from Domestic Violence Act, 2005 in the absence of a protection order or an interim protection order, is the question to be decided in this petition.

2. Second respondent filed a petition under Section 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as the Act) before Judicial First Class Magistrate, Kattakkada. It was referred to Taluk Lok Adalat, Kattakkada. On 8.11.2008 a settlement was arrived at, though no award was passed. Settlement arrived provide for return of gold ornaments on or before 13.12.2008, transfer of half right in the joint property, reservation of life interest of the second respondent over 51/2 cents of property, delivery of household articles to the second respondent and payment of maintenance amount of

₹ 25,000/- for the children. It was again taken on 12.12.2008 at the Adalat. The second respondent was then present. But petitioner was absent. It is seen recorded that petitioner did not comply with certain conditions of the settlement and second respondent was not satisfied with the settlement and therefore she retracted from the settlement previously arrived on 8.11.2008.

3. Treating the order dated 12.12.2008 as an award and that too, an order for which penalty is provided under Section 31 of the Act, in case of breach of the order, learned Magistrate as per Annexure C order dated 3.1.2009 directed Sub Inspector of Police, Malayinkil, to register a case under Section 31 of the Act and investigate the same. Consequently, Annexure A F.I.R. was registered. This petition is filed under Section 482 of Code of Criminal Procedure to quash Annexure A F.I.R. as well as the directions to investigate the offence in Annexure C order.

4. Learned Counsel appearing for the petitioner and second respondent were heard.

5. A protection order is defined in Sub-section (o) of Section 2 of the Act as "means an order made in terms of Section 18". Section 18 provides for protection order. It reads:

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.

6. Only those orders as provided in Clauses (a) to (g) of Section 18, would be a protection order as defined in Section 2(o) of the Act. Section 19 provides for residence order and Section 20 provides for monetary reliefs.

7. Section 31 provides penalty for breach of protection order or an interim protection order by the respondent. It reads:

> 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.

Section 32 of the Act provides that notwithstanding anything contained in the Criminal Procedure Code the offence under Sub-section (1) of Section 31 shall be cognizable and non-bailable. Section 28(1) provides that except as provided under the Act, all proceedings for the offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure.

8. Under Sub-section (1) of Section 31, if the respondent breaches a protection order or an interim protection order, he shall be punishable for the sentence provided therein. Under Sub-section (2) the offences, as far as practicable, shall be tried by the Magistrate, who passed the order, the breach of which has been alleged to have been caused by the accused. The offences under Sub-section (1) of Section 31 is cognizable and non-bailable.

9. It is thus clear that an offence under Section 31 of the Act is only for breach of either a protection order or an interim protection order passed under Section 18 and as defined under Section 2(o) of the Act. All other orders passed either under Sections 19, 20, 21 or 22 could only be executed as provided in the Code of Criminal Procedure in view of the mandate under Section 28 of the Act as Section 28 provides that except as provided under the 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 Code of Criminal Procedure. Therefore only if the order passed by the Magistrate is a protection order or an interim protection order, the Magistrate can direct registration of the case and investigate the case under Section 31 of the Act.

10. Section 21 of the Legal Services Authorities Act makes every Award passed by the Adalat a decree or order of the court. It reads:

21. Award of Lok Adalat.-

(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under Sub-section (1) of Section 20, the court fee paid in such case shall be refunded in the manner provided under the Court Fees Act, 1870 (7 of 1870).

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

Though under Section 21 of Legal Services Authorities Act, an award passed by the Adalat is deemed to be an order or a decree of the respective court, which should have passed it otherwise, the provision is applicable only in respect of an award. Unless an award is passed, there is no executable award to be treated as the order or decree of the court as provided under Section 21 of the Legal Services Authorities Act to be executed. Even if an award is passed, unless the said award is an order made in terms of Section 18, it cannot be a protection order or an interim protection order and its breach will not attract an offence under Section 31 of the Act. The order of the Adalat dated 8.11.2008 is first of all not an Award of the Adalat. Hence under Section 21 it cannot be treated as the order of the Court. Moreover, that order is not a protection order under Section 18 or an interim protection order. For its breach, an offence under Section 31(1) of the Act is not committed. Unfortunately, the learned Magistrate has not followed the legal position and thereby committed an error in directing registration of the case and investigation. It cannot be sustained.

11. Petition is allowed. Annexure A F.I.R. and the direction in Annexure C order for registration of the case under Section 31 of Protection of Women from Domestic Violence Act, 2005, are quashed.

Pramodini Vijay Fernandes v. Vijay Fernandes, I (2010) DMC 425 (Bombay H.C.) (17.02.2010)

Judge: Roshan Dalvi

Order

1. Rule, returnable forthwith.

2. The parties are wife and husband. The Petitioner (wife) has filed a Petition for divorce against the Respondent (husband) under Section 10 of the Indian Divorce Act, 1869. The Petitioner has taken out a Petition for the protection of herself and her child under

Sections 18, 19, 20, 21 and 22 of the Protection of Women From Domestic Violence Act, 2005 (DV Act). An order came to be passed under the DV Act on 19.7.2008. That order is stated to have been breached. The Petitioner took out an application under Section 31 of the DV Act upon violation of the order. The Family Court rejected the application on the ground that it did not have jurisdiction to pass any order under Section 31 of the DV Act. The Court also refrained from exercising its inherent powers under Section 151 of the Code of Civil Procedure (CPC). Section 31 of the DV Act lays down penalty for breach of protection of the order by the Petitioner. Section 31 of the DV Act runs thus:

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.

3. Section 31, therefore, lays down the specific procedure to be followed giving jurisdiction to the Magistrate who had passed the order to punish for breach of any protection order which is specified to be an offence committed by the party breaching the order under the DV Act. That offence is punishable as mentioned in the section. The orders under Sections 18, 19, 20, 21 and 22 may be passed by a Magistrate or by a Civil or Criminal Court under Section 26 of the DV Act where a proceeding was initiated before such Court. Section 26 of the DV Act runs thus:

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 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.

Consequently, therefore, though initial application is required to be made before a Magistrate for obtaining orders and relief's under Section 12 of the DV Act, if a legal proceeding is already filed in a Civil or a Criminal Court affecting the aggrieved person and the Respondent, relief under Sections 18, 19, 20, 21 and 22 could be granted by such Civil or Criminal Court.

4. The Family Court follows the procedure laid down in the CPC under Section 10(1) of the Family Courts Act, 1984. Section 10(1) runs thus:

10. Procedure generally.- (1)Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil Court and shall have all the powers of such Court.

5. Family Court is, therefore, a Civil Court. Where a proceeding is initiated in a Family Court, a protection order can be passed by a Family Court.

6. In this case, a divorce proceeding was pending in the Family Court affecting the Petitioner as the aggrieved person and her husband as the Respondent therein. An order came to be passed under Sections 18, 19, 20, 21 and 22 of the DV Act by the Family Court as aforesaid on 19.7.2008. The jurisdiction of the Family Court has not been challenged. Breach of the order under the aforesaid sections passed by the Family Court, as an interim protection in any legal proceeding already filed before it, by which certain reliefs are granted, are expected to be honoured and obeyed. If a breach is made of the order, which is an offence under the DV Act, the Court which passed the order is required to try it under Section 31(2) cited above. Since an order under the DV Act would normally be passed by the Magistrate upon the main application made before a Magistrate under Section 12 of the DV Act, Section 31(2) requires the offence of breach of the protection order or an interim order to be tried by the Magistrate who passed the order. Consequently, if the Magistrate does not pass such an order but a Civil or a Criminal Court, or the Family Court in a Family Court proceeding passes an order under the aforesaid sections of the DV Act as a protection order or an interim protection order such Court, which passed the order, would be not only entitled but obliged to try the offence of breach of its own order.

7. Consequently, the words Magistrate who had passed he order Section 1(2) Just read's Magistrate or a Civil or Criminal Court or a Family Court who had passed the order his applies only Legal proceeding which was pending before that Court, an application under

the aforesaid sections is made before that Court and a protection order or an interim protection is passed by that Court.

8. Of course, for trying offence under Section 31(1) of the DV Act, such Court would require to frame charges under Section 31(3) of the DV Act.

9. Mr. Sarwate on behalf of the Respondent contended on behalf of the Respondent that though the Family Court can pass an order under Sections 18, 19, 20, 21 and 22, it has no jurisdiction to levy any penalty for breach of the order passed by it. This would be to say that the law which grants the relief does not grant the remedy to enforce the relief. Such an interpretation would be to frustrate justice. An interpretation of a legislation, specially a protective legislation as the DV Act, must be such as to enhance justice and not to frustrate it. It would be absurd if the Respondent allowed orders under Sections 18, 19, 20, 21 and 22 to be passed as interim protection orders and breached them with impunity and impertinence on the ground that Section 31(2) confers jurisdiction only upon a Magistrate defence reach protection order.

10. In the case of Union of India and Anr. v. Paras Laminates (P) Ltd. (1990) 4 SCC 453 at 457, it has been held that the Customs Tribunal had powers conferred expressly by the Statute and being a judicial body it had all other incidental and ancillary powers which are necessary to make the express grant of the statutory powers fully effective. The ambit of the limits of its jurisdiction is, therefore, extended to such incidental and ancillary powers as inherent in the Tribunal. This is on the premise that the legislative intent of the power expressly granted in an assigned field of jurisdiction must be efficaciously and meaningfully exercised. Hence it is held that though the powers of the Tribunal are limited and the area of its jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted, implied grant being limited by the express grant. Hence all incidental powers, which would make the grant effective and would be reasonably necessary for that purpose are implicitly taken to be conferred in the Tribunal. This is upon the principle of interpretation set out in that paragraph from Maxwell on Interpretation of Statutes (11th Edition) which runs thus:

> where not confersurisdiction, impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.

11. Similarly in the case of Shail Kumari Devi and Anr. v. Krishan Bhagwan Pathak alias Kishun B. Pathak AIR 2008 SC 2006 it is held that the Magistrate, who is vested with the jurisdiction under Section 125 of the Criminal Procedure Code for granting maintenance to wives, children and parents, is conferred the power by necessary implication to pass interim orders of maintenance. It is held that he would have such a power in the absence of any express bar or prohibition under that section.

12. Further, since the Family Court is a Civil Court and has all the powers of a Civil Court, it can pass orders consequent upon disobedience of breach of its order under Order XXXIX Rule 2A of the CPC. Further the Family Court like any other Court has the inherent power under Section 151 of the CPC to pass such orders as would be just and equitable, including orders to effectuate its own orders. In this case, the application of the Petitioner herein was specifically made under Section 31 of the DV Act.

13. The Family Court would, therefore, have the jurisdiction under Section 31(2) of the DV Act as the Magistrate which had passed the order of interim protection to frame charges under Section 32(3) of the DV Act and to levy the penalty under Section 32(1) of the DV Act for breach of its interim protection order. However, the Family Court would also have the jurisdiction to proceed under Order XXXIX Rule 2A of the CPC for breach and disobedience of its order and injunction.

14. Consequently, the order of the learned Judge, Family Court No. 4, Pune, dated 7.5.2009 is set aside. The learned Judge, Family Court No. 4, Pune, shall try the application of the Petitioner herein either under Section 31 of the DV Act or under Order XXXIX Rule 2A of the CPC for breach of its own order. For that purpose both the parties shall be entitled to file such applications / affidavits as required by both of them. The Writ Petition is allowed. Rule is made absolute accordingly.

15. No order as to costs.

RESIDENCE ORDERS

S.R. Batra v. Taruna Batra. 2007 (2) ALD 66 (SC), A 2007 SC 1118 (Supreme Court)(15.12.2006)

Judges: S.B. Sinha, Markandey Katju

Order

Markandey Katju

1. Leave granted.

2. 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.M.M. No. 1420 of 2004.

3. Heard learned Counsel for the parties and perused the record.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Aggrieved, Smt. Taruna Batra filed a petition under Article 227 of the Constitution which was disposed of by the impugned judgment. Hence, these appeals.

10. 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.

11. 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, 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."

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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."

18. 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.

19. Learned Counsel for the respondent Smt. Taruna Batra 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.

20. 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.

21. 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.

22. 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'.

23. 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.

24. 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

25. In view of the judgment given above, the contempt petition stands dismissed.

Nidhi Kumar Gandhi v. The State, 2010 Cr.L.J. (NOC) 79, 157 (2009) DLT 472, II (2009) DMC 647 (Delhi H.C.)(16.01.2009)

Judge: S. Muarlidhar

Judgment

1. This petition under Section 482 of the Code of Criminal Procedure 1973 ('CrPC') challenges an order dated 2nd February 2008 passed by the learned Additional Sessions Judge (ASJ'), Rohini, Delhi in an application for interim relief in Crl. Appeal No. 2 of 2008. By the said impugned order the learned ASJ stayed the operation of the order dated 20th December 2007 passed by the learned Metropolitan Magistrate (MM') to the extent that the Respondent herein was directed to restore the status quo ante in relation to the Petitioner's possession of the portion of the house at No. C-36, Pushpanjali Enclave, Pitampura, Delhi-110034, as on 16th April 2007, a day prior to her eviction therefrom. The Petitioner was further restrained by the impugned order of the learned ASJ from interfering with the possession of the said house.

2. The facts in brief leading to the filing of the present appeal are that the Petitioner on 5th October 2007 filed an application in the Court of the learned Additional Chief Metropolitan Magistrate (ACMM') under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('Act'). The Petitioner stated in the said application that she had been forcibly thrown out from her matrimonial home at C-36, Pushpanjali Enclave, Pitampura, Delhi-110034 along with her minor daughter on 17th April 2007. It was further stated in the said application that at the time of her stay in the matrimonial home, she was in possession of one bed room attached with bath room, kitchen, store room and open terrace in front of bed room having separate entrance from main gate at ground floor. Among the reliefs sought in the application was a residence order allowing the Petitioner to enter the matrimonial home from where she had been evicted. The Petitioner also sought payment of maintenance from the Respondent husband Shri Saket Kumar Gandhi, the Respondent No. 2 in the present petition. In terms of Section 23(2) of the Act the Petitioner also filed an affidavit reiterating the above averments.

3. After notice was issued in the application, a reply was filed by the Respondents claiming that the matrimonial home was in the name of the father of Respondent No. 2 (who is arraigned as Respondent No. 3 in the present petition). It was mentioned that the Respondent No. 2 had already filed a separate application for restitution of conjugal rights and was willing to take back the Petitioner in the matrimonial home. It was further stated that Respondent No. 2 was at present living separately at not at C-36, Pushpanjali Enclave, Pitampura, Delhi.

4. After hearing learned Counsel for both sides, learned MM observed that Respondent No. 2 had shifted his address only after the filing of the petition under the Act. The learned ACMM noted that the Petitioner and the minor daughter were living with her father at Gurgaon. It was felt necessary to issue an interim direction that "the Petitioner would be entitled to visit the matrimonial home and would be entitled to the custody and possession of the same room/some extent of premises as she was putting up just immediately prior to leaving the said premises i.e. on 16th April 2007 one day prior to the leaving." The learned MM also directed payment by Respondent No. 2 of maintenance of ₹ 3500/- per month to the Petitioner and ₹ 1,000/- per month to the minor daughter. The petition was directed to be listed on 17th March 2008 for further proceedings.

5. It appears from the record that on 21st December 2007 possession was given to the Petitioner of the bed room on the first floor of the premises. It was stated in the memo drawn up on that date that the "keys of the middle door and main entrance were to be provide by Mr. Rajender Kumar Gandhi [Respondent No. 3-father-in-law of the Petitioner] within two weeks and that during this time Mr. Gandhi had promised to provide entrance at any time." Subsequently, on 26th December 2007 the key of the small space outside the concerned bed room in which washing machine was kept before was handed over to the petitioner.

6. Aggrieved by the order dated 20th December 2007 the Respondents herein filed Crl. Appeal No. 2 of 2008 in the court of the learned ASJ. Relying on the judgment of the Supreme Court in S.R. Batra v. Taruna Batra (2007) 3 SCC 169. it was contended by them that the expression "shared household" occurring in Section 2(s) of the Act did not include the present premises since it was owned exclusively by the father. It was submitted that the right of appeal was been sought to be rendered infructuous by the petitioner herein by getting the order dated 20th December 2007 executed even without waiting for the expiry of the statutory period of 30 days for filing of the appeal under Section 29 of the Act. The award of maintenance was also challenged in the appeal.

7. The learned ASJ by the impugned order disposed of the application filed by the respondents in their pending appeal seeking interim reliefs. It was held by the learned ASJ in the impugned order dated 2nd February 2008 that since the premises in question was neither owned nor rented by the husband and was not a joint family property, it was not a "shared household". It was held that prima facie the Petitioner did not have a right of possession of the portion of the premises that were under her occupation prior to her eviction. It was further observed that the Petitioner ought to have waited till the expiry of the limitation period for filing an appeal before getting the order dated 20th December 2007 of the learned MM implemented. The learned ASJ further observed that no procedure has been prescribed in terms of Section 28(2) of the Act and therefore devising its own procedure

the learned ASJ directed restoration of the status quo ante as on 20th December 2007 as regards the possession. The said order was directed to continue till the disposal of the appeal. The award of maintenance was left undisturbed. Aggrieved by the said order of the ASJ, the present petition was filed.

8. At the first hearing of this petition on 8th February 2008 this Court directed stay of the operation of the impugned order dated 2nd February 2008. Thereafter on 2nd May 2008 the following order was passed by this Court:

1. Learned Counsel for the Respondent Nos. 2 to 4 states that the Respondent Nos. 2 to 4 are willing to explore the possibility of a settlement through mediation. However, learned Counsel for the Petitioner as well as Petitioner who is present in Court state that in the absence of any concrete proposal from the Respondent Nos. 2 to 4, and with the Petitioner not yet being allowed facilities in the matrimonial home pursuant to the order dated 20th December 2007 passed by the learned Metropolitan Magistrate, Delhi, the Petitioner is not willing to go in for mediation at this stage.

2. The Petitioner further states that notwithstanding the order dated 8th February 2008 passed by this Court staying the impugned order of the learned ASJ she does not have access to a kitchen where she can cook and therefore she is unable to reside in the room, the possession of which has been given to her, along with her minor daughter. The Petitioner is permitted to file an affidavit and an appropriate application for directions in this regard.

3. In view of the statement made today by the petitioner, the learned Counsel for Respondent Nos. 2 to 4 states that he needs time to file a reply to the petition. Reply be filed within four weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.

4. List on 9th July 2008.

5. The interim order dated 8th February 2008 will continue till the next date of hearing.

6. A copy of order be given dasti to learned Counsel for the parties.

9. At the subsequent hearing on 30th July 2008 the Court noted the submission of the Petitioner that she had not been given access to the kitchen and the Respondents were also not giving the duplicate keys of the main gate and entrance. It was contended in reply by Mr. Thareja, learned Counsel appearing for the Respondents that while the Respondents would not give the Petitioner any duplicate key she could always exit and enter the main door and gate "at reasonable hours". He further stated that there was no kitchen on the first floor. In that context the Court directed the Respondent to file the sanctioned plan of the first floor. The sanctioned plan of the premises was thereafter placed by the parties before the Court and has been perused by the Court.

10. The petitioner who appears in person submits that she cannot be expected to reside with her minor child without the benefit of a kitchen and that prior to her being evicted she was enjoying the facility of a kitchen. Moreover, the store room on the first floor near the passage is not being used by anyone as at present. She further submits that at an interlocutory stage the learned ASJ ought not to have passed the impugned order which virtually amounts to allowing the appeal itself. Mr. Thareja, learned Counsel for the Respondents on the other hand raises a preliminary objection to the maintainability of this petition. According to him the impugned order is of a civil nature and therefore a petition under Section 482 CrPC was not maintainable. Alternatively it is submitted that if there was no remedy provided under the Act against the impugned interim order then the petition under Section 482 CrPC cannot be filed for seeking such remedy. Thirdly it was submitted that the premises in question was not a "shared household" in terms of the judgment of the Supreme Court in S.R. Batra. Finally, it was submitted that through the present proceedings the Petitioner was seeking to enlarge the scope of the proceedings before the learned MM and was trying to get possession of a kitchen which was not earlier in her possession.

11. As regards the objection as to maintainability of the present petition, this Court finds that the powers under the Act have been vested in the Magistrate in the first instance. This is plain from a reading of the Chapter IV of the Act. It is the Magistrate who has been empowered to hear and dispose of the applications for various reliefs. In fact under Section 29 of the Act an appeal has been provided to the court of Sessions from the order of the Magistrate. This being the scheme of the Act the submission that no relief in the criminal jurisdiction of the High Court can be sought by way of a petition under Section 482 CrPC is wholly misconceived. Mr. Thareja was unable to provide any provision under the Act which provides for an alternative remedy to the Petitioner. When in the view of this Court the impugned order would cause a grave miscarriage of justice, this Court is not powerless in exercise of its powers under Section 482 CrPC read with Article 227 of the Constitution to interfere. Accordingly this Court rejects the objection as to the maintainability of the present petition.

12. As regards the merits of the case it is seen from the sanctioned plan submitted that there is an unfurnished room indicated as kitchen/store' on the first floor which at present is unoccupied and this is adjoining the passage. Although Mr. Thareja states that there is no water facility in the said room and that it cannot be used as a kitchen, the Petitioner appearing in person states that she will use it for the said purpose to the extent that she can as long as her right to a separate entrance from the ground floor and duplicate keys to the main entrance and main door are provided to her. The parties admit that the small space where the washing machine was earlier kept is unsuitable for the purposes of a kitchen.

13. On a conspectus of the proceedings, this Court finds that the learned ASJ ought not to have interfered with the order dated 20th December 2007 of the learned MM restoring to the Petitioner the possession of the premises in her occupation prior to 17th April 2007 particularly at the interim stage. It was premature on the part of the learned ASJ to have straightaway proceeded to apply the law explained by the Supreme Court in S.R. Batra v. Taruna Batra without any evidence having been led to determine whether in fact the Respondent No. 2 owned the premises and that the husband had absolutely no right to live there. It is indeed inconceivable how at an interlocutory stage where, given the purposes of the Act, the question before the learned MM is of giving urgent relief, a final determination can be made on these aspects. It must be remembered that in this case it is not as if the family of the husband is being dispossessed of the portion under their occupation entirely. The Petitioner is only seeking restoration of a relatively small portion which was under her occupation prior to 17th April 2007. In the facts and circumstances, the learned ASJ erred in interfering with the interlocutory order passed by the learned MM. Further, given the situation in which the Petitioner was placed, no fault can be found with her seeking to implement the order dated 20th December 2007 forthwith. By granting to the Respondents a final relief in relation to the issue of residence, the impugned order of the learned ASJ has resulted in a grave miscarriage of justice as far as the Petitioner is concerned.

14. For the aforementioned reasons, the impugned order dated 2nd February 2008 passed by the learned ASJ is set aside and the order dated 20th December 2007 passed by the learned MM is restored. It is directed that the Petitioner will in addition to the portions of the premises in question which were handed over to her on 21st December and 26th December 2007, be put in vacant and peaceful possession of the room in the first floor shown in the plan as kitchen/store' adjoining the passage and measuring 8 feet and 7 1/2 inches x 9 feet and 6 1/2 inches. In addition, she was will be given the duplicate keys of the main gate as well as to the main entrance leading to the first floor. The Respondents will not in any manner block the access of the Petitioner and her infant child to the aforementioned portions. They will also ensure that the existing electricity and water connections to the said portions are continued. The above directions will be complied with within a period of seven days from today.

15. The learned ASJ is now directed to dispose of the appeal on the question of maintenance within a period of two months from today. Till the disposal of the appeal the present order will continue to operate as the interim order. It is clarified that the observations in this order are only for the purposes of determining the interim relief to be granted to the Petitioner pending disposal of the appeal before the learned ASJ and will not influence the disposal of the appeal by the learned ASJ on its merits and of the petition before the learned MM.

16. The petition is accordingly allowed with costs of ₹ 5,000/- which shall be paid by the Respondents to the Petitioner within a period of four weeks from today. All the pending applications also stand disposed of.

17. A copy of this order be given dasti to learned Counsel for the parties.

Shumita Didi Sandhu v. Sanjay Singh Sandhu, II (2010) DMC 882 (Delhi H.C.) (26.10.2010)

Judges: Badar Durrez Ahmed and Veena Birbal

Judgment

Badar Durrez Ahmed, J.

1. This appeal raises interesting issues with regard to the concepts of 'matrimonial home' and 'shared-household' and also concerning the right of residence of a wife in the matrimonial home, shared-household or some other place.

2. This appeal is directed against the judgment and/or order dated 02.07.2007 passed by a learned single Judge of this Court in IA Nos. 291/2005 and 8444/2005 in CS(OS) 41/2005. The suit had been filed by the appellant against her husband, Mr. Sanjay Singh Sandhu (defendant No. 1), her father-in-law, Mr. Hardev Singh Sandhu (defendant No. 2)(since deceased) and her mother-in-law, Mrs Shiela Sandhu (defendant No. 3). During the pendency of the suit as also the said applications, the appellant's father-in-law (the said defendant No. 2) passed away and his legal representatives, being his widow (Mrs Sheila Sandhu), son (Mr Sanjay Singh Sandhu), daughter, Mrs Zoya Mohan and another daughter (Mrs Tani Sandhu Bhargava), were brought on record.

3. In the said suit, the appellant/plaintiff had sought the following reliefs:

(a) Grant a decree of permanent injunction restraining the Defendant Nos. 1, 2 and 3 from committing themselves or through their agents/representatives acts of violence and intimidation against the plaintiff;

(b) Grant a decree of permanent injunction restraining the Defendant Nos. 1, 2 and 3 and their agents/representatives from forcibly dispossessing the Plaintiff out of her matrimonial home without due process of law;

(c) Grant any other/further relief/relief (s) as may be deemed fit and proper under the facts and circumstances of the case.

4. In IA No. 291/2005, the appellant/plaintiff sought an interim order restraining the defendants from dispossessing her from her 'matrimonial home', which, according to her, was the property at 18-A, Ring Road, Lajpat Nagar-IV, New Delhi. It is her case that she was

occupying the first floor of the said property and there was imminent danger of her being dispossessed from the said portion of the said property without following the due process of law. IA No. 8444/2005 was filed by the appellant/ plaintiff seeking interim orders restraining the defendants from creating any third party rights in the said property. The said applications were dismissed by the learned single Judge by virtue of the impugned order dated 02.07.2007. The learned single Judge was of the view that the plaintiff could not claim any right to stay in the said property as it did not belong to her husband (defendant No. 1), but it belonged to her parents-in-law. Taking note of the statement under Order 10 of the Code of Civil Procedure, 1908 made by the defendant No. 2 that the defendants have no intention to throw out the plaintiff from the first floor of the said property, which is occupied by her, without following the due process of law, the learned single Judge ordered that the said defendants would be bound by the statement. However, the learned single Judge clarified that this would not prevent the defendants 2 and 3 from taking recourse to law for dispossessing the plaintiff.

5. The learned single Judge in paragraph 9 of the impugned judgment and/or order observed as under:

There is no dispute that the suit property belongs to the defendant Nos. 2 and 3. The plaintiff's husband, namely, the defendant No. 1 has no share and/or interest in the same.

Again in para 9 of the impugned judgment/order, the learned single Judge observed that:

The question for prima facie consideration is as to whether the plaintiff has any right to stay in the suit property in which her husband has no right, interest or share and belongs to her father-in-law and mother-in-law. Incidental question for determination is as to whether it could be treated as matrimonial home of the plaintiff?

6. The learned single Judge, it is obvious from the aforesaid extracts, proceeded on the basis that the said property belonged to defendant Nos. 2 and 3, that is, the father-in-law and the mother-in-law and that there was no dispute with this proposition. Consequently, relying on the Supreme Court decision in the case of S.R. Batra v. Taruna Batra 2007 (3) SCC 169, he observed that the ratio of the said Supreme Court decision was clearly that the daughter-in-law has no legal right to stay in the house which belongs to her parents-in-law. The learned single Judge observed that the legal position which emerged was that the husband had a legal and moral obligation to provide residence to his wife and, therefore, the wife was entitled to claim a right of residence against her husband. He further observed that if the house in question where she lived after marriage belonged to her husband, the same could certainly be treated as a matrimonial home. Furthermore, if the house in question belonged to a Hindu undivided family in which her husband was a co-parcener, even that house could be termed as a matrimonial house. But, where the

house belonged to the parents-in-law in which the husband had no right, title or interest and the parents-in-law had merely allowed their son alongwith the daughter-in-law to stay in the said house, it would amount to mere permissive possession on the part of the daughter-in-law and would not give her any right to stay in the said house inasmuch as the same would not be her matrimonial home.

7. The learned single Judge also noted that there was a serious dispute as to whether the property could, at all, be termed as a matrimonial home. He referred to the pleadings from which it, prima facie, appeared that the appellant/plaintiff lived in the said property from the date of her marriage in 1994 till 1996 when she moved out to Defence Colony as her relations with the defendants had become strained. Interestingly, her husband (defendant No. 1) also joined her and started residing with her in Defence Colony, which was a rented accommodation. In 1999, the appellant/plaintiff and her husband (defendant No. 1) returned to the said property and resided in the first floor. Serious allegations have been hurled by the plaintiff as well as the defendant No. 1 against each other with regard to their chastity. There is also an allegation that the defendant No. 2 married another lady sometime in 2004 and that she had moved into the said property. It was alleged that because of these incidents, the appellant/plaintiff left the property in 2004. Of course, she re-entered the first floor of the said property on 10.10.2004 at 2.30 a.m. It is because of this circumstance, that the learned single Judge was prima facie of the view that there was some credence in the allegations of the defendants that the appellant/plaintiff had forced her entry into the said property on 10.10.2004 at an odd hour. Another circumstance which may be noted is that the appellant/plaintiff had also taken a flat in Mumbai for the period December 1999 to November 2000 and that the lease of the flat was in her name and she had stayed there for three-four months and her husband had also joined her. It is because of these circumstances that the learned single Judge was of the view that there was a serious dispute as to whether the suit property could, at all, have been termed as a matrimonial house, particularly when the appellant/plaintiff had left the said property in the early part of 2004 and had, prima facie, forcibly entered the same on 10.10.2004.

8. Anyhow, the main thrust of the reasoning adopted by the learned single Judge was that the daughter-in-law (appellant/plaintiff) cannot claim any right to stay in the said property inasmuch as the said property belonged to her parents-in-law. This conclusion is based on the said decision of the Supreme Court in the case of S.R. Batra (supra).

9. Mr. Akhil Sibal, the learned Counsel appearing on behalf of the plaintiff raised three points of attack insofar as the impugned decision is concerned. His first and main point was that the learned single Judge had proceeded on the basis that there was no dispute that the property belonged to the defendants 2 and 3. He submitted that the plaintiff had nowhere admitted the defendants 2 and 3 to be the sole and exclusive owners of the said

property. Consequently, the learned Counsel submitted that since the very premise was wrong, the conclusion based on such premise was obviously erroneous. He also submitted that because the said premise was faulty, the decision of the Supreme Court in the case of S.R. Batra (supra) would not be applicable to the facts and circumstances of the present case.

10. The second point of attack was that the learned single Judge had erred in holding that the appellant/plaintiff, could not, as a matter of law, claim any right in the property of the mother-in-law. He submitted that the plaintiff/appellant had a right of residence and that this proposition was not correct. The third point of attack was that since the learned single Judge had decided that in law, the appellant/plaintiff could not claim any right in the property of the mother-in-law, the suit as such had virtually been dismissed without returning any conclusive findings or recording any satisfaction on the factual aspects at all. He, therefore, submitted that this was a fit case for remand, after the impugned order was set aside.

11. Elaborating on the first aspect of the matter, that the appellant/plaintiff had not admitted the defendant Nos. 2 and 3, jointly or the defendant No. 3 by herself, to be the exclusive owner(s) of the said property, Mr. Sibal drew our attention to the pleadings of the parties and, in particular, to the written statements filed on behalf of the defendant Nos. 1, 2 and 3. Referring to para 3 of the written statement of the defendant No. 1, Mr. Sibal pointed out that the stand taken is that the said property belonged to defendant No. 3 (the mother-in-law). However, in paragraph 17 of the same written statement, a somewhat different statement has been made to the following effect:

> ...The suit property lawfully belongs to the parents of the defendant No. 1 and the plaintiff has no claim whatsoever in the said suit property.

Again, in para 21 of the written statement of the defendant No. 1, it is stated as under:

> ...the matrimonial house of the parties will be the residence of the husband i.e. defendant No. 1 and not the house/property of the parents of the husband i.e. defendant No. 2 and 3 to whom the suit property belongs. The suit property is the self acquired property of the defendant No. 2 and 3 and no person except the defendant No. 3 has any right, title or interest in the suit property. The matrimonial home of the plaintiff thus will be the house in which her husband i.e. defendant No. 1 resides who has his residence in Dehradun and not in the suit property.

12. Mr. Sibal submitted that from the aforesaid averments made in the written statement, the defendant No. 1 has taken conflicting stands. At one place, the defendant No. 1 has stated that the property belongs to his mother (defendant No. 3) and not to the plaintiff and at other places he has stated that it belongs to his parents, i.e., both defendant Nos. 2 and 3.

13. Referring to the written statement of the defendant No. 2, Mr. Sibal submitted that the defendant No. 2 claimed the said property to have been built from his personal earnings and also on the basis of the loan which he had taken from LIC. He referred to the following averments in paragraph 6 of the written statement:

> 6. That the correct facts in brief imperative for the proper adjudication of the present matter are that the house at 18A, Ring Road, Lajpat Nagar was built from the personal earnings of defendant No. 2 and also the loan which he had taken from LIC. The defendant No. 2 was living on the ground floor with his wife, defendant No. 3 and three unmarried children. The plaintiff and the defendant No. 1 got married in the year 1994. After the marriage, the plaintiff and the defendant No. 1 lived with defendants No. 2 and 3 in the ground floor of their house. Thereafter, in the year 1996, the plaintiff and the defendant No. 1 left the said premises at Lajpat Nagar and took a separate residential premises for their living in C-461, Defence Colony, New Delhi which remained their residential premises till 1999. The said house was taken on lease by plaintiff and defendant No. 1 and all the payments for rent and were duly reflected in defendant No. 1's Bank statement for the said period. Thereafter plaintiff and defendant No. 1 had been living at different places from time to time. For the last few years plaintiff and defendant No. 1 started living in defendant No. 1's house in Dehradun or at times at the First Floor of the suit property with permission of defendants No. 2 & 3. Whenever they stayed at Lajpat Nagar House even though they maintain separate kitchen. Defendant No. 2 had been paying all electricity and water charges including payment to security guards and other related expenses. For the said reasons the first floor at Lajpat nagar house belonging to defendant No. 3 was never considered to be matrimonial home of plaintiff and defendant No. 1.
>
> The defendant No. 3, in paragraph 11 (preliminary objections) of her written statement, has categorically stated that the suit property is the self acquired property of the defendant No. 3 and no person except the defendant No. 3 has any right, title or interest in the suit property. In para 2 (parawise reply on merits), the defendant No. 3 once again stated that she was the true and legal owner of the suit property and the defendant No. 2 and 3 have been in possession of the suit property.

14. In view of the averments made in the said written statements, Mr. Sibal submitted that the stand of the defendants is unclear. At one point, they claim that the property belongs to the defendant Nos. 2 and 3 and at other points they claim that the property belongs to defendant No. 3 exclusively. Thus, according to Mr. Sibal, the shifting stands are indicative of the ulterior designs of the defendants to oust the appellant/plaintiff from her matrimonial home.

15. He then referred to para 21 of the replication, where, for the first time, the plaintiff raised the plea that the said property was not the self-acquired property of the defendants 2 and 3 and also denied that no person except the defendant No. 3 had any right, title or interest in the suit property. It was, therefore, contended by Mr. Sibal that there was a dispute with regard to the ownership of the suit property. Continuing further, Mr. Sibal referred to the Order X statement made under the Code of Civil Procedure, 1908 by the defendant No. 2, where once again, the said defendant took a different stand that the property bearing No. 18-A, Ring Road, Lajpat Nagar, Delhi had been bought by his wife, Mrs Sheela Sandhu out of her own income and that the perpetual lease deed was executed by DDA in her favour.

16. Mr. Sibal also submitted that an application being IA No. 8442/2005 had been filed by the appellant/plaintiff under Order 6 Rule 17, CPC seeking amendment of the plaint. One of the amendments sought was the introduction of para 12-B, wherein the plaintiff proposed to allege that the defendant No. 3, in collusion with the other defendants, had transferred part of the above said property in the name of defendant No. 4 falsely claiming this to be her absolute property, knowing fully well that the said property was the joint ancestral property and by making false averments regarding possession and consideration. In other words, the appellant/ plaintiff sought to take, inter alia, the plea of joint ancestral property by virtue of the said amendment application. Mr. Sibal said that that application is pending and is yet to be disposed of. He submitted that the learned single Judge ought to have disposed of the application for amendment prior to passing the impugned order. This, according to him, is another reason as to why the impugned order ought to be set aside and the matter be remanded to the learned single Judge for a fresh consideration.

17. There was also some controversy with regard to a status quo order dated 08.01.2005. But, we need not go into that aspect of the matter. The main thrust of the arguments advanced by Mr. Sibal was that the foundation on which the learned single Judge had premised his conclusions was itself faulty inasmuch as the learned single Judge, assumed that there was no dispute that the suit property belonged to the defendants 2 and 3 in which the appellant's/plaintiffs husband had no share or interest. He submitted that he has been able to show, prima faice, that there was a dispute as to whether the defendants 2 and 3 or the defendant No. 3 alone was the exclusive owner of the said property and that the issue as to whether it was a joint family property also needed to be looked into. Therefore, the decision in the case of S.R. Batra (supra) would not be applicable to the facts and circumstances of the present case, because, in the Supreme Court decision, the position with regard to ownership, being that of the mother-in-law, was undisputed.

18. Referring to the following decisions, Mr. Sibal submitted that the property in question was the matrimonial home of the appellant/plaintiff and she had a right to reside therein

and, therefore, she was entitled to an order restraining the defendants from dispossessing her and/or creating any third party interest therein:

1) Kavita Gambhir v. Hari Chand Gambhir and Anr., 162 (2009) DLT 459;

2) Appasaheb Peerappa Chandgade v. Devendra Peerappa Chandgade and Ors., 2007 (1) SCC 521;

3) Komalam Amma v. Kumara Pillai Raghavan Pillai and Ors., AIR 2009 SC 636;

4) Mangat Mal (Dead) and Anr. v. Punni Devi (Dead) and Ors., 1995 (6) SCC 88;

5) S.R. Batra and Anr. v. Taruna Batra., 2007 (3) SCC 169;

6) S. Prabhakaran v. State of Kerala. 2009 (2) RCR (Civil) 883;

7) P. Babu Venkatesh Kandayammal and Padmavathi v. Rani CRL. R.C. Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008 decided on 25.03.2008.

19. Mr. Chetan Sharma, the learned senior counsel, appearing for the respondent No. 3, submitted that the present appeal is merely academic because the learned single Judge has virtually decreed the suit. He submitted that one of the reliefs claimed in the suit was to permanently injunct the defendants from forcibly dispossessing the plaintiff out of her matrimonial home "without due process of law". He submitted that this relief has already been granted by the learned single Judge by virtue of the impugned order, whereby he directed as under:

19. In view of the above, insofar as the right of the plaintiff to stay in the suit property is concerned, she cannot claim any such right as the property belongs to her parents-in-law. However, statement of defendant No. 2 was recorded by the Court under Order X CPC where he stated that he or his wife had no intention to throw her out of the premises in question without due process of law. Therefore, while dismissing the applications of the plaintiff, it is ordered that the defendant Nos. 1 and 2 shall remain bound by the said statement. This, however, would not prevent the defendants to take recourse to the law for dispossessing the plaintiff.

20. Mr. Chetan Sharma further submitted that at the time when IA Nos. 291/2005 and 8444/2005 were being argued and which ultimately came to be disposed of by the impugned order, the appellant/plaintiff did not press for hearing of the amendment application. Consequently, she cannot now be permitted to submit that the said amendment application ought to have been decided prior to the said IA Nos. 291/2005 and 8444/2005. He further submitted that the appellant/plaintiff did not press for any additional issue with regard to the title in respect of the said property. Referring to the Supreme Court decision in Om Prakash Gupta v. Ranbir B. Goyal, 2002 (2) SCC 256, Mr. Sharma submitted that the rights of the parties stand crystallised on the date of institution of the suit and subsequent events are not to be taken into account unless the three circumstances referred to therein arise. The said three circumstances are:

(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.

21. Mr. Chetan Sharma fully supported the impugned judgment and contended that there was no infirmity in the same and, therefore, did not call for any interference. He submitted that the case of the appellant/plaintiff was that there was no abandonment of the matrimonial home and that she had a right to live in the matrimonial home even if it belonged to her in-laws. Earlier, the High Court decision in the case of Taruna Batra v. S.R. Batra and Anr., 116 (2005) DLT 646 had been relied upon by the appellant/plaintiff as observed in the impugned order itself, but the Supreme Court decision in S.R. Batra (supra) reversed the decision of the High Court and sealed the fate of the appellant/plaintiff. Mr. Chetan Sharma also referred to a decision of a learned single Judge of this Court in the case of Neetu Mittal v. Kanta Mittal and Ors., (2008) 106 DRJ 623 by way of persuasive value to submit that under the Protection of Women from Domestic Violence Act , 2005, there is no concept of matrimonial home. On the other hand, the concept is of a 'shared house-hold'. In that case, the learned single Judge, after referring to and relying upon the decision of the Supreme Court in S.R. Batra (supra) held that a daughter-in-law has no right to live in the house belonging to her parents-in-law.

22. Mr. Chetan Sharma also submitted that in the present case, the said property cannot be regarded as the matrimonial home because, first of all, the appellant/plaintiff left the house in 1996 when she went to reside in Defence Colony. Her husband, the defendant No. 1 also left the said property and resided with her in Defence Colony. Secondly, the appellant/plaintiff resided in Dehradun and, thirdly, she resided in Mumbai and then in 2004, she once again left the said property, only to re-enter the same on 10.10.2004 at 2.30 a.m. He referred to the order X, CPC statement of the appellant/plaintiff, wherein she stated that she had married the defendant on 05.11.1994 and that she had shifted to Defence Colony in June, 1996 and remained there till March, 1999. She then stated that she was forced to leave her matrimonial home in 2004. She also admitted that she took a flat in Bombay during the period December 1999 till November, 2000 and that the lease of the Bombay flat was in her name and that she was in Bombay for three to four months and that her husband had joined her later on. She also admitted to her going to Pakistan in January 2004 and staying there for six days alongwith a number of other persons. Thereafter, she went to Pakistan again on 12.04.2004 to 24.05.2004 with a women's

organization. She also admitted that during the period February 2004 till 09.10.2004, no formal complaint was lodged by her.

23. According to Mr. Sharma, the Protection of Women from Domestic Violence Act, 2005, would come into play only when domestic violence takes place. This is not a case of domestic violence as there has been no whisper of any violence during February 2004 to 10.10.2004 when the appellant/plaintiff re-entered the said property at 2.30 a.m. He submitted that apart from this not being a case of domestic violence at all, the appellant/plaintiff having come to learn that the defendant No. 3 was interested in disposing of the said property, wanted to put an impediment in the sale so as to extract some money from the defendants. For all these reasons, Mr. Sharma contended that the appeal be dismissed.

24. Let us first deal with the submission of the learned Counsel for the appellant that the foundation of the learned single Judge's decision that there was no dispute that the suit property belongs to defendant Nos. 2 and 3 was itself faulty and, therefore, the entire decision is liable to be set aside. It is true that the learned single Judge had proceeded on the basis that there was no dispute that the suit property belonged to defendants 2 and 3 and even the question which was taken up for prima facie consideration by the learned single Judge, as would be apparent from paragraph 9 of the impugned order, was founded on the understanding that the appellant's husband (defendant No. 1) had no right, title or share in the said property and that the said property belonged to the appellant's father-in-law and mother-in-law. We have already noticed above that the learned Counsel for the appellant was at pains to attempt to demonstrate that the appellant/plaintiff nowhere admitted that the said property belonged to her father-in-law and mother-in-law or to her mother-in-law exclusively. He had also pointed out that there is no admission by the appellant/plaintiff that her husband (defendant No. 1) did not have any right, interest or share in the said property. The learned Counsel for the appellant had drawn our attention to the written statements filed by the defendants as also the replication filed by the appellant/plaintiff and the Order X CPC statement of the defendant No. 2.

25. On going through the relevant portions of the said documents, it appears that the defendant No. 1 took the stand that the said property belonged to his mother (defendant No. 3). However, in the very same written statement, the defendant No. 1 had also stated that the said property belonged to defendant Nos. 2 and 3 and that it was their self-acquired property. In the very same paragraph (para 21 of the written statement of the defendant No. 1), it is again stated that no person except the defendant No. 3 has any right in the said property. The defendant No. 2 in his written statement stated that the said property was made from his personal earnings and from a loan taken from LIC. However, in his Order X CPC statement, the defendant No. 2, took a different stand and stated that the property was bought by his wife (defendant No. 3) out of her own funds. The defendant

No. 3, however, took a clear stand in her written statement that the said property was her self-acquired property and no person except her had any right, title or interest in the same. She stated that while she was the true and legal owner of the said property, her husband (defendant No. 2) and she were in possession of the suit property.

26. It does appear from the averments made in the written statements of the defendant Nos. 1 and 2 that there is a shift in the stand taken with regard to the ownership of the said property. The defendant No. 1 had taken the stand that the property belongs to his mother (defendant No. 3) and that no person except the defendant No. 3 had any right, title or interest in the same. However, he has also averred that the said property belonged to defendants 2 and 3. A similar ambivalence is discernible in the stand taken by the defendant No. 2 in his written statement and his order X CPC statement. However, this much is clear that none of the defendants have stated that the appellant's husband (defendant No. 1) had any right, title or interest in the said property. There is only some lack of clarity in the pleadings with regard to the exclusivity of ownership of the defendant No. 3. In other words, there is a degree of ambiguity, particularly on the part of defendant No. 2 as to whether the defendant No. 3 is the sole and exclusive owner of the said property or whether it also belongs to the defendant No. 2. However, there is no confusion with regard to the stand that the said property does not at all belong to the appellant's husband (defendant No. 1).

27. In the replication, as pointed out earlier, the appellant/plaintiff has sought to introduce a new dimension to the case by making an allegation that the said property is not the self-acquired property of the defendant Nos. 2 and 3. The appellant/plaintiff had also filed an amendment application under Order 6 Rule 17, CPC to introduce new para 12B in the plaint where she has taken the plea of joint ancestral property. However, as pointed out above, the appellant did not press for a decision on this application at the time when IA Nos. 291/2005 and 8444/2005 were being argued before the learned single Judge. In any event, the plea of joint ancestral property has been sought to be introduced only by way of an amendment to the plaint after the defendants had filed their written statements. It cannot be said as to whether the amendment, which has been sought, will be allowed by the learned single Judge or not. Therefore, as on the date on which the learned single Judge passed the order, there did not exist any plea of joint ancestral property in the pleadings of the parties. Furthermore, what is important is to examine the stand taken by the appellant/plaintiff in the plaint which unfortunately had not been alluded to by the learned Counsel for the appellant. In para 2 of the plaint, it is merely stated that the property bearing No. 18-A, Ring Road, Lajpat Nagar-IV, is the matrimonial home of the plaintiff since 1994 and that she is currently residing in the first floor of the said property and the defendants are living on the ground floor due to strained relations between the parties.

28. In paragraph 8 of the plaint, it is alleged:

> The defendant Nos. 2 and 3 permitted the Defendant No. 1 to live with "Chinu" in the matrimonial home of the Plaintiff with ulterior motives of driving the Plaintiff from the matrimonial home.
>
> From the said averment, it is discernible that even as per the appellant's/plaintiff's understanding, the said property, which the plaintiff was regarding as her 'matrimonial home' belonged to defendant Nos. 2 and 3 and the defendant No. 1 only had permission to live in the same.

29. In para 12 of the plaint, it has been averred that the plaintiff feared for her life and was filing the suit to protect her rights "in her matrimonial home". The plea taken was that she feared that she would be "summarily thrown out without due process of law". It was also stated that:

> ...the defendants are trying to sell the house. They have already taken possession of a house being 201, Jor Bagh, New Delhi for their residence.

30. Two things are clear from the averments made in the plaint. The first is that it is nowhere alleged in the plaint by the appellant/plaintiff that the said property, which the appellant/plaintiff was referring to as her matrimonial home belonged to or was owned by her husband (defendant No. 1). In fact, there is no averment in the plaint that the defendant No. 1 had any right, title or interest or share in the said property. There is no averment that the property did not belong to the defendant No. 3 exclusively. As pointed out above, it can be inferred that the appellant/plaintiff was of the view that the property actually belonged to the defendant Nos. 2 and 3. The other point which emerges from the averments contained in the plaint is that the suit was filed to protect her rights in her 'matrimonial home' as she feared that she would be summarily thrown out without due process of law inasmuch as she had learnt that the defendants were trying to sell the house. It is in this context that the prayer (b) of the plaint, which seeks the grant of a decree of a permanent injunction restraining the defendants from forcibly dispossessing the plaintiff out of her "matrimonial home" without due process of law, gains importance and significance.

31. Thus, looking at the totality of the circumstances and the pleadings as well as the order X, CPC statements, it cannot be said that the learned single Judge was off the mark when he observed that there is no dispute that the suit property belongs to the defendant Nos. 2 and 3. Therefore, the first point of attack that the conclusion of the learned single Judge was founded on a wrong premise, falls to the ground.

32. In order to examine the other points urged by the learned Counsel for the appellant to the effect that the conclusion of the learned single Judge that the appellant/plaintiff could not claim any right in the property of the mother-in-law was erroneous and that the learned single Judge in so holding had virtually dismissed the suit itself without recording any

satisfaction on the facts, it would be necessary for us to consider the decisions cited at the bar as also the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the said Act'). We shall first examine the decision of the Supreme Court in the case of Mangat Mal (supra) wherein a question arose as to whether the right of maintenance of a Hindu lady, includes the right of provision for residence. The Supreme Court held as follows:

19. Maintenance, as we see it, necessarily must encompass a provision for residence. Maintenance is given so that the lady can live in the manner, more or less, to which she was accustomed. The concept of maintenance must, therefore, include provisions for food and clothing and the like and take into account the basic need for a roof over the head. Provision for residence may be made either by giving a lump sum in money, or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1).

33. Next, we refer to the decision of the Supreme Court in B.P. Achla Anand v. S. Appi Reddy and Anr., 2005 (3) SCC 313, which is a decision which was relied upon by a learned single Judge of this Court in the case of Kavita Gambhir (supra), which in turn, was referred to by the learned Counsel for the appellant. In B.P. Achla Anand (supra), in the context of a deserted wife continuing in possession of a property in which her husband was a tenant, the Supreme Court observed that there was no precedent, much less a binding authority, from any court in India dealing with such a situation. However, the Supreme Court noticed that English decisions could be found. The following passage from Lord Dening's Book- The Due Process of Law - was quoted by the Supreme Court:

A wife is no longer her husband's chattel. She is beginning to be regarded by the laws as a partner in all affairs which are their common concern. Thus the husband can no longer turn her out of the matrimonial home. She has as much right as he to stay there even though the house does stand in his name. . Moreover it has been held that the wife's right is effective, not only as against her husband but also as against the landlord. Thus where a husband who was statutory tenant of the matrimonial home, deserted his wife and left the house, it was held that the landlord could not turn her out so long as she paid the rent and performed the conditions of the tenancy.

34. After considering several other decisions, under English law, the Supreme Court noted the Matrimonial Homes Act, 1983 applicable in England. The preamble of that Act stated that it was an Act to consolidate certain enactments relating to the rights of a husband or wife to occupy a dwelling house that has been a matrimonial home. The Supreme noted

that one of the several rights expressly provided for by the Matrimonial Homes Act, 1983 in England was that so long as one spouse had a right to occupation, either of the spouses could apply to the court for an order requiring the other spouse to permit the exercise of that right. The Supreme Court observed as under:

32. In our opinion, a deserted wife who has been or is entitled to be in occupation of the matrimonial home is entitled to contest the suit for eviction filed against her husband in his capacity as tenant subject to satisfying two conditions : first, that the tenant has given up the contest or is not interested in contesting the suit and such giving up by the tenant-husband shall prejudice the deserted wife who is residing in the premises; and secondly, the scope and ambit of the contest or defence by the wife would not be on a footing higher or larger than that of the tenant himself. In other words, such a wife would be entitled to raise all such pleas and claim trial thereon, as would have been available to the tenant himself and no more. So long as, by availing the benefit of the provisions of the Transfer of Property Act and Rent Control Legislation, the tenant would have been entitled to stay in the tenancy premises, the wife too can continue to stay exercising her right to residence as a part of right to maintenance subject to compliance with all such obligations including the payment of rent to which the tenant is subject. This right comes to an end with the wife losing her status as wife consequent upon decree of divorce and the right to occupy the house as part of right to maintenance coming to an end.

33. We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of subletting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold - and we do so - that a deserted wife continuing in occupation of the premises obtained on lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant-husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises. Her rights and obligations shall not be higher or larger than those of the tenant himself. A suitable amendment in the legislation is called for to that effect. And, so long as that is not done, we, responding to the demands of social and gender justice, need to mould the relief and do complete justice by exercising our jurisdiction under Article 142 of the Constitution. We hasten to add that the purpose of our holding as above is to give the wife's right to residence a meaningful efficacy as dictated by the needs of the times; we do not intend nor do we propose the landlord's right to eviction against his tenant to be subordinated to wife's right to residence enforceable against her husband. Let both the rights coexist so long as they can.

35. However, in B.P. Achla Anand (supra), the appeal filed by Smt. Achla was dismissed because, in the meanwhile, a decree for dissolution of marriage by divorce based on mutual consent had been passed. The Supreme Court noted that it was not the case of Smt. Achla Anand, the appellant, that she was entitled to continue her residence in the tenanted premises by virtue of an obligation incurred by her ex husband to provide residence for her as part of maintenance. Consequently, the Supreme Court held that she could not, therefore, be allowed to proceed with the appeal and defend her right against the claim for eviction made by the landlord.

36. The third decision of the Supreme Court in this line is that of Komalam Amma (supra). In that decision, the Supreme Court took a view similar to that in Mangat Mal 's case (supra) that maintenance, in the case of a Hindu lady, necessarily must encompass a provision for residence. The Supreme Court reiterated that the provision for residence may be made either by giving a lump sum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure.

37. The final decision in this line of cases is that of the Supreme Court in S.R. Batra (supra). The facts before the Supreme Court in S.R. Batra (supra) are somewhat similar to those in the present case and it would, therefore, be instructive to refer to them in some detail. Taruna Batra married Amit Batra and started living with him in the second floor of the house belonging to Amit Batra's mother. It was not disputed that the said house at B-135, Ashok Vihar, Phase-I, Delhi belonged to Taruna Batra's mother-in-law and not to her husband Amit Batra. Cross divorce petitions were filed by Taruna Batra and Amit Batra and because of this discord, Smt Taruna Batra shifted to her parents residence. She alleged that later on, when she tried to enter B-135, Ashok Vihar, she found the main entrance locked and consequently she filed a suit for mandatory injunction to enable her to enter the house. However, before any order could be passed in the said suit, Smt Taruna Batra, alongwith her parents, allegedly broke open the locks and entered the said property. Another aspect was that Amit Batra had shifted to his own flat in Mohan Nagar, Ghaziabad before the said litigation had ensued. In the said suit, the trial Judge granted temporary injunction restraining the appellants therein from interfering with the possession of Smt Taruna Batra in respect of the second floor of the said property. In appeal, the Senior Civil Judge, Delhi, by his order dated 17.09.2004, held that Smt Taruna Batra was not residing in the second floor of the premises in question and that her husband Amit Batra was not living in the said property and the matrimonial home could not be said to be a place where only a wife was residing. He also held that Smt Taruna Batra had no right to the properties other than that of her husband and consequently dismissed the temporary injunction application. Thereafter, a petition under Article 227 of the Constitution of India was filed before the Delhi High Court whereupon a learned single Judge of this Court held that the

second floor of the property in question was the matrimonial home of Smt Taruna Batra and he further held that even if her husband Amit Batra shifted to Ghaziabad that would not make the Ghaziabad home the matrimonial home of Smt Taruna Batra. On this reasoning, the learned single Judge of this Court, held that Smt Taruna Batra was entitled to continue to reside in the second floor of B-135, Ashok Vihar as that was her matrimonial home. The Supreme Court disagreed with the view taken by the learned single Judge of this Court. Referring to an earlier decision in the case of B.R. Mehta v. Atma Devi and Ors., 1987 (4) SCC 183, the Supreme Court observed "whereas in England the rights of the spouses to the matrimonial home are governed by the Matrimonial Homes Act, 1967, no such right existed in India".

38. A reference was made to the following observations in B.R. Mehta (supra):

...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.

However, the Supreme Court in S.R. Batra (supra) observed that the aforesaid extract was merely an expression of hope and it did not lay down any law and that it was only the legislature which could create a law and not the court. The Supreme Court further held:

17. 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.

18. 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.

19. 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.

39. Thereafter, the Supreme Court considered the provisions of the said Act and particularly the concept of a "shared household" under Section 2(s) of the said Act as also the provisions of Sections 17 and 19(1) thereof and repelled the argument that since Smt Taruna Batra had lived in the property in question in the past, therefore, the said property was her 'shared household'. The Supreme Court observed as under:

26. 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.

27. It is well settled that any interpretation which leads to absurdity should not be accepted.

The Supreme Court finally held as under:

29. 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'.

30. 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.

40. From this line of cases, it is apparent that the concept of maintenance, insofar as a Hindu lady is concerned, necessarily encompasses the provision for residence. Furthermore, the provision for residence may be made either by giving a lumpsum in money or property in lieu thereof. It may also be made by providing, for the course of the lady's life, a residence and money for other necessary expenditure. Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a 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 which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both, in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India.

41. In the light of the aforesaid principles, the appellant/plaintiff would certainly have a right of residence whether as a part of maintenance or as a separate right under the said Act. The right of residence, in our view, is not the same thing as a right to reside in a particular property which the appellant refers to as her 'matrimonial home'. The said Act was introduced, inter alia, to provide for the rights of women to secure housing and to provide for

the right of the women to reside in a shared household, whether or not she had any right, title or interest in such a household.

42. Let us now look at the relevant provisions of the said Act. They are:

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;

xxx xxx xxx xxx

(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;

xxx xxx xxx xxx

(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.

43. Chapter IV of the said Act deals with the procedure for obtaining orders or reliefs. The said chapter comprises of Sections 12 - 29. Section 12 provides for the making of an application to a Magistrate seeking one or more of the reliefs under the Act. Section 17 relates to the right to reside in a "shared household". Section 18 prescribes the protection orders which the Magistrate may pass on being prima facie satisfied that domestic violence has taken place or is likely to take place. Section 19 contemplates the residence orders that may be passed by the Magistrate on being satisfied that domestic violence has taken place. Since the said provisions of Sections 17, 18 and 19 are relevant, they are set out in full hereinbelow:

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 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.

44. Another important provision is Section 23 which empowers the Magistrate to grant interim and ex parte orders on the Magistrate being 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. The ex parte order may be passed on the basis of affidavits of the aggrieved person in terms of, inter alia, Sections 18 and 19 against the respondent. Section 26 of the said Act prescribes that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings 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 the said Act.

45. From the aforesaid provisions, it is clear that the expression "matrimonial home" does not find place in the said Act. It is only the expression "shared household" which is referred to in the said Act. "Shared household" is defined in Section 2(s) to mean 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. The 'shared household' also 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 "household" has not been defined in the said Act, however, Black's Law Dictionary, 9th Edition defines 'household' in the following manner:

household, adj. Belonging to the house and family; domestic.

household, n. (14c) 1. A family living together, 2. A group of people who dwell under the same roof. Cf. FAMILY. 3. The contents of a house.

46. In contrast, the impression that we get by reading Section 2(s), which defines "shared household" is that the "household" which is referred to in the said provision, relates to the property and not just to the group of people who dwell under the same roof or the family living together. Therefore, we are of the view that the word "household" used in Section 2(s) actually means a house in the normal sense of referring to a property, be it a full-fledged house or an apartment, or some other property by any other description. This is also clear because the expression "household" has been referred to as a place where the person aggrieved lives or, at any stage has lived. It also refers to a property whether owned or tenanted or in which the aggrieved person or the respondent has any right, title, interest or equity. Therefore, in order to fall within the meaning of "shared household" as defined in Section 2(s), it is essential that the property in question must be one where the person aggrieved lives, or at any stage, has lived in a domestic relationship, either singly or alongwith the respondent. It also includes such a property 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 of them or both jointly or singly have any right, title, interest or equity. It also includes a property 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 therein. The Supreme Court has already observed in S.R. Batra (supra) that the definition of "shared household" in Section 2(s) is not happily worded, but the courts have to give it an interpretation which is sensible and which does not lead to chaos in society. In this backdrop and in the facts and circumstances of the present case, the property in question cannot be considered to be a shared "household" because neither the appellant/plaintiff, nor her husband (defendant No. 1) has any right, title or interest or equitable right in the same. The property may belong to defendant No. 3 exclusively or to defendants 2 and 3 jointly, but it certainly does not belong to the defendant No. 1 or the appellant/plaintiff. The position as it exists today also does not indicate even prima facie that the property in question is the property of a joint family of which the defendant No. 1 is a member. Therefore, in our view, the property in question

does not fall within the expression "shared household" as appearing in Section 2(s) of the said Act.

47. Section 17 of the said Act deals with the right of every women in a domestic relationship to reside in the shared household and, Section 17(2), specifically provides that such a woman 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. In other words, the wife can be evicted or excluded from the "shared household" after following the due procedure established by law and it is not an absolute right of the wife to reside in a "shared household". However, in the present case, we need to go into this aspect of the matter because Section 17 in itself would be inapplicable in view of the fact that the property in question cannot be regarded as a "shared household". The residence orders that may be passed under Section 19 are also subject to the Magistrate/court being satisfied that domestic violence has taken place. All the residence orders also relate to a "shared household". Consequently, Section 19 would also not come in the aid of the appellant/plaintiff.

48. The learned Counsel for the appellant had also referred to single Bench decisions of the Kerala High Court and the Madras High Court in the cases of S. Prabhakaran (supra) and P. Babu Venkatesh Kandayammal and Padmavathi (supra) to indicate instances of cases where the Supreme Court decision in S.R. Batra (supra) was distinguished. Those decisions are single Bench decisions and that too of other high courts and are, therefore, of no precedential values insofar as this Bench is concerned. We feel that in view of the prima facie finding that the property in question does not belong to the appellant's/plaintiff's husband nor does he have any share or interest in the same, there is no question of the said property being regarded as a "shared household" in terms of Section 2(s) of the said Act. We also find that the expression "matrimonial home" is not at all defined in the said Act and the concept of the matrimonial homes as prevailing in England by virtue of the Matrimonial Homes Act, 1967 cannot be applied in India as pointed out in S.R. Batra (supra) and B.R. Mehta (supra). There is no doubt that the appellant/plaintiff has a right of a residence whether as an independent right or as a right encapsulated in the right to maintenance under the personal law applicable to her. But that right of residence does not translate into a right to reside in a particular house. More so, because her husband does not have any right, title or interest in the said house. As noted by the Supreme Court in the case of Komalam Amma (supra) as well as in Mangat Mal (supra), the right of residence or provision for residence may be made by either giving a lumpsum in money or property in lieu thereof. In the present case, we have noted earlier in this judgment that the learned single Judge had recorded that alternative premises had been offered to the appellant/plaintiff, but she refused to accept the same and insisted on retaining the second floor of the property in question claiming it to be her 'matrimonial home'.

49. We must emphasise once again that the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property. But it can certainly not translate into a right to reside in a particular property. In order to illustrate this proposition, we may take an example of a house being allotted to a high functionary, say a Minister in the Central Cabinet and who resides in the same house alongwith his wife, son and daughter-in-law. It is obvious that since the daughter-in-law and son reside in the said house, which otherwise is a government accommodation allotted to the father-in-law, the same could be regarded as the house where the son and daughter-in-law live in matrimony. Can the daughter-in-law claim that she has a right to live in that particular property irrespective of the fact that the father-in-law subsequently is no longer a Minister and the property reverts entirely to the Government? Certainly not. It is only in that property in which the husband has a right, title or interest that the wife can claim residence and that, too, if no commensurate alternative is provided by the husband.

50. In view of the foregoing discussion, no interference is called for with the impugned order and we also feel that the learned single Judge has amply protected the appellant/plaintiff by directing that she would not be evicted from the premises in question without following the due process of law. The appeal is dismissed. The parties shall bear their respective costs.

Umesh Sharma v. State, I (2010) DMC 556 (Delhi H.C.) (25.01.2010)

Judge: V.K. Jain

Judgment

1. This is a petition under Section 482 of the Code of Criminal Procedure challenging the Order of the learned Sessions Judge dated 29th January, 2009, whereby he directed respondent No. 2, Shri Satish Chand Sharma, husband of the petitioner-Umesh Sharma to pay rent of ₹ 5,000/- per month to her for maintaining an alternative accommodation w.e.f. 7th February, 2009. The petitioner was directed to vacate the shared household within 15 days of receiving the first payment of ₹ 5,000/-.

2. A perusal of the Order dated 16th April, 2008, passed by the learned Metropolitan Magistrate, would show that the petitioner, Smt. Uma Sharma, filed an application under Section 12 of Protection of Woman from Domestic Violence Act, 2005, seeking restraint order against the respondents—Anirudh Sharma, who is her brother-in-law, Lalita Prasad Sharma, who is her father-in-law and Satish Chand Sharma, who is her husband, alleging torture and cruelty with her, besides demand of dowry and ill-treatment. She sought order

restraining the respondents from dispossessing her or her son from shared flat bearing No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi.

3. The respondents contested the application, claiming that house No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi is owned by respondent No. 2 - Lalita Prasad Sharma. The learned Metropolitan Magistrate restrained the respondents from dispossessing the petitioner from the aforesaid house and from disturbing her possession in any manner. The Order of the learned Metropolitan Magistrate was, however, modified by the learned Additional Sessions Judge, relying upon the decision of Hon'ble Supreme Court in S.R. Batra v. Taruna Batra 2007 (3) SCC 169.

4. Though the petitioner claims that property No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi, in which she is presently residing, is owned by her husband, admittedly, the property stands in the name of her father-in-law, respondent No. 2, Lalita Prasad Sharma and not in the name of her husband-Satish Chand Sharma. No material has been placed by the petitioner on record from which it may be inferred that the consideration for purchase of the aforesaid flat was paid by her husband and not by her father-in-law. Since flat in question, admittedly, stands in the name of Respondent No. 2 - Lalita Prasad Sharma, the onus was upon the petitioner to prove that it was purchased from the funds of her husband - Satish Chand Sharma, in the name of his father Shri Lalita Prasad Sharma. Neither there is any document nor any other material on record to discharge the onus, which was placed upon the petitioner. It is a settled proposition of law, if a person claims that the property, standing in the name of another person, is owned by him and not by the person in whose name it stands, the onus is upon the person making such a claim to substantiate the plea taken by him. In Vimlaben Ajitbhai Patel v. Vatslaben Ashokbhai Patel 2008 (4) SCC 649, the Hon'ble Supreme Court, inter alia, observed as under:

> It is well-settled that apparent state of affairs shall be taken as the real state of affairs. It is not for an owner of the property to establish that it is his self-acquired property and the onus would be on the one who pleads contra.

5. In the absence of the petitioner, discharging the onus, which the law places upon her, it cannot be accepted that the flat, in which she is residing, is owned by her husband and not by her father-in-law.

6. In S.R. Batra v. Taruna Batra 2007 (2) SCC (Crl.) 56, the petitioner-wife had, for some time, lived with her husband in the house, owned by her mother-in-law. A learned Single Judge of this Court held that the premises, in which she had resided with her husband, was her matrimonial home and mere change of residence by the husband thereafter would not shift the matrimonial home. It was held by learned Single Judge of this Court that wife was entitled to continue to reside in premises in question, as it was her matrimonial

home. The view taken by this Court was, however, not approved by the Hon'ble Supreme Court which, inter alia, held that it could not be said to be 'shared household' within the meaning of Section 2(s) of Protection of Women from Domestic Violence Act , 2005. The Hon'ble Supreme Court rejected the contention made on behalf of the wife that definition of 'shared household' includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. Rejecting the contention, the Hon'ble Supreme Court, inter alia, observed as under:

26.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 grandparents, 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.

27.It is well settled that any interpretation which leads to absurdity should not be accepted.

29. 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".

7. In view of the authoritative pronouncement of the Hon'ble Supreme Court in the case of Tarun Batra (supra), the flat, where she is residing and which is owned by her father-in-law, cannot be said to be shared accommodation and she has no legal right to continue to live in that house, except with the consent of her father-in-law, Shri Lalita Prasad Sharma. Since admittedly, respondent Lalita Prasad Sharma, is not agreeable to the petitioner continuing to live in the flat owned by him, no restraint order against the respondents can be passed in respect of the aforesaid flat.

8. The learned Additional Sessions Judge directed payment of ₹ 5,000/- p.m. to the petitioner in lieu of residence. During the course of hearing in this Court, respondent No. 2, Satish Chand Sharma, husband of the petitioner, agreed to pay ₹ 7,000/- p.m. to the petitioner as against ₹ 5,000/- p.m., awarded by the learned Additional Sessions Judge.

9. In view of the above discussions, Respondent No. 2, Satish Chand Sharma, shall pay ₹ 7,000/- p.m. to the petitioner from the date she vacates Flat No. A-18-C, Second Floor, Janta Flats, Raghubir Nagar, New Delhi and hands over its peaceful and vacant possession to her father-in-law. No direction, however, can be given to the petitioner in these proceedings to vacate the aforesaid flat and the consequence of her not vacating the aforesaid flat would be that she would not get amount of ₹ 7,000/- p.m., directed to be paid to her.

The petition stands disposed of.

Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey, 2008 (6) Bom CR 831, AIR 2009 (NOC) 1013 (Bombay H.C.) (26.08.2008)

Judge: Daga V.C.

Judgment

1. Rule, returnable forthwith. Heard finally by consent of parties. Perused the petition.

2. This petition, filed by petitioner-husband under Article 227 of the Constitution of India, is directed against the order dated 29.7.2008 passed below Exh. 10 in Petition No. A-113 of 2007 by the Principal Judge of the Family Court, Bandra, Mumbai whereby the petitioner, his mother, sister, other relatives, servants and agents are restrained from obstructing the respondent-wife to reside in a shared household.

Factual Matrix:

3. The petitioner and respondent got married on 18.5.2001. The petitioner is working as marketing executive. Sometime in the month of February, 2004, the respondent-wife joined the petitioner and started residing with him in the shared household. The continuous acrimony between them resulted in matrimonial discord, leading to divorce petition by the husband on the ground of mental cruelty being Petition No. A-113/2007 and criminal complaint under Sections 498-A, 306 read with Section 34 of the Indian Penal Code by the respondent-wife against the petitioner-husband.

4. The respondent-wife moved an application before the Family Court, Bandra under Section 26 of the Protection of Women from Domestic Violence Act, 2005 ("the Domestic Violence Act" for short) to seek declaration that she has a right to reside in the shared house i.e. residential flat No. A-102, "Om Adarsh Co-op. Housing Society Ltd. Deonar," Gowandi (hereinafter called the "subject-flat") and decree of permanent injunction restraining respondent-husband, his mother and relatives from evicting, dispossessing and/or excluding the respondent-wife from the subject flat is said to be a shared household.

5. The aforesaid application was opposed by the petitioner-husband, on the various grounds, contending that the subject flat is in the name of his mother. The another flat situate at "Pamakuti, Chunna Bhatti" is in the name of his grandfather, occupied by his aunt and other relatives. In short, he denied his interest in the subject-flat. He has also challenged the maintainability of the subject application and prayed for rejection thereof.

6. The Family Court, after hearing both parties, was pleased to partly allow the application with the result the petitioner-husband and all relatives were permanently restrained from committing any act of domestic violence and in turn rejected prayer of respondent-wife to prevent the petitioner's mother and sister from entering in the shared household.

Being aggrieved by the aforesaid order, to the extent it is adverse to the petitioner, he has invoked writ jurisdiction of this Court under Article 227 of the Constitution of India as stated hereinabove.

Rival Contentions:

7. The learned Counsel appearing for the petitioner urged that the application under Section 26 of the Domestic Violence Act was not maintainable and that the subject-flat cannot be termed as the shared household. He submits that the petitioner's father was an employee of the Bombay Municipal Corporation as a primary teacher. He formed one Co-operative Housing Society under the provisions of the Maharashtra Co-operative Societies Act, 1960 ("the M.C.S. Act" for short). The Bombay Municipal Corporation was pleased to allot one plot of land to the said Society. The members of the said Society constructed tenements on the said plot of land. The petitioner's father was one of the members allotted with one such tenement referred herein as subject flat. He expired on 27.5.2001.

8. After his demise, the subject flat was transferred in the name of his widow i.e. the petitioner's mother being a nominee. He further submits that the subject-flat stands in the name of the petitioner's mother as such subject flat cannot be said to be the shared household. He further submits that his mother is not a party to the proceeding in the Family Court. As such, the impugned order could not have been passed affecting her interest, that too, behind her back. He further submits that the respondent comes from a rich family and that she is not in need of residential accommodation. He further went on to submit that the subject-flat has, now, been sold by his mother vide sale deed dated 2.1.2008 to one Mr. Abdur Rashid Abdul Hakim. As such, no injunction in respect of the subject-flat styling it as the "shared household" could have been granted. The petitioner has also filed an affidavit of his mother wherein she is claiming to be the owner of the subject flat and states on oath that she has transferred, assigned and relinquished all rights, title and/or interest in respect of the subject-flat in favour of the purchaser and that she is not in possession thereof.

9. The petition is strongly opposed by the learned Counsel for the respondent-wife and supported the impugned order on facts and law both.

Statutory Provisions:

10. Before embarking upon the rival submissions it is necessary to note that the Domestic Violence Act was enacted on 13th September, 2005 to provide more effective protection of the rights of women, guaranteed under the Constitution, who are victims of violence within the family and to deal with the matters connected therewith or incidental thereto. The purpose of the Act is to provide remedy in the civil law for protection of women from being victimised by domestic violence and to prevent the occurrence of domestic violence to the society.

11. With the aforesaid aim and objects of the Domestic Violence Act, now, let me turn to the provisions of the Act relevant for the decision of this petition.

Section 2(s) "Shared household".

"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 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) ..

(b)..

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

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.

Reading of the aforesaid provisions would go to show that Section 26 provides that any relief available under Sections 18, 19, 20, 21 and 22 can 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.

12. It is, therefore, clear that a relief available under Section 19 of the Domestic Violence Act can also be claimed under Section 26 of the Act. Section 19(1)(c) provides that a Court can restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. Section 19(1)(a) provides that the order 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, can be granted.

Consideration:

Having heard both parties and having examined the statutory relevant provisions, it is not possible to accept the contention of the petitioner that the application under Section 26 moved by the respondent-wife, was not maintainable.

13. The contention of the petitioner that, the subject-flat was owned by his mother, as such, the petitioner had no right, title or interest in the subject-flat and that it has already been sold by his mother under a sale deed, dated 2.1.2008 executed, in favour of Mr. Abdur Rashid Abdul Hakim, cannot be accepted for the reasons stated hereinafter.

14. The learned Counsel appearing for the petitioner was fair enough to produce the photo copy of the sale deed dated 2.1.2008 executed by the mother of the petitioner for the perusal of the Court. The said sale deed is not a registered document. It is scribed on the stamp paper of ₹ 100/-. It is insufficiently stamped. It refers to a payment of consideration by cheque dated 1.2.2008. However, there is no material on record to show encashment of the said cheque. Insufficiently stamped and unregistered sketchy sale deed, without relevant recitals, leads me to draw an inference that the said deed is a bogus document of sale brought into existence just to defeat the right of the present respondent-wife and to get over the impugned order passed by the Family Court. The alleged sale deed did not extinguish the right, title and interest of the vendor in the subject flat.

15. Title did not pass over to the alleged purchaser. The alleged sale deed is inadmissible in evidence. The purported sale deed dated 2.1.2008 does not create any right, much less right, title or interest in favour of Mr. Abdur Rashid Abdul Hakim. As stated herein, the title still vests with the original owner.

Now, let me examine the question: whether the petitioner husband has any interest in the subject flat so as to bring it well within the sweep of a shared household?

16. The learned Counsel for the petitioner has produced the share certificate issued by the Co-operative Housing Society in whose building subject flat is located. The share certificate is in the name of Rampal Rajaram Pandey i.e. father of the petitioner (since deceased). With the death of Rampal Pandey the said flat stood inherited by the petitioner and his mother with other legal heirs, if any. The nominee does not become owner of the property. Nominee holds property for the benefit of the heirs. The petitioner's son is one of the legal heirs having interest in the subject-flat by virtue of inheritance. He is not a party to the alleged transaction of sale. Consequently, it has to be treated that he still has a interest in the subject-flat. The subject-flat, thus, can be treated as the shared household, wherein admittedly, the respondent-wife lived in a domestic relationship with the petitioner.

17. At this stage, it is relevant to mention that during the course of hearing a misleading, rather false, statement was made stating that the share certificate issued by the Society was in the name of the mother of the petitioner. The statement was found, factually, incorrect. It is, thus, clear that every attempt was made by the petitioner to defeat the legitimate right of the respondent-wife.

Having said so, having examined the well reasoned impugned order, the Family Court has rightly held that it had jurisdiction to entertain the application and that the respondent-wife has made out a prima facie case for grant of order in her favour. That is how, the impugned order was passed by the Family Court impugned in this petition.

18. The learned Counsel for the petitioner placed heavy reliance on the judgment of the Apex Court in the case of (S.R. Batra and Anr. v. Taruna Batra (Smt.) 2006 DGLS1028 : 2007(2) S C C (Cri.) 56. In the said judgment the shared household was neither belonging to husband-Amit Batra nor it was taken on rent by him. It was not a joint family property of which husband Amit Batra was a member. It was in the exclusive possession of appellant No. 2, mother of Amit Batra, hence, it was held that such an accommodation or house cannot be called as a shared household. So far as the case in hand is concerned, the petitioner-husband has undivided interest in the house after death of his father. His father died intestate. Consequently, the flat was inherited by the petitioner-husband along with other heirs. The alleged transaction of transfer is nothing but a bogus transfer brought about to defeat the claim of the respondent-wife.

19. In the above view of the matter, the petition is liable to be dismissed. In view of the false and misleading statement made by the petitioner coupled with the act of preparing a bogus document to defeat the claim of the respondent mere dismissal of the petition will not serve the ends of justice. The petition is, thus, dismissed. Rule stands discharged with costs

quantified in the sum of ₹ 25,000/- to be paid by the petitioner to the respondent-wife within four weeks from today. Order accordingly.

P. Babu Venkatesh v. Rani, AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008)

Judge: M. Jeyapaul

Order

1. Crl.R.C. No. 48 of 2008 is filed challenging the order passed by the learned Judicial Magistrate No. 6, Salem in Crl. M.P. No. 5231 of 2007 dated 31.12.2007 and Crl.R.C. No. 148 of 2008 is filed challenging the order dated 11.1.2008 passed by the very same learned Judicial Magistrate in CRL.M.P. No. 176 of 2008.

2. The first petitioner is the husband, second petitioner is the mother-in-law and the third petitioner is sister-in-law of the respondent. Invoking the provision under Section 23(2) of Protection of Womenfrom Domestic Violence Act, 2005, the respondent sought for an ex-parte residence order in Crl.M.P. No. 5231 of 2007.

3. In the affidavit filed by the respondent, she has stated that she was driven away from the matrimonial home and has been living without any food, cloth and shelter. She has further alleged in the said affidavit that she was driven away in the mid of night by beating her and as a result of which she did not have a roof to decide. Therefore, she has sought for an ex-parte residence order to be implemented by Mallur Police Station.

4. The learned Judicial Magistrate having adverted to the aforesaid allegations found in the affidavit in the background of the materials produced along with the main petition passed residence order in absentia of the petitioners herein. The said order is under challenge in Crl.R.C. No. 48 of 2008.

5. The respondent thereafter filed a petition in C.M.P. No. 176 of 2008 invoking the provision under Section 31 of the Protection of Women from Domestic Violence Act, 2005 seeking to enforce the order already passed in Crl.M.P. No. 5231 of 2007 alleging therein that the petitioners have locked the premises dishonoring the residence order passed by the learned Judicial Magistrate. The learned Judicial Magistrate having heard both sides passed an order on 11.1.2008 directing the police to break open the lock and give protection to the respondent herein to reside in the house. The said order is under challenge in Crl.R.C. No. 148 of 2008.

6. The learned Counsel appearing for the petitioners would vehemently submit that the subject house is neither the rental house nor the own house of the first petitioner herein.

Therefore the subject house does not fall under the definition "shared household" found in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. It is his further submission that the petitioners are prepared to provide alternate accommodation as contemplated under Section 19(f) of the Act by shouldering the responsibility of paying rent therefor. He contends that a Divorce petition filed by the first petitioner herein is pending adjudication. He would further submit that the learned Judicial Magistrate has not expressed his satisfaction based on the averment found in the affidavit filed by the respondent that the application did disclose a prima facie case of commission of an act of domestic violence or the likelihood of the commission of the said act. Therefore, the order passed bereft of any satisfaction expressed by the learned Judicial Magistrate is unsustainable.

As regards the other order passed by the learned Judicial Magistrate to break open the lock in the subject house with the assistance of the police, he would submit that there is no specific provision under the Act to pass such an order passed by the learned Judicial Magistrate.

It is his further submission that when the main application was posted on 21.1.2008 for counter, the interim application in Crl.M.P. No. 176 of 2008 was taken up hurriedly on 11.1.2008 and the same was disposed. The learned Judicial Magistrate should have waited till the petitioners herein file a counter in the main application for the disposal of the interim application filed by the respondent seeking break open. In view of the above, the impugned order is not sustainable, he would submit.

7. The learned Counsel appearing for the respondent would contend that the first petitioner was the owner of the subject premises where both the first petitioner and the respondent resided as husband and wife. But, after the matrimonial dispute had arisen between the parties, the first petitioner has chosen to alienate the property in the name of the second petitioner on 20.4.2006. Even otherwise, the learned Counsel appearing for the respondent would submit that the house of the second petitioner, which is in the permissible occupation of the first petitioner along with her wife shall be treated as 'shared household'. He would further submit that the pendency of the Divorce Application has nothing to do with the protection order under the Protection of Women from Domestic Violence Act, 2005. Though the order does not specifically state that the learned Judicial Magistrate was satisfied with the averment found in the affidavit, the details graphically given by the learned Judicial Magistrate about the concrete allegations made in the application would go to show that the learned Judicial Magistrate having been satisfied passed the residence order. The suggestion emanated from the petitioners that they are prepared to offer alternate accommodation can be decided during the disposal of the main application filed by the respondent. As regards the other petition filed for breaking open of the lock in the premises, the learned Counsel for the respondent would contend that the learned

Judicial Magistrate is empowered under Section 19(7) of the Act to give suitable direction to the officer incharge of the Police Station to assist the Court in the implementation of the protection order if any passed by the Court. Therefore, there is nothing wrong in the direction given by the learned Judicial Magistrate to break open the lock to accommodate the wife in the house where she last resided. The application seeking to break open the lock cannot be kept in abeyance till the petitioners herein file a counter leisurely in the main application. The merit or the otherwise of the interim application filed seeking to break open the lock will have to be decided expeditiously without waiting for any counter in the main petition. The learned Judicial Magistrate has rightly passed the order considering the urgency of the matter, he would further submit before this Court.

8. The Supreme Court in S.R. Batra and Anr. v. Taruna Batra (2007) 3 SCC 169 has held that 'shared household' means only the house belonging to or taken on rent by the husband or house which belongs to the joint family in which the husband is one of the members. It has also been observed therein that the property exclusively owned by the mother of the husband cannot be called 'shared household', as per the definition found in Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. In the above case, it is found that wife had chosen to file a Suit seeking bare injunction restraining her husband and his mother from dispossessing the wife from the property in question. On facts, it is observed that the husband of the respondent therein had already shifted his residence to a flat in Ghaziabad before ever the litigation between the parties started. In such circumstances, the Supreme Court has held that the place where the wife alone was residing cannot be termed as a matrimonial home.

9. But, in this case even before the litigation started, it is reported that both of them had resided in the subject house, which is now in the name of the second petitioner. Further, it is brought to the notice of this Court that after the dispute had arisen between the parties, the first petitioner, who was the original owner of the property alienated the same in favour of his mother, the second petitioner herein. Therefore, factually, the aforesaid ratio laid down by the Supreme Court can be distinguished. If the contention of the petitioners is accepted, every husband will simply alienate his property in favour of somebody else after the dispute has arisen and would take a stand that the house where they last resided is not a shared household and therefore the wife is not entitled to seek for residence right in the shared household.

10. As rightly pointed out by the learned Counsel for the respondent, the pendency of the Divorce petition at the instance of the first petitioner has nothing to do with the interim orders sought for by the respondent invoking the provisions under the Protection of Women from Domestic Violence Act, 2005. The reliefs provided under the aforesaid

Special Act will have to be granted in genuine cases, even during the pendency of the Matrimonial Case between the parties before the forum concerned.

11. On a careful perusal of the impugned order passed by the learned Judicial Magistrate in Crl.M.P. No. 176 of 2008, it is found that the learned Judicial Magistrate has graphically described the various domestic violence alleged in the affidavit filed by the respondent herein. He has also observed that he had an occasion to go through the entire materials filed in the main petition. As rightly pointed out by the learned Counsel appearing for the petitioners, the learned Judicial Magistrate has not observed in the order impugned that he was satisfied that the application prima facie disclosed that the petitioners were committing an act of domestic violence. In this context, the learned Counsel for the petitioners cited an authority in Ponnammal and Anr. v. State, rep.by Revenue Inspector, Kinathukadavu and Ors. 2003(4)CTC232 , wherein this Court dealing with the criminal proceedings under Section 145 of the Code of Criminal Procedure observed that any preliminary order passed under Section145(1) of the Code of Criminal Procedure without specifically stating the grounds of his satisfaction would amount to non-compliance of the provision under Section 145(1) of the Code of Criminal Procedure.

12. Section 145(1) of the Code of Criminal Procedure provides that the learned Judicial Magistrate should not only be satisfied with the grounds set up that the dispute likely to cause a breach of peace exists concerning any land or water, but shall also state specifically the grounds of being so satisfied. Under such circumstances, this Court in the aforesaid authority has observed that the preliminary order passed under Section 145(1) of the Code of Criminal Procedure without stating the grounds of his satisfaction would amount to non-compliance of the provision under Section 145(1) of the Code of Criminal Procedure.

13. Under Section 23(2) of the Protection of Women from Domestic Violence Act, 2005, the learned Magistrate has to pass a protection order, when he is satisfied that the application prima facie discloses that the respondent is committing or has committed an act of domestic violence or that there is likelihood of commission of such domestic violence before ever he passes an ex-parte order on the basis of an affidavit filed by the wife.

14. What is important is the materials which formed a basis for the satisfaction of the learned Judicial Magistrate before passing an ex-parte order will have to be considered by the Court and not the parrot like repetition of the provision to the effect that he was satisfied based on the averments found in the application. In this case it is found that the various averments found in the application clearly disclose the commission of the act of domestic violence and the same has been incorporated in the order impugned. The absence of the phrase "Magistrate is satisfied" need not be found incorporated in the order passed under Section 23(2) of the Act. If the material analysed by the learned Judicial Magistrate

discloses the allegation of commission of an act of violence, he is well within his powers to pass protection order under Section 23(2) of the Act.

15. Of course, the learned Judicial Magistrate is empowered to consider the suggestion emanated fromthe husband to provide alternate accommodation as contemplated under Section 19(f) of the Act, while passing a final order in the main application. It is after all an order passed ex-parte on the strength of the averment found in the affidavit filed by the aggrieved wife. Such a suggestion can be seriously considered by the Judicial Magistrate during the final disposal of the main application. In view of the above, the Court finds that the learned Judicial Magistrate has rightly passed the protection order. The said order does not suffer from any illegality or impropriety. Therefore, the question of setting aside the said order does not arise.

16. Coming to the order passed by the learned Judicial Magistrate giving a direction to the police authority concerned to break open the lock and give protection to the respondent to reside in the subject house, the Court finds that the learned Judicial Magistrate has ample power under Section 19(7) of the Act to give any order to the officer incharge to assist him in the implementation of the protection order. The interim residence order is one of the protection orders. Of course, the said provision does not specifically state that the learned Judicial Magistrate may direct the officer incharge to break open the lock. To give effect to the protection order passed ex-parte, the learned Judicial Magistrate will have to necessarily pass an order break open the lock by the police. If the submission made on the side of the petitioners that the learned Judicial Magistrate is not empowered to give any order to break open the lock is accepted, then in all cases, the husband will lock the house and walk off and thereby depriving the wifefrom enjoying the protection order passed under the Act. The Court finds that the aforesaid submission is against the spirit of the object and scheme of the benevolent Special Act.

17. The impugned order would reflect that the application seeking to break open the lock was filed on 9.1.2008 and the order thereon was passed on 11.1.2008. Of course, the impugned order would reveal that the main application was posted to 21.1.2008 for the counter on the side of the petitioners herein. The respondent cannot be made to wait and loiter in the street till the petitioners herein file their counter in the main application. On account of some urgency which has arisen, the interim applications are filed by the wife seeking protection order and also seeking assistance to implement the protection order. Therefore, the submission made by the learned Counsel for the petitioners that the learned Judicial Magistrate should have waited till the counter is filed by the petitioners herein in the main application, is found not sustainable. It is a case where the petitioners also were heard before ever an order was passed.

18. Of course, some comment is made by the learned Counsel for the petitioners that the learned Judicial Magistrate was pleased to pass an order at 8.30 p.m. on 11.1.2008. The Court is all praise for the learned Judicial Magistrate for passing the order at 8.30 p.m. without minding the time, considering the emergency in the application filed by the respondent. As otherwise the wife should take shelter only in the platform. There is nothing wrong in passing an order at 8.30 p.m., that too after hearing both sides. The Court finds that the order to break open the lock has been passed only after weighing the merits of the application. There is no impropriety or illegality in the said order. Therefore, both the Criminal Revision Cases fail and they stand dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed.

Eveneet Singh v. Prashant Chaudhri, I (2011) DMC 239 (Delhi H.C.) (20.12.2010)

See page 305 for full text of judgment.

S. Prabhakaran v. State of Kerala, AIR 2009 (NOC) 1017 (Kerala H.C.) (6.6.2008)

Judges: A.K. Basheer

Order

1. In this petition filed under S.482 of the Code Of Criminal Procedure, 1973, Annexure IV order passed under Ss. 18, 19 and 20 of the Protection of Women From Domestic Violence Act, 2005 (for short the Act) is under challenge.

2. By the impugned order the learned Magistrate has restrained the petitioner's son (respondent No.3 herein) from "disturbing the peaceful possession and enjoyment" of the residential building by his wife (respondent No.2) and from inflicting any type of mental and physical torture to her until further orders. The Sub Inspector of the local Police Station has also been directed to give protection to the wife and assist her to implement the "residence order".

3. Petitioner, who is the father-in-law of respondent No.2, claims that the order issued by the learned Magistrate under S. 19 of the Act is ex facie illegal and unsustainable. He was not a party to the proceedings before the court below. He contends that he has got absolute right, title and interest over the said residential building to the exclusion of his

son. However he admits that respondent No.2 had resided in the said building as his daughter-in-law for a short duration.

4. According to the petitioner, since his son did not have any kind of right over the residential building, the learned Magistrate was not justified in issuing a "residence order" as contemplated under S. 19 of the Act, on the sole ground that she had resided in that building as his daughter-in-law. He further contends that the residential building will not fall within the ambit of 'shared household' as defined under S.2(s) of the Act.

5. Per contra, it is contended on behalf of respondent No.2 (hereinafter referred to as the wife) that the residential building had been constructed by her and her husband very near to the existing ancestral home belonging to the petitioner, utilising their joint funds. Learned counsel submits that as far as the wife is concerned, the residential building in question is the matrimonial home. Further, even assuming the building belongs to the petitioner, her husband being a legal heir of the petitioner having a share in the property, the learned Magistrate was justified in issuing the impugned order. It is pointed out by the learned counsel that the wife had been residing in the said house ever since her marriage in 1998 till May 2007.

6. It is not in dispute that petitioner's son had married respondent No.2 in the year 1998. According to the wife, she was residing with her husband initially in the ancestral home of her husband's parents. But later, a new building was constructed adjacent to the ancestral house and thereafter she had been living with her husband in the said new building for the last few years. In May 2006 some misunderstanding arose between the husband and wife. It is alleged by the wife that she was subjected to harassment while residing in that house.

7. It appears that the Protection Officer had submitted a "domestic incident report" under Ss.9(B) and 37(2) (c) of the Act before the Judicial Magistrate of First Class, II, Punalar. A copy of the said report is on record as Annexure R2(e). In the said report the Officer had shown the period of incident of domestic violence as from May 31, 2006 till May 24, 2007.

8. In her application filed by the wife before the Magistrate under Ss. 18, 19 and 20 of the Act, she alleged that she was rescued from the matrimonial home, where she was put under confinement, with the help of Kottarakkara Police. She further alleged that she was not being allowed to enter the matrimonial home and that she apprehended danger to her life at the hands of her husband. It was in the above circumstances that the learned Magistrate had passed the impugned order after considering the averments made by the wife in the above application.

9. The husband had denied the allegations in the petition and contended that the residential building in respect of which the wife had sought residence order, did not belong to him.

He further stated that he had filed a petition for divorce and that his wife had been harassing him by filing false cases.

10. The learned Magistrate while repelling the contentions raised by the husband took the view that the claim made by the wife was just and reasonable and that as an interim measure an order of residence and protection had to be issued.

11. In this context it may be pertinent to note that the husband had challenged the above order (which is impugned in this case) before the Sessions Court, Kollam in Crl.A. No.112/2008. The Sessions Court did not interfere with the order passed by the learned Magistrate and dismissed the same. A copy of the judgment is on record as Annexure A2(g).

12. Petitioner who was not a party to the proceedings before the learned Magistrate has preferred this petition seeking to invoke the inherent power of this Court under S.482 of the Code.

13. The thrust of the argument of the learned counsel for the petitioner is based on the definition of 'shared household' contained in S.2(s) of the Act which is extracted hereunder:

"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 respondents, 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." (emphasis supplied)

Learned counsel submits that even assuming respondent No.2 had resided in the house as his daughter-in-law for a short duration, she is not entitled to get an order in her favour under S.19 of the Act, since her husband did not have any manner of right, title or interest over the residential building.

14. In this context learned counsel has placed heavy reliance on the judgment rendered by their Lordships of the Supreme Court in S.R.Batra & Anr v. Taruna Batra (2007 (3) KLT SN 8 (C.No.9) SC = (2007)3 SCC 169.

15. It is true that in the above judgment it was held that every house wherever the husband and wife lived together in the past, may not become a "shared household". It was observed by the Apex Court thus:

"...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 grandparents, 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 husband's relatives will be shared households and the wife can well insist in living in 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."

The case before the Supreme Court had arisen in the following facts and circumstances.

16. The wife (Smt.Taruna Batra) had sought residence order in respect of a building which admittedly belonged to her mother-in-law. It had come out on record that Smt. Taruna had shifted her residence to her parental home because of some dispute with her husband. Later, she went to the residence of her mother-in-law. She was denied entry. At that stage she preferred a civil suit praying for a mandatory injunction to enable her to enter the house.

17. The trial court held that Smt.Taruna was entitled to live in the residence of her mother-in- law and issued an order of temporary injunction restraining the mother- in-law and others from interfering with her residence. The above order was reversed by the appellate court holding that Smt.Taruna could not claim any right over the property which did not belong to her husband.

18. The said order was challenged before the High Court by Smt. Taruna. The High Court upheld the view taken by the trial court and found that she was entitled to continue to reside in the building which belonged to her mother-in-law. But the Apex Court reversed the order passed by the High Court at the instance of the parents of the husband, and held that the wife was not entitled to claim right of residence in her mother-in-law's house, since the trial court had found on facts that the wife had never resided in that house as her matrimonial home.

19. But in the case on hand it may be noticed that the wife (respondent No.2) has got a specific case that she and her husband had shifted to the new residential building jointly constructed by them, just adjoining the ancestral house of the parents-in-law, where they had been initially living. Therefore the petitioner may not be able to draw much support from the judgment of the Apex Court in Batra's case (supra), in the given facts and circumstances of this case.

20. It is true that the Supreme Court in the above decision had referred to the definition of "shared household" contained in S.2(s) of the Act. But it may incidentally be noticed that the latter part of the above definition undoubtedly shows that a household, which may belong to the joint family, of which the respondent (husband) is a member, irrespective of whether the respondent or the aggrieved person has right, title or interest in the shared household, will also fall within the ambit and sweep of the said definition. In other words, the inclusive definition, referred to above, will take within its fold a household over which

the husband in his capacity as a member of the joint family has some subsisting right, even assuming he does not have any exclusive right, title or interest.

21. In this context it is necessary to refer to S. 17 of the Act also, which is extracted hereunder:

"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.

22. Sub-s.(1) of S. 17 quoted above starts with a non obstante clause. It postulates that 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.

23. "Domestic relationship" is defined in cl.(f) of S. 2 of the Act as hereunder:

"(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;

If we read the provisions contained in S. 17(1) keeping in view the definitions of "domestic relationship" as well as "shared household", there can be no ambiguity with regard to the right of the wife to live in the household whether it be the joint family house of the husband or the residential building of the parents-in-law, if the wife lives or has at any stage lived in a domestic relationship either singly or along with the husband.

24. Similarly S. 19(1)(a) of the Act also is relevant in this context, which reads thus:

"19(1) While disposing of an application under sub-s.(1) of S.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;

(emphasis supplied)

25. In the case on hand it is not in dispute that respondent No.2 had been residing with her husband in the residential building situated very close to the ancestral home. It is true that the two residential buildings stand in the name of the petitioner. He has been paying tax for those two buildings. But there are materials on record which would prima facie show that the wife had been residing in the newly constructed building for quite some time. The domestic incident report referred to above (Ext.R2(e)) also will clearly show that the wife had been residing in that building at least till May 2007. Therefore it cannot be said

that the wife had lived in that residential building only for a short duration and that too occasionally. The inclusive definition of shared household contained in S.2(s) of the Act read with the provisions contained in Ss. 17 and 19 of the Act will undoubtedly show that the residential building in question, even if it belongs to the petitioner, has to be treated as a "shared household" coming under the purview of the Act. That being the position, the learned Magistrate was justified in issuing Annexure IV order under S. 19 of the Act for facilitating residence of the wife whether or not the husband has a "legal or equitable interest in the shared household ".

26. As rightly pointed out by the learned counsel for the wife, the petitioner has not come before this Court with clean hands. He has shown the address of his son (respondent No.3) in the cause title of this case as though he is living in a lodge. But respondent No.3 in the appeal preferred by him before the Sessions Court had shown the very same residential address as that of the petitioner in his appeal memorandum. This aspect of the matter will also clearly show that the attempt of the petitioner is only to frustrate the wife somehow from getting a roof over her head.

27. It has to be remembered that the intent and purpose of the legislation has to be kept in view while interpreting the provisions contained in the Act, which has been primarily enacted to ameliorate the hardships that may be caused to hapless wives at the matrimonial homes. The Court should come to the aid of these helpless victims who may be destined to suffer silently. In cases where atrocities perpetrated at the matrimonial homes come to light, the Court should step in diligently. Majority of the womenfolk in this country are still not "liberated" in the euphemistic sense of the word. Even in cases where the victim girl is well educated and employed, instances of harassment and atrocities manifest in large number of matrimonial homes in different hues and colours. Such ingenuities can be tackled only if the provisions of the Act are given a purposive interpretation without, of course, doing violence to the legislative exercise.

28. Having considered the entire materials available on record, I am not at all satisfied that this is a fit case warranting interference in exercise of the inherent power of this Court under S.482 of the Code.

I do not find any merit in the contentions raised by the petitioner. The Crl.M.C fails and it is accordingly dismissed.

Nishant Sharma v. State of Uttar Pradesh, 2012 Cr.L.J. 4423 (Uttar Pradesh H.C.) (4.05.2012)

Judge: Ramesh Sinha

Judgment

Heard Sri Chetan Chatterjee, learned counsel for the revisionists, Sri P.S. Pundir, learned counsel for the opposite party no.2 and learned A.G.A. for the State. This criminal revision has been preferred against the order dated 19.12.2009 passed by Additional District and Sessions Judge, Court No. 10, Saharanpur in Criminal Appeal No. 96 of 2009, Smt. Ashu Sharma Versus State of U.P. and others under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Act) by which the lower appellate court has set aside the order dated 19.09.2009, passed by the Chief Judicial Magistrate, Saharanpur in Case No. 75 of 2008, rejecting the application dated 24.6.2008, filed by opposite party no.2 under Section 23 of the Act, Police Station Kotwali Nagar, District Saharanpur, directing the revisionist to reside in the house of opposite party no.2.

Brief facts of the case are that the revisionist no.1 is the husband of opposite party no.2, who were married in accordance with Hindu Rights and Tradition on 19.5.2002. From the said wedlock a male child, namely, Kaustubh Sharma, who at present is aged about 3 years and 4 months. The relationship between revisionist no.1, Nishant Sharma and opposite party no.2, Smt. Anshu Sharma become strained. Due to the conduct of revisionist no.1 and his family members, the opposite party no.2 was compelled to leave the house of the revisionists. After the opposite party no.2 left her matrimonial house, there were several litigations between opposite party no. 2 and revisionist no.1 such as under Section 498A, 323, 504, 506, I.P.C. and 3/4 D.P. Act. A petition under Section 125, Cr.P.C. was also filed by opposite party no.2 against the revisionist no.1. The revisionist no.1 had also filed a suit for divorce bearing Divorce Petition No. 117 of 2006 against opposite party no.2.

On 24.6.2008, application No. 75 of 2008 under Section 19 and 37 (2) along with an application under Section 23 (2) of the Act read with Section 12, 17, 18, 19, 20 and 22 of the Act was filed by opposite party no.2 against the revisionists in the Court of Chief Judicial Magistrate, Saharanpur. On the said application, the revisionists also filed their objections on 8.3.2009. The learned Magistrate rejected the application of the opposite party no.2 under Section 23 of the Act by which she has prayed that the revisionist no.2 be directed to allow her to live in house No. 18, New Madhav Nagar, Saharanpur and no interference could be made by the revisionist vide order dated 19.9.2009 on the ground that the opposite party no.2 after the marriage was living with her husband and thereafter she returned from her husband's house was living at her parental house, hence she had no right to live along with his minor son in the

house which is owned by revisionist no.2 from his own resources, hence it is not in the interest of justice to grant her any interim/ex-parte relief.

Feeling aggrieved by the order dated 19.9.2009 passed by the learned Magistrate, the opposite party no.2 preferred an appeal before the Additional Session Judge, Court No.10, Saharanpur which was allowed by the Session Judge vide order dated 19.12.2009 and set aside the order dated 19.9.2009 and further directed that the opposite party no.2 and her son Kaustaubh be permitted to live in house No. 18, New Madhava Nagar and further the revisionists were restrained from interfering in the peaceful living of opposite party no.2 and her minor son in the said house.

On 24.12.2009, the opposite party no.2 filed an application stating that the police of the concerned police station may be directed to get the opposite party no.2 in the possession of the property of the father of the revisionist no.1 situated at New Madhava Nagar, Police Station Kotwali Nagar, District Saharanpur in pursuance of the order dated 19.12.2009. On 28.1.2010, the Judicial Magistrate, Saharanpur on the application dated 24.12.2009 filed by opposite party no.2, directed the Station Officer of police station Kotwali Nagar, Saharanpur to ensure the possession of opposite party no.2 and her minor son in house no.18, New Madhav Nagar, District Saharanpur so that they may reside there in pursuance of the order passed by the appellate court on 9.12.2009. Aggrieved by the order dated 19.12.2009 passed by the appellate court on 28.1.2010, the present revision has been filed by the revisionists.

It has been contended by the learned counsel for the revisionists that the house in question i.e. House No. 80 situated in New Madhav Nagar, Saharanpur is not the house of revisionist no.1, Nishant Sharma, who is husband of opposite party no.2, as the said house belongs to revisionist no.2, Rajnish Kant Sharma, father of revisionist no.1, who has built the said house from his own resources and revisionist no.1 has no concern with the said house as he is living in New Delhi separately. It has further been contended by the learned counsel for the revisionists that revisionist no.2, Rajnish Kant Sharma, father of revisionist no.1, Nishant Sharma, who is the husband of opposite party no.2 are themselves living in a rented house and not in the house in question hence the order passed by the lower appellate court is liable to be set aside.

On the other hand, Sri P.S. Pundir, learned counsel for the opposite party no.2 has argued that the order passed by the lower appellate court and the order passed by the learned Chief Judicial Magistrate on 28.1.2010 in pursuance of which the opposite party no.2 and her minor son have been in the possession of the said house and are living there in pursuance of the order passed by the lower appellate court under Section 23 (1) of the Act, is completely just and legal in the eye of law. It is then urged by the opposite party no.2 that the family of revisionist no.1 is a joint family and after the marriage the revisionist no.1 and opposite party no.2 wife used to live in the house in question i.e. House No. 18, New Madhav Nagar and further the opposite party no.2 also come to live in the said house with her husband at regular intervals on

the festivals also, hence she is entitled to live in the said house as it also belongs to revisionist no.1, her husband.

Having considered the submissions advanced by the learned counsel for the parties, I am of the opinion that the revisionist no.1 lives in a joint family along with father revisionist no.2 and being a joint family the wife of revisionist no.1 and her minor son are also entitled to live in the said house as ordered by the appellate court vide its order dated 19.12.2009. Section 2 (f) of the Act which defines the "domestic relationship" is reproduced hereunder:-

"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 17 of the Act which provides right to reside in a share hold house is reproduced hereunder:-

"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."

From a perusal of the definition of "domestic relationship" it is absolutely clear that the revisionist no.1 along with his wife opposite party no.2 as per material available on record had lived together in the said house in a joint family along with her husband revisionist no.2 after the marriage and during festivals etc., hence in view of Section 17 of the Act, the opposite party no.2 has a right to reside in a share household which also belong to her husband, revisionist no.1 along with his father revisionist no.2 who is a family member living together as joint family.

Learned counsel for the revisionist has relied upon the decisions of the Apex Court in the case of S.R.Batra Versus Tarun Batra reported in 2006-LAWS (SC)-12-11. From a perusal of the said judgment, it is apparent that the facts of the case which was decided by the Apex Court is distinguishable from the facts of the present case. Moreover, the Apex Court in the said judgment has held that the right of resident's wife in the share household would only mean the house belonging to them or taken on rent by the husband or the house of the joint family of which the husband is a member. Here in the present case as per the judgment of the Apex Court also it is evident that the revisionist no.1 is a member of a joint family of revisionist no.2, who is the father of revisionist no.1 and as such it cannot be said that the house in ques-

tion does not belongs to revisionist no.1. Thus the wife is also entitled to live in the said house being a joint family of which her husband is also a member.

In view of the above, I am of the opinion that the lower appellate has allowed the appeal of opposite party no.2 with a well reasoned order and has rightly set aside the order of Chief Judicial Magistrate and directed that the opposite party no.2 be allowed to live in the house in question being a joint family house of revisionist no.2 of which her husband is also a member. The impugned order passed by the lower appellate court and the order dated 28.1.2010 passed by the Judicial Magistrate for executing the order dated 19.12.2009 for putting the opposite party no.2 in the possession of the house in question does not suffer from any manifest error of law.

The revision lacks merit and is accordingly dismissed.

Preeti Satija v. Smt. Raj Kumari, RFA (OS) 24/2012, C.M. APPL.4236/2012, 4237/2012 & 5451/2013 (Delhi H.C.) (15.01.2014)

Judges: S. Ravindra Bhat, Najmi Waziri

Judgment

S. Ravindra Bhat, J.

1. The defendant appeals the judgment and order of a learned Single Judge, who decreed the suit preferred by the respondent- plaintiff, her mother in law, on admission, by invoking Order XII Rule 6, Code of Civil Procedure (CPC). The plaintiff had sought a decree for possession/eviction of the defendant/daughter-in-law.

2. The plaintiff had filed the suit for possession, permanent injunction and mesne profits against the defendants, her son and mother in-law, in respect of a portion of property bearing No.2245, Hudson Lane, GTB Nagar, Kingsway Camp, Delhi - 110 009 (hereafter referred to as "the suit property"). The first defendant is the plaintiff's daughter-in-law and wife of her disowned son. The son was also arrayed as the second defendant. The suit property belonged to the plaintiff's husband (Shri Tek Chand), who he died on 30.06.2008 leaving behind a registered Will dated 20.11.2006 by which he bequeathed the suit property to her. The plaintiff alleged that after her husband's death, she became the sole and absolute owner of that property. The plaintiff claimed that the back portion of the suit property consisting of one bedroom, a bathroom and a small kitchen is in occupation of the defendants. She alleged that since the relationship between her and the defendants became estranged, she wanted them to vacate the property. During the pendency of the suit, the plaintiff filed an application alleging her entitlement to a decree on alleged admission.

3. The appellant's position in her reply to the application for decree on admission was that the plaintiff was not the absolute owner of the suit property as the Will had not been granted probate and was as yet untested in law and that without it being probated, the Will cannot come into force.

4. The learned Single Judge was of the opinion that since the defendant/appellant had not disputed the due execution of the Will, and had merely contested that it had no legal effect because it had not been probated, there was in effect an admission. Further, he concluded that it is inessential to seek a probate, and thus, the Will, being admitted, remains operative between the parties. The impugned order also mentioned the two notices issued on behalf of the plaintiff to the defendants and her allegation that they were harassing her and continuing to live in the suit premises. The Court also noticed that the appellant had filed a suit, before the Civil Judge, North West, Rohini Courts, Delhi (Suit No.16/2010) which is still pending. Importantly, the Single Judge was also aware of the fact that the appellant had relied on provisions of the Protection of Women from Domestic Violence Act, 2005 (hereafter "2005 Act").

5. In the impugned judgment, the learned Single Judge rejected the arguments of the appellant with respect to applicability of the provisions of the 2005 Act. It was held that the suit property could not be considered to be "shared household". In view of this conclusion, the Single Judge decreed the suit in part, holding that the defendant was liable to be evicted.

6. The appellant argued that the learned Single Judge failed to consider that there was no unambiguous admission of the kind that warranted exercise of discretion under Order 12, Rule 6. In this regard, it was contended that the written statement had alleged collusion between the plaintiff and her son, the second defendant; it had not admitted due execution of the Will and stated that such circumstances would have to be tested in probate proceedings. In these circumstances, the court should have not exercised its discretion in granting a decree on admission. It was further argued that the Single Judge fell into error in relying on the decision of the Supreme Court in S.R. Batra & Anr v. Smt. Taruna Batra, (2007) 3 SCC169 and the ruling of this Court in Shumita Didi Sandhu v. Sanjay Singh Sandhu, 2007 (96) DRJ 697. It was contended that those decisions overlooked the crucial definition of "shared household" and that the respondent, was an expression not limited to male relatives of the applicant, but also female relatives, by virtue of proviso to Section 2(q) and Section 19 (1)(f). It was argued that in the present case the husband had not been served and had not entered appearance; there were matrimonial disputes between him and the first defendant, i.e. the appellant. Counsel urged that the plaintiff and the second defendant colluded; the son disappeared. At the same time, the plaintiff "disowned" him after the matrimonial disputes started, and proceeded to file the suit. Counsel emphasized that it was precisely to overcome these strategies and devices that

"shared household" was defined widely, and the wife, under the 2005 Act, was given the right to reside in such premises, by virtue of Section 17. It was also pointed out that by virtue of Section 26, the provisions of the 2005 Act could be invoked before any court in any stage of the proceeding. It was argued that the appellant is in a pitiable plight, because she has to maintain two school going children, who have been left untended and uncared by her husband and the orders of maintenance granted in her favour by the concerned magistrate have not been implemented. It was also pointed out that the wife has initiated criminal proceedings alleging that the husband had committed offences punishable under Sections 406 and 498-A of the Indian Penal Code (IPC).

7. Counsel for the plaintiff justified the impugned order. He argued that the appellant had made an unambiguous admission entitling the plaintiff to a decree under Order 12 Rule 6. Counsel submitted that the decisions in Shumita Didi Sandhu and S.R. Batra were conclusive as to the limits of the right to residence of the wife in a shared household. Here, the suit premises belonged to the plaintiff and the appellant could not claim the right to reside in it, since her husband had no right - ownership or otherwise in respect of those premises.

8. The first question which this court has to consider is whether there were admissions in the pleadings of the type to enable the court to draw a decree for possession on admission. The suit records were called for and have been gone into by this Court. In the written statement, the appellant had claimed that the suit was not maintainable because the suit premises were her matrimonial home where she was entitled to reside. At more than one place, (especially in reply to the plea that the plaintiff is "absolute owner" of the property), the appellant unequivocally denied the plaintiff's title and stated that she was put to strict proof of the claim of sole ownership. In respect of the allegation that the ownership was on account of testamentary devolution by virtue of late Tek Chand's registered Will, the appellant denied them, stating that such was not the case "as per her knowledge". Since she had no knowledge and the plaintiff was put to strict proof, the appellant went on to state that this could be done by obtaining probate - a course which had not as yet been resorted to. The gist of these averments, therefore, was that the appellant denied the plaintiff's title. She did not admit the Will, and the clear admission that the written statement contained was as to the relationship of the parties.

9. The question here is whether the pleadings taken as a whole point to an unambiguous and clear admission contemplated by law. The standard spelt out in Uttam Singh Duggal & Co. v. United Bank of India & Ors 2000 (7) SCC 120 and Jeevan Diesel & Electricals Limited v. Jasbir Singh Chadha & Another, (2010) 6 SCC 601 that the Courts have to adopt, while considering pleadings and considering if a decree on admission is to be drawn, is whether there is a "clear and unequivocal admission of the case" (of the

plaintiff, by the party defending the application). It is also not in dispute that there is no golden rule about what constitute as "clear and unequivocal admission". The Court has to proceed on a case fact dependent approach having due regard to the overall effect of the pleadings and documents. This is clear from the decision in Gilbert v. Smith, 1875- 76 (2) Ch 686, which was relied upon by the Supreme Court in Jeevan Diesel (supra). The question was amplified in Western Coalfields Ltd. v. M/s Swati Industires, AIR 2003 Bom 369. In Jeevan Diesel (supra), it was held that :

"whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision on this question depends on the facts of the case. This question, namely whether there is a clear admission or not cannot be decided on the basis of a judicial precedent."

10. Courts cannot therefore base their decision to decree (or not to grant a decree) in a suit in terms of Order XII Rule 6 CPC only on the basis of a particular pleading or admission. Rather, the overall effect of the pleadings and documents of the concerned parties are to be weighed. The Court has to be mindful that what seems plainly an admission could well be explained by the litigant making it, during the course of the trial. Moreover, the controlling expression under Order 12 Rule 6 is that Court "may" grant a decree on admissions. It is important to analyze this aspect because admissions either in the pleadings or in a document or in the course of a statement cannot be viewed in isolation.

11. In this case, the appellant's consistent stand in the written statement as well as in the reply to the application under Order 12 Rule 6 CPC was of denial of the plaintiff's claim of absolute ownership. This denial was unequivocal. The appellant also claimed that the plaintiff and her husband had colluded and the suit was a step to achieve the object of that collusion. She relies on the copies of the complaint, criminal proceedings and the orders made towards her maintenance, in support of those submissions. That she added that the plaintiff ought to obtain probate, is a matter of detail, in the written statement, which - with respect to the learned Single judge - was plucked out from the pleadings. Whether a will is probated or not, it requires to be proved, once the ownership of the property is disputed and the claim to such title is solely based on a will. This aspect gains importance because in the event of a trial it would have been necessary for the plaintiff to prove due execution of the will, in tune with provisions of the Indian Succession Act and the Evidence Act.

That part of the written statement and reply to the plaintiff's application dealing with the plaintiff's obligation to obtain probate, should not, in our view with respect to the impugned judgment, have been the exclusive basis for holding that the plaintiff was entitled to a decree on admissions. The impugned judgment in effect assumes plaintiff's title to the suit premises on the basis of due execution of the Will, which was not proved. This court,

therefore, is of opinion that the appellant's pleadings cannot be considered as unequivocal or unqualified, and admissions, necessitating a decree on admissions.

12. The next question is whether the learned single judge was right in holding that the provisions of the 2005 Act did not aid the appellant and that she could not claim the suit premises to be "shared household".

13. The question has to be examined in view of provisions of the 2005 Act. 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 that:

"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) defines shared household 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"

Section 2 (q) defines who is a respondent: "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"

Section 3(a) states that an act will 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

(emphasis supplied)

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."

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). 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.

14. There are some decisions which have preferred the view that since the ruling in S.R. Batra held that when the premises are not owned by the husband, the applicant/wife cannot claim it to be a shared household (for example, Neetu Mittal v. Kanta Mittal, (2008) DLT 691, which held that self-acquired property of the husband's parents are not shared household).

15. These decisions, with respect, proceeded on an erroneous understanding of the statute. For this, it would be useful to recollect the decision in Eveneet Singh v. Prashant Chaudhari, 177(2011) DLT 124 where it was held that:

"11. The key to an understanding of the rights flowing from the Domestic Violence Act, are concepts such as "domestic relationship'- which inter alia, is "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...; who is a " Respondent"- a term not confined only to males who had lived with the aggrieved person, i.e. the complainant female, but also - by virtue of proviso to Section 2(q) to "a relative of the husband..." (in the case where the domestic relationship is or was a marriage). This aspect has been noticed, and clarified in several rulings by various High Courts (Ref Afzalunnisa Begum v. The State of A.P., 2009 Cri.L.J. 4191; Archana Hemant Naik v. Urmilaben Naik, 2010 Cri.L.J. 751 and Varsha Kapoor v. Union of India, WP (Crl.) No. 638 of 2010, Decided on: 03.06.2010, by a Division Bench of this High Court). It has been held that when a law uses the same word in different parts of the same statute, there is a presumption that that it is used in the same sense throughout (Suresh Chand v. Gulam Chisti, (1990) 1 SCC 593), unless the context indicates otherwise (Bhogilal Chunnilal Pandya v. State of Bombay, 1959 Supp (1) SCC 593). Now, the relevant part of Section 19 reads as follows: "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...."

(Emphasis supplied)

The broad and expansive nature of the Court's power to make a residence order is also underlined by the amplitude of the definition of "shared household", which is "where the person aggrieved lives or at any stage has lived- (i) in a domestic relationship

(ii) either singly or along with the Respondent and includes such a household

(a) whether owned or tenanted either jointly by the aggrieved person and the Respondent, or

(b) owned or tenanted by either of them

(iii) 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

(iv) 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.

It is thus apparent that Parliamentary intention was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship"; even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity. It may, however, be noticed here that Section 19, while referring to a " Respondent", lays down a limited exception under the proviso to 19(1)(b), exempting women from being directed to remove themselves from the shared household. However, no such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Clearly, if the legislature had wanted to create another exception in favor of women, it could have done so. The omission here, seems deliberate and in consonance with the rest of the scheme of the Act. Another instance of a domestic relationship may be an orphaned sister, or widowed mother, living in her brother's or son's house; it falls within the definition of domestic relationship, (which is one where the parties are related by consanguinity, or marriage) constitutes a shared household, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property, by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would

severely curtail the extent of the usefulness of the right to residence. This was noted by the Bombay High Court in Archana Hemant Naik (supra) in the following terms:

"If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household."

(Emphasis supplied)

12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a Respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.

13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family' similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.

14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HUFs (and therefore Hindus) would have more security, by reason of their

professing the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra -would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "Respondent" to the "shared household", a protection order can be made under Section 19(1)(a).

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in any way, exhaustive (S. Prabhakaran v. State of Kerala, 2009 (2) RCR 883. It states that "...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 (Emphasis supplied).

16. It would not be out of place to notice here that the use of the term "Respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of "Respondent" under Section 2(q)." (emphasis supplied)

16. The above decision of a single judge was approved by the Division Bench in Eveneet Singh v. Prashant Chaudhari (DB, FAO (OS) 71-72/2011, decided on 08.11.2011)

"12. Thus, at best it can be urged that while deciding an issue pertaining to a wife's claim for residence in the shared household the discussion must start with a presumption in favour of the wife that law leans in her favour to continue to reside in the shared household and only upon adequate circumstances being manifestly and objectively disclosed by the opposite party, could an order contemplated by clause (f) of sub-section 1 of Section 10 of the Act be passed.

13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant; medical documents pertaining to whom would show that she suffers from 'tachycardia' with heart muscles functioning at about 20%. The constant strife with the newly married daughter-in-law in her house would certainly have an adverse effect on the

mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.

14. It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother- in-law or father-in-law."

17. In an earlier decision, Varsha Kapoor v. UOI & Ors. 2010 VI AD (Delhi) 472 another Division Bench interpreted Section 2(q) of the Act also concluded that "respondent" can include female relatives of the husband. The Division Bench held as under:

"15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2(q) along with other provisions, out task is quite simple, which may in first blush appear to be somewhat tricky. We are of the considered view that the manner in which definition of "respondent" is given under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are: a) Main enacting part which deals with those aggrieved persons, who are "in a domestic relationship". Thus, in those cases where aggrieved person is in a domestic relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as Respondent has to be an adult male person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc. b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of "respondent" is widened by not limiting it to "adult male person" only, but also including "a relative of husband or the male partner", as the case may be.

What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

16. Having dissected definition into two parts, the rationale for including a female/ woman under the expression "relative of the husband or male partner" is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members

would invariably include female relatives as well. If restricted interpretation is given, as contended by the Petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be Respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage."

18. This interpretation has been approved in Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, [2011] 2 SCR 261 by the Supreme Court. The learned Single Judge of the High Court had, in that case, disposed off the writ petition with a direction to the Appellant to vacate her matrimonial house, which was in the name of the second Respondent and also directed the Trial Court to expedite the hearing of the wife's miscellaneous criminal application within six months. A further direction was given confirming the order relating to deletion of the names of the 'other members' from the complaint filed by the Appellant. The judgment of the High Court was challenged before the Supreme Court. Allowing the appeal, the Supreme Court held:

"13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. 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.

14. 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.

15. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act."

19. The ruling in Shumita Didi Sandhu, in this Court's opinion, with due respect, did not analyze the entirety of the definition of "shared household". Nor did it link the concept and the right to residence granted by the 2005 Act with the definition of "respondent" which

includes female relatives of the husband, and not just the male relatives. That decision was rendered much before the ruling in Varsha Kapoor, and the Supreme Court decision in Sandhya Manoj Wankhede. Its absence of any discussion on the rights of women as against female relatives of the husband regardless of whether the respondent had any right, or interest in the property, in this Court's opinion, results in limiting it to deciding the facts of that case. It would be also necessary to notice a decision of the Supreme Court in Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and Ors., 2008(4) SCC 649. There, the wife was beneficiary of a maintenance order, which was sought to be enforced through execution, against her mother in law's property. The wife claimed that since it was a "shared household", the property could be attached. Repelling the argument, the Supreme Court held that the obligation to provide maintenance was of the husband and any order in that regard could be enforced against him, by attachment of his personal assets or properties. It was in this context that the Court held that a shared household belonging to the mother in law could not be subject matter of attachment. The context of that decision was different as the Supreme Court, in this Court's opinion, did not decide that despite the definition of "shared household" enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there. Rather, in proceedings for maintenance, the claim may not lie against the mother-in-law's property - a domain that the present case does not touch upon.

20. Crucially, Parliament's intention by the 2005 Act was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow (or as in this case, a daughter in law, estranged from her husband) living with a mother-in- law, in premises owned by the latter, falls within a "domestic relationship". The obligation not to disturb the right to residence in the shared household would continue even if the mother- in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" (such as an equitable right to possession) in those premises. This is because the premises would be a "shared household". The daughter-in-law, in these circumstances is entitled to protection from dispossession, though her husband never had any ownership rights in the premises. The right is not dependent on title, but the mere factum of residence. Thus, even if the mother-in-law is a tenant, then, on that ground, or someone having equity, she can be injuncted from dispossessing the daughter in law. In case the mother in law is the owner, the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. The only exception is the proviso to 19(1)(b), which exempts women from being directed to remove themselves from the shared household. No such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Had the Parliament intended

to create another exception in favor of women, it would have done so. This omission was deliberate and in consonance with the rest of the scheme of the Act. There can be other cases of domestic relationships such as an orphaned sister, or widowed mother, living in her brother's or son's house. Both are covered by the definition of domestic relationship, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence.

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them.

22. Likewise, the interpretation preferred by some learned single judges that where the husband has some rights (as a member of the HUF, i.e. the Hindu Undivided Family) and if those premises were the shared household, the wife can enforce her right to residence, also constitutes an internally incoherent and restrictive interpretation of the Act. As explained in Evneet Singh, such a construction is contrary to Parliamentary intention that the law is a non-sectarian one. Indeed, the "joint" status of a family referred to under Section 2 (s) is in a generic sense. To equate it with a HUF would result in unintended benefits to one set of respondents, who are Hindus. Speaking generically, "joint family" refers to a group of people, related either by blood or marriage, residing in the same house. Instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage, though the legal obligation to maintain a child ceases as soon as she or he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family" similar to that of an HUF can be found in Muslim law, Christian law or any other personal law. Therefore, a restrictive interpretation of "joint family" by equating it to a HUF would result in

implicit discrimination, because women living in a shared household belonging to an HUF (and therefore, Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. In fact, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra - would have the protection of the Act, while the latter would not. This inequity was addressed by the Parliament which stated in no uncertain terms that irrespective of title of the "Respondent" to the "shared household", a protection order can be made under Section 19(1)(a).

23. The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was "disowned" by his mother. The appellant's mother-in law then instituted the suit, to dispossess the daughter in law and her grand-children, claiming that she no longer has any relationship with her son or her daughter in law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor has it been proved in probate proceedings. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases "disown" them after the son moves out from the common or "joint" premises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs' daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of "disowning" sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband's family, on the basis of such tentative facts. To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act.

24. In view of the above discussion, the impugned judgment and decree of the learned single judge is hereby set aside; parties are directed to present themselves before the concerned single judge as per roster allocation, on 6th February, 2014 for directions toward further

proceedings in the suit. The appeal is allowed, under the above circumstances, without any order as to costs.

Kavita Dass v. NCT of Delhi, CRL.M.C. 4282/2011 and Crl. M.A. No. 19670/2011 (Delhi H.C.) (17.04.2012)

Judge: Suresh Kait

Judgment

1. Vide this common judgment, I shall dispose of both the above mentioned petitions.

2. The petitioner has sought to quash FIR No.157 dated 07.12.2011 registered under Section 448 Indian Penal Code, 1860 at PS. Defence Colony, New Delhi against petitioner/wife and to set aside order dated 28.11.2011 passed by learned Additional Sessions Judge, Saket District Courts, New Delhi in Appeal CA No.35/11 in case titled Kavita Dass Vs Ranjit Dass.

3. Brief facts of the case are that the petitioner got married to respondent No.2 on 26.12.1975 at Delhi. After marriage, the petitioner and respondent No.2 lived together in abroad (Sri Lanka and Australia) as husband and wife for 12 long years. Two sons were born out of the said wedlock in 1978 and 1981 respectively. The elder son Rajad Das is married and settled in London while the younger son has been living in Delhi.

4. In 1992, the respondent No.2 acquired a license to start his own company in the name & style of "Forex Company." Accordingly, the couple came back to India and started living in a rented accommodation bearing address C-293, Defence Colony, New Delhi. During their stay in India, the respondent No.2 came in contact with another woman, a spinster and fell in love with her. This was a flash point in the relationship. All efforts were made by the petitioner to convince the respondent No.2 to give up the illicit liaison with another woman, however, failed.

5. The situation further became worst. The respondent No.2 as a part of a well planned act, sometime in July, 2009 left the premises C- 293, Defence Colony, New Delhi and abandoned the petitioner/wife. Thereafter, respondent No.2 in connivance with the then landlord, got an eviction order in a suit filed against himself as well as the petitioner/wife. The aforesaid suit for eviction was decided ex parte in favour of the then landlord, accordingly, petitioner was forced to leave the shared household, i.e. C-293, Defence Colony, New Delhi on 25.08.2010.

6. After the eviction, the petitioner was literally came on road and was forced to take shelter at her brother-in-law's house at C-52, Defence Colony, New Delhi. Petitioner stayed

there from 25.08.2011 till 16.04.2011. Around July, 2009, the respondent No.2 after abandoning the petitioner, filed a divorce petition bearing No.1079/2009 against her which is pending before Ld. Additional District Judge, Saket District Courts, New Delhi.

7. In addition to the divorce petition, the respondent No. 2, around September, 2009 coerced and virtually cajoled the petitioner to sign an out of court memorandum of understanding (MOU) by absolutely fraudulent means of representation, wherein, the respondent No. 2 had stated that he would pay the permanent alimony of ₹ 45 lacs to the petitioner against a divorce by mutual consent.

8. Accordingly, on the basis of the aforesaid MOU, the respondent No. 2 filed a petition for divorce and dissolution of marriage on the basis of mutual consent, however, till date not even the first motion has taken place as the petitioner realized that her signatures on the MOU were obtained by fraudulent representations. As such she did not act upon the said MOU being well within her rights to do so.

9. The petitioner was compelled and constrained to approach trial court with complaint filed under section 12 of the Domestic Violence Act, seeking interim measures and interim relief in accordance with provisions of the said Act and in the facts and circumstances of the case, the trial court vide interim order dated 10.09.2010 directed the respondent No. 2 to pay an amount of ₹ 10,000/- to the petitioner as an interim maintenance, as well as monthly rent of ₹ 25,000/- from the date of petitioner's eviction from the then shared household.

10. Subsequently, the petitioner in the month of April, 2011 came to know that the respondent No. 2 had taken another premises bearing address D-12, Defence Colony, New Delhi on rent. Accordingly, on 17.04.2011, she entered in to her new matrimonial home D-12, Defence Colony, New Delhi with the help of Protection Officer Ms. Preeti Saxena, who handed over to her the keys of the front door, bedroom door and balcony door from the respondent. Since then, the petitioner has been residing with respondent No.2 at the aforesaid rented shared accommodation.

11. Thereafter, the petitioner on 18.04.2011, moved an application in the court of Ld. MM, Ms. Pooja Talwar, Saket District court seeking protection against her removal from the aforesaid shared household i.e D-12 Defence Colony, New Delhi. An interim order dated 19.04.2011 u/s 17 and 19 of the D.V. Act was passed by the above named Ld. Magistrate, whereby the petitioner was granted right to live with the respondent No.2 in above mentioned shared household. However, subsequently, Ld. MM vide order dated 28.04.2011 vacated the earlier order dated 19.04.2011.

12. In the order dated 28.04.2011, Ld. MM observed that the present premises was not a shared household. The petitioner while signing the MOU was fully aware that she had to vacate the said premises, therefore, there was no reason for the petitioner to enter the

house of respondent No.2 forcefully, accordingly, the Ld. MM directed that the petitioner may be removed from the premises by taking due recourse of law.

13. Mr. Vikas Pahwa, Ld. Senior Advocate appearing on behalf of the petitioner submitted that the petitioner was forced to give an out of court undertaking on 05.06.2011 stating that she will vacate the premises as directed by the Ld. Trial court. Subsequently, the petitioner, against order dated 28.04.2011, filed an Appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before Ld. Sessions Court, Saket District Court, New Delhi. Smt.Raj Rani Mitra, Ld. ASJ, Saket Courts, New Delhi, granted an ex- parte stay on order of Ld. MM dated 28.04.2011, which was subsequently vacated vide order dated 09.06.2011 passed by the Ld. Additional Sessions Judge on an application of respondent No.2, and the matter was transferred to Sh. A.K. Garg, Ld. ADJ, Saket District Courts, New Delhi, which court was in seize of a connected appeal in the same matter.

14. Sh. A.K. Garg, Ld. ASJ, Saket Courts heard the arguments in Appeal No.35/11 and reserved for order on 12.10.2011. Thereafter, Ld. ASJ adjourned the pronouncement on 13 occasions before finally dismissing the appeal and upheld the Ld. MM's order dated 28.04.2011, whereby, the petitioner was directed to be removed from Respondent No.2/ husband's rented premises on the ground that the said premises was not a shared household and the petitioner had no right to enter the said premises forcefully.

15. Ld. counsel for the petitioner further submitted that FIR No.157 dated 07.12.2011 registered at P.S. Defence colony, is legally and factually unsustainable in law. Ld. ASJ has committed a serious error in ignoring the fact that the house in question was a matrimonial home and shared household. Moreover, no evidentiary value can be given to out of court settlement deed entered into between the parties, which MOU was signed by the petitioner under duress.

16. Further submitted that no divorce has taken place between the parties, therefore, the petitioner has legal right to stay with her husband, it being her matrimonial home.

17. Further Ld. Counsel for the petitioner refers to a judgment passed by Hon'ble Supreme Court in a case titled as "S R Batra and Anr. Vs. Smt.Taruna Batra" reported in (2007) 3 SCC 169, wherein, it was held as under:-

"....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 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".

18. Further refers to a case decided by Hon'ble Supreme Court in Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel reported in (2008) 4 SCC 649 , wherein, it was observed as under :-

"....The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share..."

19. On perusal of the impugned order, ld. Judge was of the view that in no circumstances, D-12, Defence Colony can be said to be shared household. In addition to that since both the parties never resided together in the said house, therefore, that house cannot be termed as shared household as per provision of Section 2(f), 2(s) r.w.S. 17 of PWDV Act. When the order was being dictated, counsel for the appellant had appeared and stated that though the MOU was executed between the parties but the complainant did not wish to abide by the same for the reasons known to the appellant. It was mentioned in the order dated 18.04.2011, that the respondent was fully aware that she had to vacate the earlier premises, therefore, there was no reason for her to enter the house of the respondent forcefully, since the said house cannot be said to a "shared household", therefore, she may be removed from the premises by taking recourse to due process of law.

20. It was further observed in the order passed by Ld. Additional Sessions Judge, Saket courts, New Delhi, while deciding the appeals of the appellant that the appellant's main grievance is that the order has been passed for registration of the FIR u/s 31 of the Act which the magistrate is not empowered under the Act because the word "respondent" is specifically defined in the Act. Under the Act respondent means an adult male person and it is very clear that the respondent would be a person from the family of the husband only in the case the applicant is a wife.

21. Protection order was obtained u/s 18. It is true that D.V. Act has been enacted to provide for more effective protection of the right of women guaranteed under the constitution who are victim of the violence of any kind. Section 2(a) of the Act defines the aggrieved person. Aggrieved person means any women who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of violence by the respondent.

22. It was further observed by Ld. Additional Sessions Judge that the appellant had entered in the house of the respondent without having any right, therefore, in these circumstances, order passed by Ld. MM on 10.06.2011 is deemed to be an order passed u/s 448 Indian Penal Code, 1860 for the offence of house trespass. In view of that, both the appeals of the appellant was dismissed with direction to register an FIR u/S 448 Indian Penal Code, 1860 against the appellant.

23. Mr. K.K. Manan, learned counsel appearing on behalf of respondent No. 2 submits that respondent No. 2 and the petitioner entered in MOU and the respondent No.2/husband agreed to pay a sum of ₹ 45 lacs to the appellant with the condition that she agreed to grant divorce by mutual consent. However, she did not come forward for the same and the present house, which is on rent is not shared household. She had neither complied with the conditions of MOU nor had she complied with order passed by learned trial court.

24. Further submitted that the impugned order does not suffer from any illegality and therefore, the instant petitions may be dismissed with exemplary costs.

25. Ld. Senior Counsel for petitioner on rebuttal submitted that the courts below have wrongly passed the orders by directing SHO concerned to lodge FIR under Section 448 Indian Penal Code, 1860.

26. Ld. Counsel further refers to Section 441 of Indian Penal Code, 1860 according to which the trespass should be with intention to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence.

27. The petitioner herein did not entered in anybody's property, but it was the house of her husband and entered with the help of Protection Officer under the protection of Domestic Violence Act. Therefore, she rightly entered the house which is her matrimonial house.

28. Therefore, he submitted that the case against the petitioner cannot be lodged for the criminal trespass. In Section 442 of IPC, the definition of house trespass is given, which reads as under:-

"Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

29. In the instant case, the petitioner is legally wedded wife of respondent No. 2, there is no divorce taken place, she entered into the house of respondent No.2 with no intention of committing offence and the petitioner has not committed any offence. Therefore, both the court i.e. Trial and appellate court have gone wrong by directing her to vacate the house which was taken on rent by her husband/ respondent No.2 and to lodge an FIR against her.

30. Presently, where a woman is subjected to cruelty by her husband or his relative, it is an offence committed under Section 498A of Indian Penal Code, 1860. The Civil Law does not further address this phenomenal in its entirety. Therefore, it is by virtue of Protection of women against Domestic Violence Act, which interalia seeks to provide as under :-

(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;"

31. I have noted that in the judgment delivered by Hon'ble Supreme Court in the matter of Smt. Kanwal Sood Vs. Nawal Kishore and Anr. (1983) 3 SCC 25, referred to by learned counsel for the petitioner, it has been observed as under :-

"10 It may be pointed out that the appellant was allowed to occupy the premises in 1967 by Shri R.C. Sood. Under the terms of gift-deed Shri Sood was entitled to remain in occupation of the premises during his lifetime. He could as well grant, leave and licence to the appellant to occupy the premises along with him. Now thequestion arises about her status after the death of Shri R.C. Sood. At the most, it can be said that after the death of Shri Sood the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to criminal trespass within the meaning of section 141 of the Indian Penal Code. In order to satisfy the conditions of section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. A bare persual of the complaint filed by Respondent No. I makes it abundantly clear that there is absolutely no allegation about the intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession, as will be evident from three material paragraphs which are quoted below:

"2. That the late Shri R.C. Sood was occupying the said premises in accordance with clause No. I of a gift-deed executed by him in favour of Shri Anand Mayee Sangh and after his demise the said premises had to be delivered to Shri Anand Mayee Sangh.

3. That after the demise of Shri R.". Sood, the accused was repeatedly requested to voluntarily vacate and deliver the possession of the said premises to the Sangh but the accused paid no heed and hence a notice dated 13.11.1973, copy of which enclosed, was sent to the accused as required by U.P. Amendment of Section 448 I.P.C. the said notice was served upon accused on 14.11.73 as per postal A.D. receipt attached herewith.

4. That the accused was required to quit and vacate the said premises by the 20th day of November, 1973 but instead of vacating the premises the accused has been making unusual pretext and has thus committed an offence under section 448 I.P.C."

11 The appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R.C. Sood. If a suit for eviction is filed in Civil Court she might be in a position to vindicate her right and justify her possession. This is essentially a civil matter which could be properly adjudicated upon by a competent Civil Court. To initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the Court."

32. On perusal of aforesaid provisions and laws laid down by Hon'ble Supreme court, it includes any household owned or tenanted by either of the parties in respect of which either the aggrieved person/wife or the respondent or both jointly or singly have any right, therefore, the petitioner being legally wedded wife has a right to live with the husband, whether he lives in an ancestral house or own acquired house or rented house. Therefore, if the respondent does not allow the aggrieved person then by taking shelter of the court, the Magistrate may pass the order so that she may enter in the house or she would not be thrown out from the house of his husband without due process of law. Certainly, not otherwise, as directed by the Ld. MM and upheld by the appellate court.

33. In my opinion, the court cannot ask the aggrieved person to vacate the house, even though, may be on rent. However, she cannot be directed to vacate the same without due process of law. The second direction of the court to register a case against the aggrieved person on not vacating the house of her husband is not only bad in law but is also against the mandate of the Act. The issue on shared household has already been decided by the Apex Court in case of S.R. Batra (supra).

34. The impugned orders passed by the two courts below i.e the court of Ld. MM and court of Ld. Additional Sessions Judge have defeated the very purpose of Act, and therefore, the instant petitions are allowed and the impugned order mentioned above are set aside.

35. Accordingly, the FIR No.157 dated 07.12.2011 registered under Section 448 Indian Penal Code, 1860 at PS. Defence Colony, New Delhi against petitioner/wife is quashed along with all the emanating proceedings there from.

36. Both the petitions are allowed and disposed of on above terms.

37. The applications for stay in both the petitions are disposed of being infructous.

38. No order as to costs.

Adil v. State, II (2010) DMC 861 (Delhi H.C.) (20.09.2010)

Judge: Shiv Narayan Dhingra

Judgment

1. By this petition the petitioners have assailed orders dated 30th November, 2009, and 6th November, 2009, passed by learned Metropolitan Magistrate (MM).

2. Brief facts relevant for the purpose of deciding this petition are that the respondent Kaushar Bano was married to Zahid Khan, brother of the three petitioners on 16th March, 1994. Zahid Khan died on 14th November, 2002, at Delhi. After his death, Kaushar Bano filed an FIR on 26th July, 2003 against the petitioners and her mother-in-law and other relatives making various allegations of cruelty, dowry demand etc. In this FIR, she gave her residence as House No. 5, Gali Masjidwali No. 1, Babarpur, Shahadara, Delhi - 32.

3. After coming into force of The Protection of Women from Domestic Violence Act (in short Domestic Violence Act), she filed an application under Section 12 of Domestic Violence Act on 6th August, 2007, and also made an application for interim relief under Section 23 of Domestic Violence Act seeking right of residence in the property where petitioners were living i.e. District Bulandshahar, U.P.

4. The Court of MM passed an order dated 19th April, 2008, observing that the property, in which right of residence was being sought by Kaushar Bano, was a property of her mother-in-law and cannot be termed as shared household. She, therefore, dismissed the application for interim relief and fixed the case for evidence giving an opportunity to prove the facts.

5. Against this order Kaushar Bano preferred an appeal before the learned Sessions Judge. Learned Additional Sessions Judge observed that the mother-in-law of Kaushar Bano i.e. mother of the present petitioners, expired on 4th June, 2008, and after her death, the question whether the property constituted shared house-hold would be required to be gone into by the MM again and the MM would determine if the appellant would be entitled to a relief in the changed circumstances since the property (matrimonial home) was indeed not in the name of any of the respondents i.e. the present petitioners, their mother having expired. She remanded back the matter to MM vide her order dated 27th November, 2008.

6. After the matter was remanded back, learned MM reconsidered the application under Section 23 of Domestic Violence Act and passed order dated 6th November, 2009 observing that respondent had a right to live in the property at Bulandshahar. It was brought to the notice of the MM that present petitioners have filed a civil suit in the Court of Civil

Judge, S.D., Bulandshahar, U.P. in respect of same property, wherein wife Kaushar Bano was made as a respondent.

7. The learned MM allowed application of wife observing that vide order dated 19th April, 2008, the interim relief was refused to Kaushar Bano on the ground that house in Bulandshahar did not constitute a shared household as no document was on record to show that property was one in which the husband had a right or it was exclusive property of mother-in-law. She observed that, prima facie, the interim order was refused to Kaushar Bano on the ground that property belonged to mother-in-law, but the stand taken by the present petitioners was contrary to the reply filed by them later on where they had taken a stand that house in question belonged to their father and a settlement/Will was executed by him. She observed that since the earlier stand taken before the Court was that the property belonged to their mother and mother had expired intestate, deceased husband of Kaushar Bano being a son had a right in the property in question, hence the property can be termed as shared household. She, therefore, held that Kaushar Bano had a right of residence in the property in Town Gulaothi, District Bulandshahar, U.P.

8. Against this order, an appeal was preferred by the petitioners before the learned Additional Sessions Judge who observed that there was no infirmity in the order passed by the learned MM and the property could be termed as shared household within the definition as given in Section 2(s) Act. Vide order dated 30th November, 2009 the learned MM called upon the site plan of the property and she directed a portion of the property to be handed over to Kaushar Bano.

9. A perusal of the FIR dated 23rd July, 2003 lodged by Kaushar Bano against her in laws would show that her husband was a Doctor and had started practicing in Delhi, though the date of shifting to Delhi has been kept vague in the complaint. Her complaint also shows that birth of her first child, a female, had taken place at Bulandshahar on 23rd June, 1997, whereas male child Shahid was born on 22nd December, 1998 at House No. 5, Gali Masjidwali No. 1, Babarpur, Shahadara, Delhi-32. The complaint also gives an impression that her husband had separated from his other brothers sometime in 1998-1999, when she alleged that her dowry articles and Istridhan were misappropriated and she started residing at Delhi with her husband. Her husband died on 14th November, 2002 at Delhi. A perusal of directory of community of the petitioners, released by Delhi Government, shows that it contained the names of entire family members of Kaushar Bano, her husband and three children. The address given in the directory is A-5, Main Gali Masjid Wali, Babar Pur, Shahdara, Delhi-32. Her husband Zahid Khan has been shown as a Doctor and three children of couple namely Shahrukh, Heena and Sahil find mention in director. A perusal of Voters' List of Babarpur of year 2003 would also show that names of Kaushar Bano and her husband appear in Voters' List of Babarpur. It appears couple

had separated from rest of the family about 8 years before filing of application under the Protection of Women from Domestic Violence Act, 2005.

10. It is apparent from the perusal of the order of Trial Court and Appellate Court that both, the Trial Court and the Appellate Court mis-directed themselves and did not consider the relevant provision of the Domestic Violence Act. Under Domestic Violence Act, the first pre-condition is that the applicant must be an aggrieved person. Aggrieved person is a person defined in Section 2(a) of the Act. The domestic relationship must be there between the aggrieved person and respondent to invoke Domestic Violence Act. This Court had clarified the legal position in respect of domestic relationship in Vijay Verma v. State NCT of Delhi and Anr. Criminal Misc. No. 3878 of 2009 and observed as under:

5. Filing of a petition under Protection of Women from Domestic Violence Act by the petitioner taking shelter of domestic relationship and domestic violence needs to be considered so that this Act is not misused to settle property disputes. Domestic relationship is defined under the Act in Section 2(f) as under:

(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.

6. A perusal of this provision makes it clear that domestic relationship arises in respect of an aggrieved person if the aggrieved person had lived together with the respondent in a shared household. This living together can be either soon before filing of petition or 'at any point of time'. The problem arises with the meaning of phrase "at any point of time". Does that mean that living together at any stage in the past would give right to a person to become aggrieved person to claim domestic relationship? I consider that "at any point of time" under the Act only means where an aggrieved person has been continuously living in the shared household as a matter of right but for some reason the aggrieved person has to leave the house temporarily and when she returns, she is not allowed to enjoy her right to live in the property. However, "at any point of time" cannot be defined as "at any point of time in the past" whether the right to live survives or not. For example if there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places; can it be said that wife of each of the sons can claim a right to live in the house of father-in-law because at one point of time she along with her husband had lived in the shared household. If this meaning is given to the shared household then the whole purpose of Domestic Violence Act shall stand defeated. Where a family member leaves the shared household to establish his own household, and actually

establishes his own household, he cannot claim to have a right to move an application under Section 12 of Protection of Women from Domestic Violence Act on the basis of domestic relationship. Domestic relationship comes to an end once the son along with his family moved out of the joint family and established his own household or when a daughter gets married and establishes her own household with her husband. Such son, daughter, daughter-in-law, son-in-law, if they have any right in the property say because of coparcenary or because of inheritance, such right can be claimed by an independent civil suit and an application under Protection of Women from Domestic Violence Act cannot be filed by a person who has established his separate household and ceased to have a domestic relationship. Domestic relationship continues so long as the parties live under the same roof and enjoy living together in a shared household. Only a compelled or temporarily going out by aggrieved person shall fall in phrase 'at any point of time', say, wife has gone to her parents house or to a relative or some other female member has gone to live with her some relative, and, all her articles and belongings remain within the same household and she has not left the household permanently, the domestic relationship continues. However, where the living together has been given up and a separate household is established and belongings are removed, domestic relationship comes to an end and a relationship of being relatives of each other survives. This is very normal in families that a person whether, a male or a female attains self sufficiency after education or otherwise and takes a job lives in some other city or country, enjoys life there, settles home there. He cannot be said to have domestic relationship with the persons whom he left behind. His relationship that of a brother and sister, father and son, father and daughter, father and daughter-in-law etc survives but the domestic relationship of living in a joint household would not survive & comes to an end.

(emphasis added)

11. In this case it could not have been decided by the Court of MM without recording evidence as to whether any domestic relationship existed between the parties on the date of filing application or soon before that in accordance with law laid down by this Court. It must be kept in mind that resort of Domestic Violence Act cannot be done to enforce property rights. For enforcement of property rights, the parties are supposed to approach civil court. Resort to Domestic Violence Act can be done only where there is urgent requirement of wife to be maintained and provided residence when because of domestic violence, she had been rendered homeless and she had lost source of maintenance. Domestic Violence Act is not meant to enforce the legal rights of property, neither an interim order can be passed without first prima facie coming to conclusion that a domestic relationship existed between the parties and the applicant was an aggrieved person within the meaning of Section 2(a) of the Domestic Violence Act. In the present case, the order of learned

MM and learned ASJ is absolutely silent as to how respondent was an aggrieved person and how a domestic relationship existed between her and petitioners.

12. I, therefore, set aside the orders dated 6th November, 2009 and 30th November, 2009 of learned MM. Learned MM shall record evidence first and decide whether a domestic relationship existed between the parties and whether the applicant fell within the scope of 'aggrieved person' as defined in Section 2(a) of the Protection of Women from Domestic Violence Act, 2005 and then pass appropriate order.

Bindiya A. Chawla v. Ajay Lajpatraj Chawla, 2009 (5) Bom CR 486 (Bombay H.C.)(31.03.2009)

Judges: Dalvi Roshan

Judgment

1. Plaintiff No. 1 is the mother of plaintiffs No. 2 and 3 who are her minor children. The suit is filed by plaintiff No. 1 for herself as well as on behalf of plaintiffs No. 2 and 3. Defendant No. 1 is the husband of plaintiff No. 1 and father of plaintiffs No. 2 and 3. Defendant No. 2 is the father-in-law of plaintiff No. 1 and the grand father of plaintiffs No. 2 and 3. Defendant No. 3 is the brother-in-law of plaintiff No. 1 and the Uncle of plaintiffs No. 2 and 3. Defendant No. 4 is the mother-in-law of plaintiff No. 1 and Grandmother of plaintiffs No. 2 and 3.

2. Plaintiff No. 1 and defendant No. 1 got married in November, 1991 in Mumbai. They lived in the USA from 1991 onwards. The suit flat stood in their names. Plaintiff No. 1 also claims to have a key to the suit flat as shall be seen presently.

3. Since October, 2006 there have been proceedings for divorce between the parties. Under certain restraint orders passed by the Superior Court of California in the USA. Plaintiff No. 1 has been granted the right of residence in what is stated to be their "family home" in the USA. In those proceedings defendant No. 1 has shown a list of properties stated to be belonging to him. The plaintiff No. 1 has claimed a 1/2 share in the said properties. That, of course, is not a part of this suit.

4. The plaintiffs returned to Mumbai on 2.7.2007.

5. This suit is filed in August 2007 by the plaintiffs claiming an equal share with defendant No. 1 in his HUF properties, movable and immovable enumerated in Exhibits D and E to the Plaint. The plaintiffs have challenged a Deed of Gift executed by defendant No. 1 in respect of one of the suit flat registered on 11.12.2006, after their divorce proceedings commenced in the USA. The plaintiffs claim that the suit flat is the matrimonial home

of the 1st plaintiff and have sought to restrain defendants No. 2 to 4 from entering thereupon or from interfering with the plaintiffs' possession therein and have also sought to restrain all the defendants from alienating, encumbering or creating any third party rights in all the suit properties, movable and immovable.

6. The plaintiffs have sought rights as members and coparceners of the Hindu undivided family (HUF) of defendant No. 2. It is the plaintiffs' claim that defendant No. 2 has formed a HUF with defendants No. 1 and 3 and the said HUF acquired larger properties which have been treated as joint family properties though purchased in various names. It is their case that the HUF owns several movable and immovable properties listed in Exhibits D and E to the Plaint. It may be stated that though so claimed, the plaintiff No. 1 is not and cannot be a member of the HUF of defendant No. 2. Plaintiffs No. 2 and 3 may claim to be such members if there is such a HUF. Hence the rights and entitlements of plaintiff No. 1 and plaintiffs No. 2 and 3 are distinct.

7. The plaintiff No. 1, as the wife of defendant No. 1, would be entitled to a 1/2 share in all the assets and properties of defendant No. 1 including a 1/2 share in his share in the HUF properties as a co-parcener upon partition, consequent upon her marriage with him and her divorce. Her claim would subsist in the joint family properties as well as self acquired properties of defendant No. 1. Her right to the 1/2 share of the self acquired properties of defendant No. 1 and the joint properties of defendant No. 1 with herself would be adjudicated upon by the Competent Court in the USA having jurisdiction in the divorce proceedings between the parties. I am told that the list of the properties stated to be of defendant No. 1 has been furnished by defendant No. 1 in the superior Court at California. This suit cannot concern itself with those properties or the rights of plaintiff No. 1 in those properties. Her right in the HUF properties of defendant No. 1 would only have to be considered in this suit.

8. Plaintiffs No. 2 and 3 would have an interest as co-parceners by virtue of their very birth in the family of defendant No. 1. Hence if defendant No. 1 is a member of HUF, plaintiffs No. 2 and 3 would also be co-parceners therein. The rights and entitlements of plaintiffs No. 2 and 3 would be as such coparceners. They would be entitled to a share in the HUF properties and to ask for partition thereof, plaintiffs No. 2 and 3, as the minor children of defendant No. 1, would only be entitled to be maintained by defendant No. 1. They would not per se have a right in the assets and properties of defendant No, 1 as such children, save and except as coparceners of the HUF.

9. The plaintiffs have claimed the right of residence as aforesaid in respect of the suit flat. This right is essentially claimed as the right in respect of her matrimonial home. She is entitled to the right of residence, which is implicit in her right of maintenance, as a wife,

under Section 17 of the Protection ofWomen from Domestic Violence Act, 2005 (the said Act).

10. The plaintiffs must therefore show that the suit flat is the matrimonial home of the plaintiff No. 1 and defendant No. 1. Paragraph 1 and 2 of the plaint show that after marriage in November 1991 plaintiff No. 1 and defendant No. 1 started residing in the USA from 1991 itself. They resided in the USA until October, 2006 when their marriage broke down and divorce proceedings were filed. Even thereafter the plaintiffs continued to reside in their family home in the USA. She has been granted the right of residence in that home with a restraint order against defendant No. 1. Hence that home has been and has remained her matrimonial home at all times. She came to India on 02.07.2007. Upon coming to India she started residing in the suit flat. Paragraph 14 of the plaint shows that she was constrained to break open the lock as she had lost the key of that flat.

11. The concept of Matrimonial Home has been explained in Advanced Law Lexicon by P. Ramnathan Iyer, 3rd edition, at page 2939, referring to Black's Law Dictionary, 7th edition, 1999 as " the house where husband and wife live together" The concept of such matrimonial home can also be gathered from the legal provisions granting territorial jurisdiction to Court in case of matrimonial disputes - to cite - under Section 19 of the Hindu Marriage Act, 1955 the Court to which a petition under the act could be presented was, inter alia, the Court in which the parties last resided together. That precept takes into consideration what is referred to as the matrimonial home of the parties to the marriage.

12. Section 17 of the said Act deals with the said concept. It runs thus:

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.

13. It may be mentioned that "matrimonial home" would be the place of residence of the parties in matrimony. A "shared residence" is a wider concept. It would be the place of residence even of parties not in matrimony. Every woman in a domestic relationship, whether a wife or not, is sought to be included in the said section to be entitled to. a right to reside therein, whether or not she has any title thereto. Hence a wife claiming a right of residence under Section 17 of the said Act in fact claims a right to what has always been called the "Matrimonial Home".

14. Plaintiff No. 1 claims a right to reside in the suit flat under the protection granted by the said statutory possession. She cannot be dispossessed therefrom. This is under the premise that it is her matrimonial home. The section does not confer any ownership rights on the

woman seeking the right to reside in such residence. In fact she may have no right, title or beneficial interest in the same. Her right is only the right to reside. She would require to reside there in peace and have such possession protected against eviction or exclusion. Consequently the right to reside contemplated under Section 17 is implicitly in only one such residence. That is required to be the shared household of the woman who claims the right of residence. That is, therefore, the household which she shared along with her husband. That is, in short, her matrimonial home. The fact that she has been given the statutory right only of residence in such household, implicitly shows that she can have such right in only one such household. That is the right given to her whether or not she otherwise has any other right, title or beneficial interest therein. She cannot be given the mere right of residence in more than one household. By the very nature of things she cannot be expected to live in more than one such shared household. The right is only protective. It is not proprietory. It does not confer title upon her. It is the right of residence which is included in her right of maintenance. She would have the right to reside in the household she shared with her husband until she is given either a permanent right to reside in another property or is given her alimony which may include more than one such residence and immovable properties. Until that is given, her residence is required to be protected. Hence she is given the right to reside and to continue to reside in the household she shared with her husband (i.e. her matrimonial home).

15. The parties may, from time to time reside in different properties one after another. In such case their shared household or matrimonial home would change from time to time. The wife would be entitled to continue to reside in only one such residence which she shared with her husband. It would essentially be the last of the residences which the parties shared. Hence if the parties shifted residence, the wife would not have the right in more than one such residence.

16. In this case the parties essentially resided in the USA during a good length of their marriage. The wife continued to reside there even after Divorce proceedings were filed. Her residence has been protected by the Competent Court in the USA. The parties shared that residence from 1991- 2006. Mr. Vaibhav on behalf of the plaintiffs argued that the suit flat was the residence in which the parties resided soon after their marriage and hence it is her shared household. Much water has flown between 1991 when the parties married and in 2007 when she returned to the residence which she shared with her husband before moving to the USA. Such residence cannot continue to be the shared residence of the parties. The wife cannot, therefore, have the right of residence under Section 17 of the Act in the suit flat in which the parties did not share their residence since 1991.

17. The concept of matrimonial home has been considered in the case of (Alka Bhaskar Bakre v. Bhaskar Bakre 1990(2) Bom.C.R. 388 : A.I.R. 1991 Bom. 164 in that case the parties

to the marriage changed their respective residences from time to time upon transfer of the husband's employment. Before the break up of the marriage the parties resided in Bombay. That house was purchased on ownership basis. The husband had contributed the initial amount. The wife had paid the remaining amount. The parties resided there until the husband was transferred again when the wife refused to follow him. The parties' house at Bombay was held to be their matrimonial home as that was the last in the series of homes in which the parties had lived together and had intention to live together.

In this case the parties may have lived in the suit flat soon after their marriage. That was for an extremely short period. Having married in November, 1991 they moved to the USA in 1991 itself. They lived in their house in the USA till 2000 when their marriage broke down and the wife continued to live there after her husband left the matrimonial home. So soon as she left that home and returned to Murribai, there were a dispute with regard to her right in the home claimed by her. The matrimonial home of the parties is the home in the USA where they last lived together during the subsistence of their marriage and in which they intended to so live. Plaintiff No. 1, therefore, cannot claim the right of residence in the suit flat as her matrimonial home or as her shared residence under Section 17 of the said Act.

18. It is contended on behalf of the defendants that this Court has no inherent jurisdiction to grant the plaintiffs the right of residence in the suit flat under Section 17 of the Act.

19. Nevertheless the plaintiff's claim upon the suit flat is also based on the title. It is contended by the defendants that the suit flat actually comprises of two flats being flat Nos. 101 and 102. Flat Nos. 101 is in the names of defendants No. 3 and 4. Flat No. 102 is admittedly in the names of plaintiff No. 1 and defendant No. 4. Hence the defendants contend that the plaintiff No. 1 would be entitled to flat No. 102 and that can be partitioned and given to her plaintiff No. 1 has mortgaged the flat No. 102 to Citibank against a loan taken by her for her jewellery business.

20. Flat No. 101 initially stood in the names of defendant No. 4 and defendant No. 1. Defendant No. 1 is stated to have executed a Deed of Gift in favour of his brother defendant No. 3 on 16.01.2007. That Deed of Gift has been registered only on 11.12.2006. The registration is after divorce proceedings between the parties were filed by plaintiff No. 1 on 10.10.2006. Defendant No. 1 claims in this Court that there is no HUF in which he has any share and that he owns no property. He has been residing in India almost since about 2007. He claims to be residing in his parents' flat which is another flat in Seakist Building in Bandra. The only flat in his name was flat No. 101 on the 1st floor of Legacy Building. It cannot be comprehended how and why he would gift that flat to his brother who is shown to have other properties as well. The registration of the Deed of Gift of

11.12.2006 shows that the Deed of Gift stated to be dated 16.1.2006 is a bogus, antidated document only to prevent the plaintiffs' claiming any rights therein.

21. It is seen that plaintiff No. 1 as well as defendant No. 1 are shown as owners jointly with defendant No. 4 in both these flats. The said flat, therefore, essentially belonged to the husband and wife in which the name of the mother of the husband was shown jointly with their names. Though the plaintiff No. 1 is otherwise not entitled to a right of residence in the said flat, while she has the right of residence in the family property in the USA, she would be entitled to rights in respect of the suit flat by virtue of her joint ownership admitted by the defendants.

22. It is her case that there is only one flat, though there are two documents in respect thereof. There is admittedly no partition in the suit flat. The defendants claim to partition it and offer 1/2 the suit flat stated to be flat No. 102 to the plaintiffs. The fact remains that, admittedly it has been used as single flat and defendant No. 1 has under an anti dated Deed of Gift, gifted the flat to his brother for no apparent reason after the divorce proceedings between the parties.

23. The plaintiffs claim that defendants No. 2 to 4 have sought to enter upon the suit flat though their permanent residence is in two flats on the ground floor of Seakist Building at B.J. Road, Bandra (W), Mumbai 400050. The' fact that those two flats stand in the names of defendants No. 2 and 4 is not denied. The defendants have in fact produced documents relating to those flats.

24. Yet the defendants claim to be in possession of the suit flat also. They claim to have some maid servants in that flat.

25. The defendants have relied upon certain photographs showing what they call "possession" of defendants No. 2 to 4 in the suit flat. The photographs merely show defendants Nos. 2 and 4 and another person dining in the suit flat. The plaintiffs contention, that defendants No. 2 to 4 have merely entered upon the suit flat and disturbed the plaintiffs' possession and seek only to harass the plaintiffs while they are not actually in possession of that flat and do not actually live there, stands to reason upon seeing the photographs produced by defendants No. 2 to 4 in which they are seen dining at the dining table from a tiffin box ! No one would dine in this fashion in their own home in which they continuously reside. It is, therefore clear that though the flat on the 1st floor of Legacy Building stood in the names of plaintiff No. 1 and defendant No. 1 with defendant No. 4 as a joint owner in respect of each of the flats, defendants No. 2 to 4 have never resided therein. Their continuous possession by way of their residence is not shown. Their claim of possession by virtue of having some maid servants therein cannot be accepted.

26. The plaintiffs' right and title in respect of the suit flat is prima facie seen. The injunctive reliefs as prayed by the plaintiffs must therefore be granted in respect of the suit flat bearing flat No. 101 and 102 against the defendants including their maid servants.

27. The plaintiffs have also applied for appointment of Court Receiver in respect of the various movable and immovable properties enumerated in Exhibits D and E to the plaint. The plaintiffs claim that these are joint family properties. The defendants have disputed the existence of the joint family itself. The defendants have claimed that defendant No. 2 migrated to India from Pakistan at the time of the partition of India when he was penniless and that he acquired properties thereafter. Several properties are shown not only in his name, but in the names of defendants No. 3 and 4 also. Defendant No. 4 is not shown to be having any separate independent income. She has merely shown properties standing in her name. She claims to have shown those properties as her own in her tax returns. The tax returns are not produced. Only the documents of title showing the names of the defendants No. 3 and 4 are produced. If there is a HUF and if these properties are claimed by defendants No. 3 and 4 as their own separate independent properties they would require to show the income from which these properties are purchased. However, that exercise is not called for in this suit at least at this stage. In paragraphs 3 and 4 of the Plaint the plaintiffs have claimed that there is a HUF of defendant No. 2 with defendants No. 1 and 3 and that properties are acquired and treated as their joint family properties. There is absolutely no evidence produced by the plaintiff on this score. The plaintiffs have not even shown or got produced the income tax returns of the defendants showing any properties as HUF properties. The fact of the HUF itself is denied. It would be material to consider the fundamental principles of Hindu Law relating to joint family and its properties. It may be enumerated thus:

(i) There is a presumption that a Hindu family is joint in food worship and estate.

(ii) When the joint family is not disputed the property would be presumed to be joint.

(iii) If the Joint family possessed property jointly, the presumption is that it would continue to be joint.

(iv) the mere fact that the family is joint, does not cause a presumption to be made that it possesses joint property.

(v) the plaintiffs have first to show that the family had some property with the income of which the other properties were acquired. Hence the plaintiff has to show the nucleus fromwhich the properties could be acquired. Then the presumption of jointness in properties can be drawn.

(vi) the plaintiff must show the income that the nucleus yielded e.g. from a running business for the presumption to be drawn.

(vii) if that is shown the mere purchase by the defendants in his name would not be sufficient to show that the property is self acquired property. He would require to show the independent source of his income to prove his self acquisition and to prove that property was acquired by him without any aid from the family estate. See (Madanlal v. Ramprasadf A.I.R. 2002 Raj 1999.

28. The nucleus from which any of the properties could have been acquired is also not shown. It is settled law that a nucleus of joint family property is essentially required to be shown upon which alone can there be a presumption that the property purchased by any member of the joint family would be a joint family property see (Babubhai Girdharlal and Ors. v. Ujamlal Hargovandas and Ors.) A.I.R. 1937 Bom. 446; (Shrinivas Krishnarao Kongo v. Narayan Devji Kongo and Ors.) 1954 DGLS (soft) 53 : 1954 S.C.R. 1 : A.I.R. 1954 S.C. 379; (K.V. Narayanswami Iyer v. K.V. Ramakrishna Iyer and Ors.) 1964 DGLS (soft) 106 : A.I.R. 1965 S.C. 289; (Mudigowda Gowdappa Sank and Ors. v. Ramchandra Revgowda Sankh) 1969 DGLS (soft) 4 : A.I.R. 1969 S.C. 1076; (Baikuntha Nath Paramanik v. Sashi Bhushan Pramanik and Ors.) 1972 DGLS (soft) 354 : A.I.R. 1972 S.C. 2531; (D.S. Lakshmaiah and Anr. v. L. Balasubramanyam and Anr.) 2003 DGLS (soft) 467 : A.I.R. 2003 S.C. 3800.

29. It is contended by Mr. Vaibhav on behalf of the plaintiffs that in this case the plaintiffs would not be required to show that the properties enumerated in Exhibits D and E are joint family properties as contended by the defendants in view of the admission of the defendants. Defendant No. 1 has relied upon an unregistered Deed of Partition under which certain properties have been partitioned between the defendants. It is contended by the defendants that there was a partial partition of only some of the properties which were of the HUF of defendant No. 2. Mr. Vaibhav relied upon a judgment in the case of (Union of India and Ors. v. M.V. Valliappan and Ors.) (1999) 6 S.C.C. 259, to contend that there cannot be a partial partition. However that judgment relates to whether a partial partition is effective for the purpose of income tax law.

30. The fact of partition shows that the properties were joint before they were partitioned. Hence some of the properties at least are shown to be joint family properties. Hence, the existence of the family cannot be disputed. When the Joint Family cannot be disputed, the properties held by such family members would be presumed to be joint. The plaintiffs' Advocate Mr. Vaibhav relied upon the case of (Sher Singh and Ors. v. Gamdoor Singh) 1996 DGLS (soft) 2079 : (1997) 2 S.C.C. 485 in which it is held that the joint family not being disputed property held by the family assumed character of coparcenary property. However, all the properties in the names of these defendants cannot be presumed to be of the HUF when the nucleus of the HUF is not shown from which further acquisitions can be taken to have been made. Hence though the plaintiff may have shown a shadow of

the HUF and certain properties belonging to the HUF, all the properties enumerated in Exhibit D and E cannot per se be taken to be HUF properties.

31. In any event even plaintiff No. 1 would have no share as coparcener in such HUF properties as claimed by her in paragraph 4 of the plaint. She would be entitled only to her 1/2 share in the properties which would come to the share of defendant No. 1 upon the partition of the HUF. She, of course, would be entitled to 1/2 share in the properties of defendant No. 1 shown by him in the Competent Court in the USA in her divorce proceedings by way of her alimony, with which this suit is not concerned.

32. Plaintiffs No. 2 and 3 would certainly be co-parceners in the HUF by their very birth. The Partition Deed produced by defendant No. 1 is certainly a pointer to the fact that the HUF did exist. Hence the family would be joint in food worship and estate. The HUF consists of defendant No. 2 and his two sons defendants No. 1 and 3. The HUF would therefore consist of the sons' sons of defendant No. 2 also. These are plaintiffs No. 2 and 3. Plaintiffs No. 2 and 3 can demand partition of the HUF. Upon such partition they would be entitled to their share in such of the properties as are of the HUF. Those properties are not yet shown since the nucleus from which those properties could have been purchased by the HUF is not shown. Hence the appointment of Court Receiver which is sought in respect of all the properties enumerated in Exhibit D and E is a misconceived relief at least at this stage. Only if and when the plaintiffs can show a nucleus of the HUF and the acquisition from that nucleus of any of the properties any relief in respect thereof and for the protection of such properties for ascertaining share of plaintiffs No. 2 and 3 in such properties can be granted. The Court Receiver cannot, therefore, be appointed Receiver of any of those properties at present.

33. However, the protection of the plaintiffs in the suit flat being the entire flat on the 1st floor of Legacy Building bearing Nos. 101 and 102 is required to be granted, since the plaintiffs have shown the title of plaintiff No. 1 and defendant No. 1, her husband in the said flat. Yet upon defendant No. 1 himself contending that he has gifted the suit flat to his brother defendant No. 3 and divested himself of any right therein, the right in respect of the said flat cannot be granted to defendant No. 1.

34. It is clarified that this relief cannot be granted upon the premise that the said flat is a matrimonial home of plaintiff No. 1 and defendant No. 1 or their shared residence. The possession of the plaintiffs in the said flat is required to be protected consequent upon the title of plaintiff No. 1 therein.

35. No relief of injunction or appointment of Court Receiver in respect of any other property shown in Exhibit D and E to the Plaint can be granted.

36. Hence the following order:

Injunction in respect of prayers (a) and (b) (part) is granted. Defendants No. 2 to 4 are restrained from entering upon the suit flat on the 1st floor of Legacy Building at TPS-IV, Bandra (W), Mumbai 400050, bearing Nos. 101 and 102 or disturbing the possession of the plaintiffs therein. All the defendants are restrained from alienating, encumbering or creating third party rights in respect of the suit flat on the 1st floor of Legacy Building bearing Nos. 101 and 102.

The other part of prayer (b) and prayer (c) are refused.

Notice of Motion disposed of accordingly.

Sabah Sami Khan v. Adnan Sami Khan, 2011 (1) MhLj 427 (Bombay H.C.) (21.10.2010)

See page 413 for full text of judgment.

Natasha Kohli v. Mon Mohan Kohli, 172 (2010) DLT 516, 2010 (119) DRJ 44 (Delhi H.C.) (24.09.2010)

Judges: Vikramajit Sen and Mukta Gupta

Judgment

1. This Appeal assails the Order dated 21.4.2010 passed by the learned Single Judge holding that the plaintiff was not in occupation of the entire house, that is, 15-A, Amrita Shergill Marg, New Delhi; and that she was in occupation of only the Guest House where she was living and sleeping since 2004. The learned Single Judge has ordered that 'till the rights of the parties are determined after adjudication, it would be just and appropriate that the plaintiff shall keep living in the guest annexee and shall not interfere into the Main Building where defendant and son of the parties is living except that she can go to her son's bedroom and stay with him as per the wishes of her son and son can also go to guest room annexee and stay with the mother as and when he likes. Apart from that, plaintiff shall not interfere into the possession of the defendant No. 1 of the main building. It is also ordered that defendant No. 1, 2 and 3 shall not sell or part with possession of the suit property, that is, 15-A, Amrita Shergil Marg, New Delhi till disposal of the present suit or till the rights of the parties are ascertained in the execution filed by the plaintiff or unless the parties arrive at a settlement'. It will be immediately apparent that the Appellant has not been allowed the use of even the Kitchen. Resultantly, she would perforce have to purchase her food etc. from elsewhere, that is, from outside of the matrimonial home.

2. The plaintiff has filed a Suit for Permanent and Mandatory Injunction in which her husband, Mr. Mon Mohan Kohli, is Defendant No. 1. The matrimonial home is 15-A, Amrita Shergil Marg, New Delhi and is owned by Jey Key Private Limited, Defendant No. 2. Mr. Joginder Kohli, Defendant No. 3, is impleaded as a Director of that Company. S/Shri Mon Mohan Kohli and Joginder Kohli have 600 shares each, out of a total Paid Up and Subscribed Share Capital of 1200 shares. The suit property is stated to comprise the entire 15-A, Amrita Shergil Marg, New Delhi, ad measuring approximately 2227 square meters; it includes the Main Bungalow as well as the Annexee. The Plaint sets out that a Family Settlement has taken place between Defendant No. 1 and his family, all of whom were residents of the undivided 15-A, Amrita Shergil Marg, New Delhi. The said Memorandum recognizes joint ownership of the plaintiff and Defendant No. 1 in 15-A, Amrita Shergil Marg, New Delhi. In paragraph 20 of the Plaint, it has been asseverated that Defendant No. 1 had made attempts to throw the plaintiff as well as her son out of the suit property which avowedly is also the matrimonial home of the plaintiff. Paragraph 27 of the Plaint contains the allegation that in the first week of May, 2006 Defendant No. 1 stepped up his efforts to throw the plaintiff and her minor son out of the suit property so that he could be able to sell the property by handing over vacant peaceful possession thereof to the buyer. All that is required to be emphasized for the present is that the plaintiffs prayers pertained to the entire suit property, that is, 15-A, Amrita Shergil Marg, New Delhi and not just the Annexee. The primary prayer is for a permanent injunction in respect of the peaceful possession and enjoyment of the suit property by the plaintiff.

3. The Site Plan, which is acceptable to both the warring spouses, is at page 1026 of the Appeal File and makes the following depiction:

4. The portion shown as Study is the room which the plaintiff claims she was using as her makeshift Bedroom; except when she allegedly took refuge, along with her son, in the Annexee. Her husband, Defendant No. 1 before us, asserts that the plaintiff had shifted to the Annexee and only during the pendency of the case had laid a false claim of her sleeping in the Study.

5. We shall abjure from narrating the allegations hurled at each other by the Husband and the Wife.

6. On the first date of hearing, that is, 19.6.2006, the learned Single Judge, who was then seised with the case restrained the Defendants 'from dispossessing the plaintiff from the property bearing No. 15-A, Amrita Shergil Marg, New Delhi. The parties shall also maintain status quo of the title and occupancy of the property till the next date of hearing'.

7. The next Order, dated 24.05.2007, passed by the same learned Single Judge, clarifies that the Order dated 19.6.2006 did not permit any party to alter the status quo. We think it most expedient to quote the Order thereafter:

It is further directed that within one week from today, the defendant shall make available/provide wardrobes and cupboards in the guest room in the suit property. The plaintiff shall remove her belongings from the bedroom of the defendant and shall store all her belongings in the cupboards which shall be provided by the defendant within a period of one week thereafter. The defendant may restore the locks which were admittedly existing in the bed room and have admittedly been removed by the plaintiff during the pendency of the case. ...It is made clear that this is purely an interim arrangement in order to enable the parties to cohabit in the same house without any expression of any opinion on the merits of the case.

8. A Local Commissioner had also been appointed vide those Orders and her Report has generated considerable amount of arguments. Defendant No. 1 relies on this Report where the Local Commissioner had recorded that the plaintiff had filled up the stuff in the cupboards on the Mezzanine of the Bedroom though the same was empty on the earlier occasion and that the plaintiff had locked up the entire portion and had kept her stuff in her son's room. Reliance is also placed on the Orders passed by the learned Single Judge dated 23.7.2007 wherein the plaintiff was directed to allow the Local Commissioner to physically verify the submission of the plaintiff that the cupboards, of which keys are not handed over, contain the goods of the plaintiff. The Report filed pursuant to this Order records the quarrel that took place between the plaintiff and the Local Commissioner during her proceedings. We do not propose to dwell in detail on the Report since it principally recounts the conduct of the parties, so far as making the keys to the cupboards available. In paragraph 5 of the said Report, the Local Commissioner has stated that she 'went to guest room where the plaintiff is residing'. We mention this because the Defendant No. 1/Respondent No. 1 endeavours to rely on it to show the place where the Appellant was residing at that time. It would be convenient to immediately mention the letter dated 13.10.2006 addressed by the plaintiff to the SHO Tughlak Road Police Station, New Delhi in which she has, inter alia, stated thus - 'I have been sleeping since 2004 (the house was under renovation for 4 years before that and we had moved out in 1999 and then moved back in 2004) in the cottage in the back garden where the staff quarters are. He locked up my sleeping quarters. Despite several weeks of asking him to open it he refused saying he wanted me out with my son as he was interested in remarriage and or wanting his bisexual partners to enjoy the house. When one day I saw the cottage open for a few minutes for cleaning, I managed to slip the locks out and get the cottage opened. I finally managed a good nites rest. I may mention that every time he did something to harass me, I reminded him of the interim injunction which he showed contempt towards and scored and laughed and said money was the absolute and final power which he had. ...' It would be recalled that in the impugned Order the learned Single Judge has laid stress

on the Report to arrive at the conclusion that the plaintiff was not residing in the Main House but only in the Guest Room.

9. The factual averments in the Plaint, which were relied upon by the plaintiff in his application for stay as well are categorical in that 'The plaintiff was married to the Defendant No. 1 on 14.11.1994 at New Delhi as per Hindu rites and ceremonies. After the marriage, the plaintiff began to reside at 15, Amrita Shergill Marg, New Delhi. The said property was the Matrimonial Home of the plaintiff'. We have perused the Reply of the Defendant/ Respondent to the interim application for stay filed by the plaintiff/Appellant and the application filed under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 for vacation of ex parte ad interim stay granted on 19.6.2006 to maintain status quo. The Respondent has not traversed this fact or stated that the plaintiff was not enjoying the entire suit property as the matrimonial home and was residing only in the Outhouse. The averment as regards an admission on the part of the plaintiff that she, at the time of filing of the Suit, was not residing in the Main Building but was residing only in the Annexee or the Outhouse was only raised subsequent to Local Commissioner's Report and nowhere specifically pleaded.

10. So far as the Written Statement is concerned, it appears to us that there is an admission in the Reply to paragraph 1 to 11 that the parties had commenced residing in the suit property in March 2004. There is a bald assertion that the suit property was not the matrimonial home of the plaintiff. In paragraph 13 of the Written Statement, Defendant No. 1 has asserted that - 'the plaintiff is occupying the suit premises only in a capacity as wife of Defendant No. 1. The tenancy rights always remain with Defendant No. 1 in his individual capacity. ...' In paragraph 20, Defendant No. 1 has denied any attempt to throw the plaintiff and their minor son out of the suit property. Paragraph 33 contains a submission that the 'plaintiff has been sleeping in the outhouse of the suit property and not in the main building. The plaintiff has now removed the locks of the master bedroom of the Defendant No. 1 and taken away the keys of the outhouse and of one servant's quarter'. In the Replication (dated 20.12.2006), the plaintiff has pleaded that - 'the so-called outhouse is more in the nature of a Guest Annexee. It is only when the drunk and other violent behavior of the Defendant No. 1 goes out of hand that the plaintiff and her minor son occasionally take refuge and sleep in the outhouse'. In an application dated 31.1.2007 filed by Defendant No. 1, it has been averred that his 'anguish and distress is compounded by the fact that he is forced to live in the same house (in which he has exclusive tenancy rights) with the maker of these preposterous allegations against him, i.e. the plaintiff. ...Defendant No. 1 is particularly aggrieved by the fact that the plaintiff has also made false allegations in the replication that he is locking certain portions of the house. The only portion which the defendant No. 1 locks in (sic.) his bedroom for safety and privacy when he sleeps at night. ...' There are several statements made by Defendant

No. 1 to the effect that it is difficult for him to live with the plaintiff under one roof. It is also pleaded by him that 'it is not possible to identify discreet separate portions in the suit property as it has only one kitchen, one drawing room, one dining room, one main entrance etc. ...The plaintiff is only trying to make all sorts of claims without any basis whatsoever only with a view to continue in the suit property'. In Reply to IA No. 8088/2007 dated 14.8.2007, Defendant No. 1 has, inter alia, stated that 'the plaintiff has removed the bed-cum-sofa from the guest room and has kept the same in the study of the main house, so that the study could be used as a bedroom'.

11. The Orders passed by the learned Single Judge from time to time, as well as the pleadings of the parties, must be kept in perspective. We think that the so-called admissions contained in the plaintiff's Report to the SHO have been blown out of reasonable proportions. All that she has brought to the notice of that Official was that oftentimes she had to sleep in the Guest Room/Outhouse/Annexee. However much we stretch this statement we are unable to find in it an admission that she was not living in the Main House. On the contrary, Respondent No. 1 has pleaded that she had brought a sofa-cum-bed into the 'Study'. There may be legitimate provocation for the Local Commissioner to have developed an inimical attitude towards the plaintiff. A plain reading of the Report does not lead us to the conclusion that the plaintiff has ceased residing in the Main House and/or that she had returned to the Main House after the passing of any of the interim Orders in the Suit. It is not so infrequent that one of the spouses abandons the matrimonial bed. If this is for an extended period, it inevitably leads to the breakdown of the matrimony. However, it would be out of context to see into such action as an abandonment by the withdrawing spouse from the matrimonial home itself. We have already observed that there is only a bald denial by the husband that the suit property, that is, 15-A, Amrita Shergill Marg, New Delhi is not the matrimonial home. In the facts of the case, prima facie, we cannot but conclude that the suit property is the matrimonial home of the plaintiff/Appellant. Accordingly, her rights of residence therein must be respected not only because of the statutory mandate of Section 17 of Protection of Women from Domestic Violence Act, 2005 which acknowledges a woman's right to reside in a shared household but also on the principles of equity.

12. If we were to decide this legal nodus a priori, we would be influenced, and not in a small manner only, by the wife's/plaintiff's rights of residence in the matrimonial home. Apart from making adjustments so that the warring spouses may not assault each other, we would protect occupation of both parties by engineering a distance between them. We must also not lose sight of the fact that prima facie the plaintiff/Wife is a part owner of the suit property which is also the matrimonial home. However, Courts must abjure adopting a feudal and archaic attitude by thinking that a wife can be relegated to Outhouse as if it is a mere chattel. On the contrary, efforts must be made to ensure that she can live a life of respect.

13. The Order of the learned Single Judge directing the removal of the plaintiffs belongings to the Outhouse/Guest Room/Annexee does not lead to the conclusion that she was compelled and confined to reside there. The grievance which was ventilated before the Court was that she had locked-up her husband/Defendant No. 1's belongings which were in the Master Bedroom; the cupboards/almirahs were u buts mezzanine. The learned Single Judge merely endeavoured to obviate a quarrel on this account by directing the plaintiff to remove her belongings from the Master Bedroom, especially in view of the fact that she had herself pleaded that sometimes she had been left with no other recourse than to sleep separately from Defendant No. 1.

14. We would be loathe to lose sight of the fact that the son of the parties is not an adult and would require substantial overseeing and care by his mother. In the course of hearings, which spanned over a 1000 pages and have taken several hours of arguments, it has become evident to us that the plaintiff can reside in the room styled as the 'Study' which is what was before disharmony erupted between the spouses. This room is directly in front of the son's Bedroom. The plaintiff has herself contended that she will confine herself to the use of the small 'Powder Room' or toilet in front of the Study and contiguous to her son's Bedroom.

15. It is important to maintain some semblance of peace in the matrimonial home and/or suit property, and we think that this is precisely what the learned Single Judge earlier seised of the matter had endeavoured to achieve when she directed the plaintiff to remove her belongings from the cupboards in the Main Bedroom. The plaintiff is directed not to enter the Master Bedroom. She may sleep in the Study. Owing to the fact that her belongings are now stored in the Outhouse/Annexee/Guest Room, where there is a larger bathroom/toilet, she shall have its additional use. Accordingly, except for the Master Bedroom, the plaintiff shall be entitled to use the remaining portion of the Main House, that is, the Kitchen, Dining Room/Sitting Room/Drawing Room. We clarify that the plaintiff shall have no right of access to Master Bedroom or to the Mezzanine which is part of the Master Bedroom from which she was ordered to remove her belongings.

16. As has been pointed out by learned Single Judge in the impugned Order, this is purely an Interim Arrangement which will await the Final Judgment.

17. It will be worth of mention that no Order has been passed, and none has been brought to our notice, whereby the plaintiff has been restrained from access to any part of the suit property, except that of the Master Bedroom and the Mezzanine and bathrooms contiguous thereto, earlier to the impugned Order.

18. Appeal is allowed accordingly and all pending applications are disposed of.

19. Parties to bear their respective costs.

V.D Bhanot v. Savita Bhanot, I (2012) DMC 482 (SC), AIR 2012 (SC) 965 (Supreme Court)(07.02.2012)

See page 470 for full text of judgment.

Rajaram Panwari v. Asha Panwari, I MPHT 383 (Madhya Pradesh H.C.) (07.10.2009)

Judge: N.K. Mody

Order

1. Being aggrieved by the judgment dated 25-9-2008 passed by IInd Addl. Sessions Judge, Ratlam in Cri. Appeal No. 51/2008, whereby judgment dated 25-1-2008 passed by CJM, Ratlam in Cri. Case No. 1336/2007, where the interim application filed by the respondents under Section 12 of the Protection of Women from Domestic Violence Act was allowed and the interim directions issued by learned Trial Court were further modified, present petition has been filed.

2. Short facts of the case are that petitioner No. 1 is the husband of respondent No. 1 and petitioner No. 1 and respondent No. 1 have adopted respondent No. 2. The marriage between petitioner No. 1 and respondent No. 1 was solemnized on 20-7-87 at Nagpur. Petitioner No. 1 is a retired employee of Railways. Prior to it petitioner No. 1 was married to Nirmalabai from whom petitioner No. 1 was blessed with a son Lalit petitioner No. 2. Divorce took place between the petitioner No. 1 and Nirmalabai on 21-1-87 in H.M.A. Case No. 84-A/85. Petitioner No. 3 is wife of petitioner No. 2 while petitioner No. 4 is son of petitioner Nos. 2 and 3. Respondent No. 2 is Homeopathy Doctor by profession and is in Govt. job at Ratlam. The age difference between the petitioner No. 1 and respondent No. 1 is more than 18 years. Probably it is the main cause for dispute between the parties.

3. Petition was filed by respondent No. 1 before the learned Court below under the provisions of Protection of Women from Domestic Violence Act, 2005, which shall be referred hereinafter as 'Act', wherein various allegations were made against the petitioners. Alongwith the petition an application for interim directions was filed, which was allowed and in appeal filed by the respondent No. 1, which was allowed in part, the interim directions issued by the Trial Court were further modified. No appeal was filed by the petitioners against the interim directions issued by the learned Trial Court. Present petition has been filed by the petitioners against the impugned judgment passed by the learned Appellate Court, whereby the directions given by the learned Trial Court were modified.

4. Undisputedly, there is a house at Gandhi Nagar, Ratlam, in which petitioners and respondents are residing. This house is bearing House No. 530/1, which contains four bedrooms. Petitioner No. 2 is also in the services of Railways and was residing in a separate house which is situated at Vinoba Nagar, Ratlam at a distance of one and a half kilometer from Gandhi Nagar. This house was purchased by the petitioner No. 1 in the name of petitioner No. 3. Petitioner Nos. 2 to 4 were living there. Later on because of subsequent developments petitioner Nos. 2 to 4 also started to live at Gandhi Nagar while house at Vinoba Nagar is locked. It appears that after shifting of petitioner Nos. 2 to 4 at Gandhi Nagar, Ratlam, the dispute started.

5. The successful efforts were made to sort out the dispute amicably as it was the family dispute, so that the parties can live happily. Shri Sanjay Sharma, learned Counsel for the petitioners argued at length and submits that the impugned order is illegal and deserves to be set aside. Learned Counsel submits that no order could have been passed against petitioner Nos. 3 and 4 as they are women and minor. Learned Counsel further submits that the petitioners are ready to provide the alternative accommodation to the respondents.

6. Learned Counsel for the respondents submit that direction given by the learned Courts below which was modified by the Appellate Court requires no interference. It is submitted that the petition be dismissed.

7. Interim order passed by the learned Trial Court in favour of the respondents whereby it was directed that petitioners should not cause any domestic violence and should not cause any interference and also it was directed that petitioners shall not cause any obstruction in the residence of the respondents in the house situated at Gandhi Nagar, Ratlam. The order has been modified by the Appellate Court upon the instance of respondent No. 2 with a direction that petitioner Nos. 2 to 4 shall not reside at Gandhi Nagar and shall vacate the same forthwith failing which the learned Trial Court shall ensure the compliance.

8. From perusal of the record it is evident that vide order dated 25-1-2008 CJM, Ratlam has directed that the petitioners shall not create any obstruction in the residence of respondents' house situated at Gandhi Nagar, Ratlam. This order has not been challenged by the petitioners before the learned Appellate Court, therefore, this interim order attained finality.

9. So far as the order passed by the learned Appellate Court is concerned, the interim order was modified by the Appellate Court. It was further directed that petitioner No. 2 to 4 shall not reside in the house situated at Gandhi Nagar, Ratlam and shall vacate the same with immediate effect. It is only these directions, which is under challenged.

10. The Protection of Women from Domestic Violence Act has come in force w.e.f. 13-9-2005. The enactment is to provide 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. Sub-section (a) of Section 2 of the Act defines "aggrieved person". According to which "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. Respondent 2, who is the son of respondent No. 1 has also filed the application before the learned Court below. Since respondent No. 2 is not a woman, therefore, no application could have been filed on behalf of the respondent No. 2, who is minor. Sub-section (q) of Section 2 defines the word "respondent" according to which "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. Since petitioner No. 3, who happens to be the wife of petitioner No. 2 is a female, therefore, the petitioner No. 3 cannot be put in the category of respondent, therefore, again the petition is not maintainable against the petitioner No. 3. Sub-section (o) of Section 2 of the Act deals with "protection order". According to which order made in terms of Section 18 is the "protection order".

11. Thus, Section 18 of the Act empowers the Court to pass a protection order in favour of aggrieved person and prohibits 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;

(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 respondents, other relatives or any person who give the aggrieved person assistance from domestic violence;

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

12. Thus, Section 18 of the Act provides powers to the Court to pass an appropriate protective order in favour of aggrieved person. Enough evidence is on record to show that the petitioner No. 1 is an old man and is also sick. The sketch map of the house situated at Gandhi Nagar, Ratlam is filed, which is not disputed by any of the parties. According to which it contains four rooms, which are numbered as 1, 2, 3, 4. There are two kitchens, out of which one kitchen is shown in possession of petitioner No. 1. To protect the interest of the respondent No. 1 till final disposal of the petition following directions are being issued:

(1) Respondent No. 1 shall remain in room, which is shown as hall with kitchen and also marked as No. 2 and room No. 4 exclusively while petitioner No. 1 shall remain in a room, which is marked as room Nos. 1 and 3 with kitchen. Map shall be the part of the order.

(2) Since petitioner No. 2 is also in possession of a house situated at Vinoba Nagar, Ratlam and the fact that prior to the dispute petitioner No. 2 was living in that house with his family, therefore, petitioner No. 2 shall live in that house.

(3) Respondent No. 1 shall take full care of petitioner No. 1 as the petitioner No. 1 is a senior citizen and is sick.

(4) Petitioner No. 2 shall also take care of petitioner No. 1 during the day hours but shall not stay in the house situated at Gandhi Nagar, Ratlam during night hours, i.e., between 9.00 p.m. to 6.00 a.m.

(5) Learned Trial Court shall proceed with the case and conclude the trial at the earliest within a period of three months.

(6) After holding the enquiry the learned Trial Court shall be at liberty to pass fresh and final order without being influenced by the order passed by this Court or interim orders passed by learned Courts below.

With the aforesaid modifications, the petition stands disposed of. Parties are directed to remain present before the learned Court below on 26-10-2009. It is directed that record of the learned Courts below be sent back forthwith.

Saraswathy v. Babu, 2014 Cr.L.J. 1000 (SC) (Supreme Court) (25.11.2013)

See page 474 for full text of judgment.

P. Babu Venkatesh v. Rani, AIR 2008 (NOC) 1772 (Madras H.C.) (25.03.2008)

See page 529 for full text of judgment.

Ishpal Singh Kahai v. Ramanjeet Kahai, Writ Petition No.576 of 2011 (Bombay H.C.) (23.03.2011)

See page 77 for full text of judgment.

MONETARY RELIEF

Sukrit Verma v. State of Rajasthan, III (2011) DMC 394 (Rajasthan H.C. (Jaipur Bench)) (05.05.2011)

See page 369 for full text of judgment.

Ann Menezes v. Shahajan Mohammad, I (2011) DMC 683, 2010 Cr.L.J. 3592 (Bombay H.C.)(04.03.2010)

Judge: R.M. Savant

Order

1. The above Petition takes exception to the Order dated 9-6-2008, passed by the learned Addl. Sessions Judge-3, South Goa, Margao, by which Order, the Appeal filed by the Respondent herein came to be allowed and the Order dated 5-11-2007, passed by the learned J.M.F.C., in so far as directing/ordering the Respondent herein to secure an alternate accommodation to the Petitioner and granting ₹ 10,000/- towards loss of earnings, was quashed and set aside. However, the rest of the reliefs granted by the learned J.M.F.C., were maintained.

2. The facts in brief can be stated thus:

The Petitioner, herein, and the Respondent were married in the year 1995. The Petitioner converted herself to Islam. The registration of the marriage was done on 22-6-1994. Out of the said marriage, a boy child was born on 6-12-1994. After marriage, the Petitioner and the Respondent firstly stayed at Bogda, then in the MPT Colony in the accommodation of the Petitioner's father. Till 1996, the relations between the Petitioner and the Respondent were normal. However, thereafter, the Respondent subjected the Petitioner to domestic violence. It is alleged by the Petitioner against the Respondent that the Respondent had extra- marital affairs with one Babita and had a child from the said Babita. It was also alleged by her, that the Respondent had also another extra-marital affair with one Hasina, whom he married and out of which wedlock, one child Furqan Mohammed was born. It was alleged that the Respondent was staying with the said Hasina after he left the Petitioner. It was also alleged that the Respondent used to abuse her emotionally and verbally by casting aspersion/accusation on her conduct and character and used to insult her for not bringing dowry and used to make demeaning, humiliating remarks. It was also alleged that the Respondent failed to provide money for maintaining her and her child and also failed to provide food, clothes, medicines, etc. It was also

alleged that he did not allow her to take up employment, nor paid rent, electricity and water bills, etc. It was further alleged that the Respondent, by retaining the amount of ₹ 1,50,000/- borrowed from the father of the Petitioner, demanded dowry by seeking to appropriate the said amount of ₹ 1,50,000/- towards the same. On the aforesaid allegations, the Petitioner herein filed an application under Section 12 of The Protection of Women from Domestic Violence Act, 2005, (the said Act, for short). The said application came to be numbered as Maintenance Appln. No. 3/M/2007/D. The said application was filed through the Protection Officer, one Shekhar Prabhudessai, with request to take cognizance of the domestic incident report. The Petitioner in the said application sought Protection under Order 18 of the said Act, a Residence Order under Section 19 of the Act by seeking directions against the Respondent to secure the same level of alternate accommodation and pay rent for the same. The Petitioner sought Monetary Relief under Section 20 of the Act as follows:

(i) Medical expenses : ₹ 5,000/-,

(ii) Loss of Earnings : ₹ 36,000/-,

(iii) Seeking direction against the respondent to pay the expenses of food, clothes and other basic necessities, an amount of ₹ 6000/-per month,

(iv) Household expenses, an amount of ₹ 1000/- per month,

(v) School fees and related expenses of her son, an amount of ₹ 1000/- per month.

3. In support of her case, the Petitioner examined three witnesses i.e. she herself as P.W. 1, her sister Shenaz as P.W. 2 and her son Sohail as P.W. 3. The Respondent-husband, in support of his defence also examined two witnesses i.e. himself as DW.1 and one Chintamani as D.W. 2. The learned J.M.F.C., on a consideration of the evidence on record, recorded a finding that the Petitioner has proved that the Respondent had extra marital affairs with Hasina and Babita, from whom he had also begotten children. The learned J.M.F.C., therefore, held that the Petitioner must have undergone mental and emotional trauma on account of the said extra-marital affairs of the Respondent during the subsistence of the marriage with the Petitioner and the said mental emotional trauma, therefore, fell within the sweep of domestic violence as envisaged in Section 3 of the said Act.

In so far as economic abuse is concerned, the learned Magistrate on the basis of oral evidence on record, has recorded a finding that the Respondent has deprived the Petitioner and her son from basic economic needs as the Respondent stopped providing her with money, for clothing and food from 1998 and that she had to manage the family with the assistance of her father. The learned J.M.F.C. also recorded a finding on the basis of the evidence especially the evidence of D.W. 1, i.e. the Respondent, that she had been stopped from giving tuitions which she was giving in her house on the pretext that the Respondent is paying rent and he does not want any outsider in his house. The learned J.M.F.C. also

on the basis of the evidence which amply demonstrated the insulting and humiliating treatment which was meted out to the Petitioner as also taking into consideration the evidence as regards the Respondent asking the Petitioner to abort at the time of the second pregnancy on the threat of being physically abused, reached a conclusion that the Petitioner was subjected to cruelty. The Trial Court on the basis of the fact that the Respondent wanted to appropriate the sum of ₹ 1,50,000/-, which was advanced by the father of the Petitioner to the Respondent towards buying a vehicle towards dowry, concluded that the said amounted to a demand of dowry by the Respondent on the Petitioner and her father. The trial Court, was therefore, of the view that the same would also be a component or an ingredient of cruelty and, therefore, amounted to the Petitioner being subjected to domestic violence. The learned J.M.F.C. rejected the case of the Respondent that the Applicant is earning enough as Nursery School teacher by observing that merely because the Petitioner is earning some amount to keep body and soul together, would not absolve the Respondent from the legal and moral obligation to maintain the Petitioner and her son. The learned J.M.F.C., therefore, considering the ingredients of domestic violence as postulated in Section 3 of The Protection of Women from Domestic Violence Act, reached a conclusion that, in the instance case, all the ingredients of domestic violence were proved. The learned J.M.F.C, therefore, passed a Protection Order under Section 18 of the said Act, thereby restraining and injuncting the Respondent from repeating any act of domestic violence against the Petitioner, prohibiting the Respondent from entering school, college, work place of the Petitioner and her son and directing the Respondent to stay away from the Petitioner and her relatives and the son. The learned J.M.F.C, also passed a Residence Order directing the Respondent to secure an alternate accommodation to the Petitioner and her son having suitable conforts and pay rent for the same. The learned J.M.F.C, also granted Monetary relief to the following extent:

Respondent was directed to pay medical expenses of ₹ 3,000/- and loss of earning ₹ 10,000/- to the Petitioner. The Respondent was directed to pay a sum of ₹ 1,000/-per month to the Petitioner for food, clothes, medication and other basic needs. The Respondent was directed to pay school fees and related expenses of the Petitioner's son in the sum of ₹ 1,000/- per month and was also directed to pay a sum of ₹ 500/- as household expenses to the Petitioner.

4. The Officer-in-charge of Vasco Police Station was directed to give protection to the aggrieved person.

5. Being aggrieved by the Order passed by the learned J.M.F.C, dated 5-11-2007, the Respondent herein, filed a Criminal Appeal No. 62/2007, challenging the said Order. The said Appeal was tried by the learned Addl. Sessions Judge, South Goa, Margao. It would be pertinent to note that the findings as regards the extra-marital affairs of the Respondent, the cruelty meted out to the Petitioner, the economic abuse and the demand for dowry of

the learned J.M.F.C, were all confirmed by the lower Appellate Court. The Judgment and Order of the learned J.M.F.C, was set aside only to the extent of the direction ordering the Respondent to secure alternate accommodation to the Petitioner and the payment of ₹ 10,000/- to the Petitioner as loss of earnings.

6. The above Criminal Writ Petition is, therefore, directed against the said Order of the lower Appellate Court whereby the said benefits were taken away.

7. In so far as the said two aspects are concerned, the lower Appellate Court was of the view that the Trial Court had erred in ordering the Respondent to secure alternate accommodation when there was absolutely no grievance made by the Petitioner in that regard and that the direction to pay an amount of ₹ 10,000/- as loss of earnings to the Petitioner was without there being any evidence in that behalf on record.

I have heard Shri A. D. Bhobe, the learned Counsel for the Petitioner. None appeared for the Respondent though served.

8. In so far as the first aspect i.e. the direction to seek alternate accommodation is concerned, it is in the evidence of the Petitioner that she is presently residing in a rented premises and paying ₹ 1,000/- as rent. The factum of she staying in a rented premises and paying rent also finds corroboration from the evidence of P.W. 2/Shehnaz, who has also stated that the Petitioner is staying in a premises on rent. It is undisputed position that the Respondent is not living with the Petitioner but with the said Hasina with whom he had an extra-marital affair. The lower Appellate Court, was therefore, right in a way in recording a finding that whether there being any grievance as regards the accommodation which is presently available with her, the learned J.M.F.C., could not have issued direction for securing alternate accommodation. However, the fact cannot be lost sight of that the Petitioner is staying in a rented premises and paying ₹ 1,000/- as rent. The lower Appellate Court has also in turn accepted the said position and, therefore, whilst setting aside the direction of securing alternate accommodation, has directed an amount of ₹ 500/- as rent to the Petitioner. On what basis the said sum of ₹ 500/- has been arrived at is not clear. In my view, considering the evidence on record, where it has come in the evidence of the Petitioner that she is paying rent of ₹ 1,000/- which was not controverted and which fact has also been accepted by the lower Appellate Court by awarding the Petitioner a sum of ₹ 500/-. In my view, it would be just and proper to award a sum of ₹ 1,000/- to the Petitioner towards the payment of rent, whilst confirming the Order of the lower Appellate Court of setting aside the direction of securing alternate accommodation.

9. In so far as the payment of ₹ 10,000/-as loss of earnings to the Petitioner is concerned, it is required to be seen that the Petitioner is working as a teacher in a Nursery School since the year 2001 and she was supplementing her income by giving tuition which has come in her evidence. She has deposed that she was earning ₹ 500/- per month from the

tuitions, which tuitions Respondent stopped her from giving between the period from 2003 to 2005 as he did not want any other person to come in the house. The evidence of the Petitioner has been corroborated by the evidence of P.W. 2, her sister, who has also deposed that the Petitioner was giving tuitions and, on account of the estrangement between the Petitioner and the Respondent, she was not permitted to give tuition. The Trial Court, possibly, taking into consideration the fact that the Petitioner was earning ₹ 500/- per month and taking into consideration the period of two years between 2003 to 2005, for which period the Petitioner would have earned ₹ 12,000/-, probably thought it fit to award a sum of ₹ 10,000/-. It, therefore, cannot be said that there was absolutely no material on record to justify the direction of payment of ₹ 10,000/- to the Petitioner. It is an undisputed position that the Respondent prevented the Petitioner from giving tuitions on the pretext that he was paying rent for the premises in question and he did not like any other person in the house. In matters of this kind, there cannot be any clinching evidence, conclusion would have to be drawn on the basis of whatever is on record and the circumstances prevailing. In my view, therefore, the lower Appellate Court has erred in setting aside the said direction of payment of ₹ 10,000/- to the Respondent for loss of earnings. The said direction of the learned J.M.F.C., is therefore, reinstated. The Petitioner would, therefore, be entitled to the amount of ₹ 10,000/- on account of loss of earnings. The impugned Order of the lower Appellate Court to that extent is set aside, the direction of payment of rent to the Petitioner of the lower Appellate Court is also modified to the extent mentioned herein above i.e. at the rate of ₹ 1,000/- per month from 1st April, 2010.

10. Rule is accordingly made absolute in the aforesaid terms.

Amit Khanna v. Priyanka Khanna, 2010 (119) DRJ 182 (Delhi H.C.) (01.09.2010)

Judge: Shiv Narayan Dhingra

Judgmement

1. By these petitions petitioners, husband and wife have assailed order dated 26th October, 2009, passed by learned Additional Sessions Judge (ASJ) in appeal. Ms Priyanka Khanna had moved an application before learned Metropolitan Magistrate (MM) under Section 12 of Protection of Women from DomesticViolence Act and also made an interim application for residence, protection and maintenance. Learned MM considered the income of the husband for the financial years 2004-05, 2005-06, 2006-07 and 2007-08 and found that annual gross income of the husband for the latest financial year i.e. 2007-08 was(Ed-

itor: The text of the vernacular matter has not been reproduced. Please write to contact@manupatra.com if the vernacular matter is required.) 3,47,550/- (before deduction of tax). She considered that gross monthly income of the husband was between (Editor: The text of the vernacular matter has not been reproduced) 28,000/- and (Editor: The text of the vernacular matter has not been reproduced) 29,000/-. She awarded monthly maintenance of (Editor: The text of the vernacular matter has not been reproduced) 10,000/- to the wife. Apart from that, she also awarded (Editor: The text of the vernacular matter has not been reproduced) 5,000/- per mensem (p.m.) as rent for residence. Thus, she awarded (Editor: The text of the vernacular matter has not been reproduced) 15,000/- p.m. to the wife. In appeal, the learned ASJ enhanced the house rent payable to the wife from (Editor: The text of the vernacular matter has not been reproduced) 5,000/- p.m. to (Editor: The text of the vernacular matter has not been reproduced) 15,000/- p.m. and maintenance from (Editor: The text of the vernacular matter has not been reproduced) 10,000/- p.m. to (Editor: The text of the vernacular matter has not been reproduced) 30,000/- p.m., although, the husband had placed before the learned ASJ his latest salary slip showing gross monthly income of (Editor: The text of the vernacular matter has not been reproduced) 41,000/-. This enhancement was done by the learned ASJ on the ground that husband was a man of status and owner of vast movable and immovable properties and it was a matter of common knowledge that parties generally conceal their actual income and do not show their real income in the Income Tax Returns. The respondent-wife was alone in this world. She had lost her job and was unemployed and was living with her parents and dependent on them. It was also observed by the learned ASJ that it was very difficult to find a suitable residence by paying (Editor: The text of the vernacular matter has not been reproduced) 5,000/- p.m.

2. It is noteworthy that a petition for divorce was filed by the husband which is pending before the court of ADJ and the learned ADJ after considering the material vide order dated 16th September, 2008, granted to the wife a monthly maintenance of (Editor: The text of the vernacular matter has not been reproduced) 25,000/-from the date of filing of application under Section 24 of Hindu Marriage Act till the disposal of the case and awarded (Editor: The text of the vernacular matter has not been reproduced) 10,000/- towards litigation expenses.

3. It is evident from the order passed by the learned ASJ that he has not enumerated the vast movable and immovable properties owned by the husband. Mere allegations made by the wife that husband was a man of status and had vast movable and immovable properties would not give jurisdiction to the Court to pass an order of maintenance beyond the means of the husband. When allegations are made by the spouses about the vast movable and immovable properties of other, even for passing an interim order the allegations must be substantiated by some sort of documentary evidence. The properties existing in the

name of sister-in-law, mother or father cannot be considered to be the properties of the spouses. If such properties are considered as properties of husband, then property existing in the name of father of the wife, mother of the wife or brother or sister of the wife could reflect her status and income and the courts can think that a wife has sufficient properties and she does not need maintenance.

4. After attaining self sufficiency and being employed, a man's own income has to be the basis for fixing maintenance for his dependants whether wife, parents or children. Properties of his brothers or parents cannot be a basis for fixing maintenance. Status of a man is not determined from the status of his brothers or parents. There may be many cases where a man is egoistic and does not take help from his rich parents or rich brother and does not maintain same status which his rich brother and parents may maintain.

5. In the present case, the marriage between husband and wife was not a marriage arranged by respective parents. It was a love marriage after courtship of 8 years and I do not think that this Court ship or love was there between the parties before marriage because of the status of brothers of the husband or status of parents of the husband. It has to be presumed that love was with the person and not with the property and it is the income and wealth of the husband which is to be looked by the Court for deciding proper maintenance. When the income of the husband was (Editor: The text of the vernacular matter has not been reproduced) 41,000/- p.m., granting maintenance plus rent of (Editor: The text of the vernacular matter has not been reproduced) 45,000/- p.m., under no circumstance is justified. I find the order passed by the learned ASJ unjustified and contrary to settled legal preposition. The order of learned ASJ is hereby set aside.

6. Since the income of the husband is now (Editor: The text of the vernacular matter has not been reproduced) 41,000/- p.m. without deducting tax and after deducting tax it would be around (Editor: The text of the vernacular matter has not been reproduced) 38,500/-, a maintenance of (Editor: The text of the vernacular matter has not been reproduced) 15,000/- p.m. and rent of (Editor: The text of the vernacular matter has not been reproduced) 5,000/- p.m. would be the just maintenance. This would be payable from the date of order of the Appellate Court. Prior to the date of order of the Appellate Court, since the income of the husband was only (Editor: The text of the vernacular matter has not been reproduced) 29,000/- p.m., the order of the Court of Metropolitan Magistrate would prevail. However, this maintenance and amount towards rent is not over and above the maintenance awarded by the matrimonial court, neither this order shall affect the order passed by ADJ granting maintenance @(Editor: The text of the vernacular matter has not been reproduced) 25,000/- p.m. The amount payable under this order shall be adjustable against other maintenance order

7. Both petitions stand disposed of in view of my above finding and conclusion.

Shyam Kumar Alwani v. Dimpal Alwani, S.B. Criminal Revision Petition No. 1310/2010 (Rajasthan H.C. (Jaipur Bench)) (09.12.2010)

Judge: R.S. Chauhan

Judgment

1. Aggrieved by the order dated 23.10.2010, passed by the Additional District and Session Judge (Fast Track) No. 5, Jaipur City, Jaipur, whereby the learned Judge has enhanced the interim maintenance granted to the Respondent Nos. 1 and 2 from ₹ 1,500/- per month to ₹ 5,00/- per month, the Petitioner has approached this Court.

2. In brief, the facts of the case are that on 10.11.2009, the complainant-Respondent No. 1, Smt. Dimpal Alwani, filed an application against the Petitioner under Section 12 of the Protection of Women fromDomestic Violence Act, 2005 ('the Act', for short) before the trial court for maintenance. In the complaint, she stated that she got married with the Petitioner on 24.7.2007. In this marriage, her father gave sufficient dowry. But immediately after the marriage, the Petitioner started torturing her and committed domestic violence. She further claimed that the Petitioner runs a coaching institute and earns sufficient income. Hence, her prayer for maintenance. The Petitioner filed his reply to the complaint and denied the allegations made in it by the Respondent No. 1. However, vide order dated 31.05.2010, the learned trial court directed the Petitioner to pay ₹ 1,500/- per month to the Respondents as maintenance. Against the order dated 31.05.2010, both the Petitioner and the Respondents filed their respective appeals before the learned appellate court. However, vide order dated 23.10.2010, the learned appellate court, while dismissing the appeal filed by the Petitioner, allowed the appeal filed by the Respondents and enhanced the interim maintenance from ₹ 1,500/- per month to ₹ 5,000/- per month. Hence, this petition before this Court.

3. Mr. Anshuman Saxena, the learned Counsel for the Petitioner, has vehemently contended that the learned Judge has relied upon evidence which was not produced before the trial court when the trial court passed its order dated 31.5.2010. In fact, the learned Judge has relied on the evidence which was produced for the first time before him. The said evidence has not even been subject to cross-examination. Therefore, the learned Judge has exercised a power not vested in him. Secondly, the Petitioner had given a valid justification for sudden decrease in his income from ₹ 1,44,000/to ₹ 35,000/-. Therefore, the learned Judge has erred in not accepting his explanation and in enhancing the maintenance amount. Thirdly, the learned Judge has not given any cogent reason for enhancing the maintenance amount.

4. Heard the learned Counsel for the Petitioner and perused the impugned order.

5. Firstly, there is no Bar in Code of Criminal Procedure which prevents an appellate court from looking at fresh evidence which may be produced before it subsequently. In this case both, the Petitioner and the Respondent No. 1, being aggrieved by the order dated 31.05.2010, had filed their respective appeals. While the Petitioner had submitted his Income Tax returns in order to make out a case that his income had suddenly decreased from ₹ 1,44000/- to ₹ 35,000/-, the Respondent No. 1 had submitted documents to show the fact that the Petitioner had bought a RHB house in 2001. In order to assess the income of the Petitioner, the learned Judge has relied upon the Income Tax returns submitted by the Petitioner himself. Therefore, the Petitioner cannot now claim that the learned Judge was not justified in relaying upon fresh evidence which was produced by the Petitioner himself. As far as the evidence produced by the Respondent No. 1-wife is concerned, the learned Judge did not even pay attention to it. Therefore, the assessment of the income and the consequent enhancement of maintenance by the learned Judge is based on evidence which was produced by the Petitioner himself. Therefore, the contention raised by the learned Counsel that the learned Judge was not justified in looking at fresh evidence, that too the evidence which has not even been subject to cross-examination, does not hold water.

6. Secondly, the learned Judge has given cogent reason for not believing the last Income Tax return submitted by the Petitioner. The complaint was filed on 10.11.2009 and the Income Tax returns was submitted on 7.7.2010. Since there is sudden decreased in the income of the Petitioner, as reflected by the Income Tax return filed after the complainant filed the complaint, the learned Judge was certainly justified in concluding that the Petitioner has not approached the court with clean hands. Moreover, considering the high rate of inflation, and the increase in prices in essential commodities, the learned Judge was certainly justified in enhancing the maintenance from ₹ 1,500/- per month to ₹ 5,000/- per month. Therefore, this Court does not find any illegality or perversity in the impugned order.

7. Hence, this petition is devoid of any merit. It is, hereby, dismissed. However, the learned trial court is directed to expedite the matter as soon as possible.

Badri Lal Gurjar v. Yogesh Kumari, 2010 (1) WLN233 (Rajasthan H.C.) (18.11.2009)

See page 319 for full text of judgment.

Harish Bairani v. Meena Bairani, RLW 2011 (2) 1763 (Rajasthan H.C.) (02.05.2011)

See page 101 for full text of judgment.

Om Prakash v. State of Rajasthan, S.B. Criminal Revision Petition No.1220/2010 (Rajasthan H.C) (29.04.2011)

See page XXX for full text of judgment.

Anil Solanki v. Ila Solanki, RLW 2010 (3) Raj 2533 (Rajasthan H.C.) (15.10.2009)

Judge: R.S. Chauhan

Judgment

1. CHAUHAN, J.-The petitioner has challenged the order dated 04.04.2009 passed by the Additional Civil Judge (Jr. Division) No. 15 Jaipur City, Jaipur whereby the leaned Magistrate had directed the recovery of the maintenance amount payable to non-petitioner No. 1, Smt. Ha Solanki, under the Protection of Women against Domestic Violence Act, 2005 ('the Act', for short) in an application moved under Section 125 Cr.P.C. The petitioner has also challenged the order dated 22.06.2009, passed by the Additional District Judge No. 9, Jaipur City, Jaipur, whereby the learned Judge has upheld the order dated 04.04.2009.

2. The brief facts of the case are that the petitioner, Anil Solanki, married the non-petitioner No. 1, Smt. Ila Solanki according to the Hindu rites and customs. However, subsequently certain differences arose between the parties. Therefore, Smt. Ila Solanki filed an application under Section 12 of the Act before the learned trial Court. Vide order dated 13.04.2007, the learned trial Court passed an interim order directing the petitioner to pay ₹ 7,000/- per month to her. Since both the parties were aggrieved by the said order, they filed two separate appeals before the District & Sessions Judge, Jaipur City, Jaipur. However, during the pendency of the appeals, both the parties agreed that they did not wish to pursue the appeals. Therefore, they entered into a compromise. Vide order dated

22.05.2007, the appellate Court dismissed the appeals on the basis of the compromise. However, as the petitioner was not paying ₹ 7,000/- per month to the non-petitioner No. 1, in October 2007 she moved an application under Section 31 of the Act before the learned trial Court for recovery of the amount due. But, vide order dated 10.02.2009, the learned trial Court rejected the said application ostensibly on the ground that the non-petitioner No. 1 had an alternative remedy under Section 125 of Cr.P.C. and she should file an application under the said provision. Taking her cue from the order dated 10.02.2009, on 07.03.2009 the petitioner filed an application under Section 125 of Cr. P.C before the learned trial Court. After hearing both the parties, vide order dated 04.04.2009, the learned trial Court directed the petitioner to pay arrears of interim amount totaling ₹ 1,61,000/- to non-petitioner No. 1 and to submit the receipt before the learned trial Court. Since the petitioner was aggrieved by the said order, he filed a revision petition before the revisional Court. However, vide order dated 22.06.2009, the learned revisional Court has upheld the order dated 04.04.2009.

3. Meanwhile, the petitioner also moved an application under Section 25(2) of the Act praying that the interim order dated 13.04.2007 be modified or altered. However, vide order dated 10.02.2009, the learned trial Court dismissed the said application. Since the petitioner was aggrieved by the rejection of his application under Section 25(2) of the Act, the petitioner has filed a revision petition before the Court. According to the petitioner, the said revision petition is still pending before this Court.

4. Mr. K.K. Sharma, the learned Counsel for non-petitioner No. 1, has raised a few preliminary objections : firstly, the petitioner had already filed a revision petition before the revisional Court challenging the order dated 4.4.2009. Therefore, the present petition is, in fact, a second revision petition in the garb of a miscellaneous petition under Section 482, of Cr.P.C. Hence, the present petition is hit by Section 397(3) of Cr.P.C. Thus, the petition is non-maintainable. Secondly, even prior to the present petition being submitted before this Court, vide order dated 24.7.2009, the learned trial Court has directed the petitioner to pay a total of ₹ 1,82,000/- as arrears of interim maintenance amount to the non-petitioner No. 1. It further directed that in case the petitioner fails to do so, then his property should be attached. According to the learned Counsel, the petitioner has not challenged the said order. Thirdly, the order dated 4.4.2009 and the order dated 22.6.2009 have culminated in the order dated 24.7.2009. Thus, the petitioner should challenge the order dated 24.7.2009. Since, the petitioner has failed to challenge the final order, therefore, the controversy involved in this case is only of purely academic interest.

5. On the other hand, Mr. R.K. Daga, the learned Counsel for the petitioner, has contended that Section 482 Cr.P.C. contains the inherent powers of the Court. The section begins with a non-obstante clause - "nothing in this Code". Therefore, none of the provisions of

the Code can crib, cabin and confine the scope and ambit of the inherent powers. However, as a vast power has been bestowed upon the Court, it has to be exercised sparingly. The said power should be exercised in order to prevent the abuse of the process of any Court, or to secure ends of justice. In order to buttress this contention, the learned Counsel has relied upon the cases of Madhu Limaye v. State of Maharashtra (1997) 4 SCC 551, Krishnan v. Krishnaveni (1997) 4 SCC 241, Pepsi Food Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749, Puran v. Rambilas (2001) 6 SCC 338, Satya Narayan Sharma v. State of Rajasthan (2001) 8 SCC 607 and on the case of State through Special Cell, New Delhi v. Navjot Sandhu @ Afshan Guru and Ors. (2003) 6 SCC 641-5. Therefore, even if there is a bar of filing of a second revision petition contained in Sub-clause (3) of Section 397, the said bar cannot oust the inherent jurisdiction of this Court under Section 482 of Cr.P.C. Moreover, in the present case, since the application under Section 125(3) has been filed after the period of limitation, since the said application has been allowed by the learned trial Court, the filing of the application and its granting tantamount to abuse of the process of the Court and of the law. Therefore, the petitioner is justified in filing the present miscellaneous petition.

6. Furthermore, according to the learned Counsel, there is no need to challenge the order dated 24.07.2009 passed by the learned trial Court. For, the said order is based on the order dated 04.04.2009. Since the order dated 04.04.2009 is already under challenge in the present petition and since the order dated 24.07.2009 is a consequential order based upon the order dated 04.04.2009, the order dated 24.07.2009 need not be challenged.

7. Heard the learned Counsel on the preliminary objections.

8. The magnitude of the power contained in Section 482 Cr.P.C. has taxed the judicial imagination. In catena of the cases, the Apex Court has held that the inherent powers of the Court do not exist merely because Section 482 Cr.P.C. bestowes the said power. In fact, the said power exists by the fact that the powers are inherent in nature. Section 482 Cr.P.C. merely expresses the existence of the said power, but does not bestow the said power. Even in the absence of Section 482 Cr.P.C, the inherent powers would continue to exist. Therefore, Section 482 Cr.P.C merely makes obvious a power which is apparent. Hence, Section 482 Cr.P.C. does not bestow any new power upon the High Court.

9. As far back as 1977, in the case of Madhu Limaye (supra), the Apex Court had held that Section 482 Cr.P.C. begins with a non-obstante clause when it proclaims nothing in this Code shall be deemed to limit or effect inherent powers of the High Court. The words "nothing in this Code" would naturally include Section 397(2) as well as Section 397(3). Therefore, Section 397(2) and by implication Section 397(3) would not prevent the High Court from exercising its inherent powers under Section 482 Cr.P.C.

10. Similar views have also been expressed in the case of Krishnan (supra) wherein the Hon'ble Supreme Court has observed that "even though a second revision to the High Court is prohibited by Section 397(3) of the Criminal Procedure Code, the inherent power is still available under Section 482 of the Criminal Procedure Code."

11. In the case of Pepsi Foods Ltd. (supra), the Hon'ble Supreme Court stated that inherent powers under Section 482 of the Code could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. It had further observed that "the power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers."

12. Similarly in the case of Puran (supra), the Apex Court reiterated that "the inherent jurisdiction under Section 482 is not affected by the provisions of Section 397(3) of the Code of Criminal Procedure." It further observed that "for securing the ends of justice the High Court can interfere with an order which causes miscarriage of justice or is palpably illegal or is unjustified."

13. In the case of Satya Narayan Sharma (supra), the Hon'ble Supreme Court has further proclaimed that "Section 482 of the Criminal Procedure Code starts with the words Nothing in this Code". According to the Apex Court, the inherent powers can be exercised even if there a contrary provision in the Code. It further observed that "Section 482 of the Criminal Procedure Code does not provide that inherent jurisdiction can be exercised notwithstanding any other provision contained in any other enactment." Therefore, if any other enactment contains specific bar, then inherent jurisdiction cannot be exercised to get over the bar.

14. Lastly in the case of Navjot Sandhu (supra), the Hon'ble Supreme Court has opined as under:

> Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus, the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayan Sharma case this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revision powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be used only in cases where there is an abuse of the process of the court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to

be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.

15. The principles which emerge from the above noted case law: firstly, the inherent powers cannot be cribbed, cabined and confined by any other provision of the Code. However, the inherent powers can be curtailed by a specific bar contained in any other law being in force. Secondly, Section 482 Cr.P.C. bestows a vast power. The more vast the power, the more sparingly it should be invoked. Thirdly, the said power should be invoked in order to prevent abuse of the process of the Court, or in order to secure the ends of justice. For doing justice is the cardinal role of the Courts. In fact, it is the very reason for the existence of the Courts. While chasing injustice, the powers of the Court cannot be fettered either by the provisions of the Code or by the technicalities of Law. Therefore, in the present case, the petition is certainly maintainable. However, it is for the Court to consider if the process of the Court has been abused or whether the ends of justice demand and dictate that the petition be entertained. Therefore, the preliminary objection raised by Mr. K.K. Sharma with regard to the maintainability of the petition is, hereby, rejected.

16. Even the second contention raised by Mr. K.K. Sharma is unworthy of acceptance. As stated above, vide order dated 4.4.2009, the learned trial Court had directed the petitioner to pay the arrears of the interim amount totaling ₹ 1,61,000/-. Since the petitioner had failed to comply with the said order, vide order dated 24.07.2009, the learned trial Court has directed the petitioner to pay arrears of interim amount totaling ₹ 1,82,000/- (the increase amount being due to lapse of time). The petitioner has challenged the order dated 04.04.2009 on the ground that the application under Section 125(3) was filed beyond limitation. Therefore, in case, the plea of limitation were accepted, the order dated 04.04.2009 would necessarily have to be quashed. Since the order dated 24.07.2009 is squarely based on the order dated 04.04.2009, in case the latter order is quashed and set aside, the former order would automatically come to an end. Hence, presently it is not necessary for the petitioner to challenge the order dated 24.7.2009. Although it is not essential that the order dated 24.7.2009 be challenged, but it would have been better that the same were challenged in the present petition so as to preempt the multiplicity of litigation. For, in case the order dated 04.04.2009 is upheld, then the petitioner would be compelled to challenge the order dated 24.7.2009. Thus, under the scheme of things, the petitioner should have challenged the order dated 24.7.2009. However, his non-challenging the order would not adversely affect the maintainability of the pres-

ent petition. For these reasons, the second contention raised by K.K. Sharma is equally rejected.

17. Mr. R.K. Daga, the learned Counsel for the petitioner, has vehemently contended that according to Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 ('the Rules', for short), an application under Section 12 shall be dealt with and the orders enforced in the same manner as laid down under Section 125 of Cr.PC. According to the first proviso of Section 125(3) of Cr.P.C. no warrant for recovery of any amount shall be made unless the application is made to the Court within a period of one year from the date on which it becomes due. According to the learned Counsel, the first proviso of Section 125(3) of Cr.P.C, therefore, provides a period of limitation of one year for the filing of the application for recovery of maintenance amount. According to the learned Counsel the period of one year begins from the date of the order passed by the Court. In the present case, the order for payment of the interim amount was passed on 13.04.2007. However, the application under Section 125(3) Cr.P.C. was moved on 07.03.2009. Therefore, the said application has been filed beyond the period of one year. Hence, the said application is hit by limitation.

18. Secondly, the petitioner had moved an application under Section 24(3) of the Act for modifying the order dated 13.04.2007. However, the said application was dismissed vide order dated 10.02.2009, the petitioner has filed a revision petition, which is still pending before this Court. Therefore, this petition should not be decided until and unless the revision petition is first decided by this Court.

19. On the other hand, Mr. K.K. Sharma has raised the following contentions : firstly, the petitioner is misinterpreting the scope and ambit of Section 125(3) Cr.P.C. Although it is true that the period of limitation has been prescribed by Section 125(3) Cr.P.C, but the period of limitation of one year does not begin from the date of the order; it begins from the date of default due to non-payment of the maintenance amount. For, Section 125(3) Cr.P.C uses the words "for every breach of the order" and further uses the expression "a period of one year from the date on which it became due". Therefore, the period of one year commences not from the date of the order, but from the date the amount-becomes due.

20. Secondly, the order for payment of interim maintenance was passed on 13.04.2007, since not a single penny was paid by the petitioner to the non-petitioner No. 1, she filed an application under Section 31 of the Act in October, 2007 i.e., within the period of one year from the date of passing of the order. However, the said application was dismissed on 10.02.2009. The non-petitioner No. 1 was directed to approach the Court by filing an application under Section 125 Cr.P.C. Immediately on 07.03.2009, the non-petitioner No. 1 filed her application under Section 125 Cr.P.C. Since the non-petitioner No. 1

has been pursuing her legal remedies with due diligence, she cannot be faulted for laches or delays. Moreover, her application cannot be dismissed on the ground of being hit by limitation. '

21. Thirdly, the non-payment of an interim maintenance is a continuous wrong and the period of limitation begins from the date on which the maintenance becomes due. According to the petitioner himself, he had failed to pay a single penny to non-petitioner No. 1. Therefore, the amount was due from April 2007 till 07.03.2009, the date on which the application was submitted. Hence, application was well within the limitation.

22. Forthly, even if the criminal revision petition is pending before this Court against the order dated 10.02.2009, the decision in that petition would function only prospectively and not retrospectively. Therefore, the issue whether the non-petitioner No. 1 is entitled to recover the arrears of her interim maintenance amount would not be affected by the judgment in the criminal revision petition.

23. Heard the learned Counsel and perused the impugned orders.

Section 125 Cr.P.C. is as under:

125. Order for maintenance of wives, children and parents. (1) If any person having sufficient means neglects or refuses to maintain:

(a) His wife, unable to maintain herself, or

(b) His legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) His legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) His father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in Clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means. (Provided further that the Magistrate may, during the pendency of the Proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses for proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person)

Explanation- For the purposes of this Chapter,-

(a) Minor means a person who, under the provisions of the Indian Majority Act, 1975 (9 of 1875) is deemed not to have attained his majority;

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

((2) Any Such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.)

(3) If any Person so ordered fails without sufficient cause to company 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 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:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the court to levy such amount within a period of one year from the dare on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. If a husband has contracted - marriage with another woman or keeps a mistress, it shall be considered to just ground for his wife's refusal to live with him.

(4) ....

(5) ....

24. A bare perusal of Section 125(3) clearly reveals that the said provision uses the words "for every breach of the order" and uses the words "within a period of one year from the date on which it became due".

25. The breach of the order need not necessarily be from the date of the order itself. The said breach could be committed much later than the date of the order. Considering this aspect that the breach can be committed even later the legislature in its wisdom has purposely

used the words "a period of one yearfrom the date on which it became due." Thus, the period of one year would commence from the date when the maintenance or interim maintenance amount became due. Therefore, the said period of limitation would commence from the date when the party has defaulted in payment of the maintenance or interim maintenance amount as directed by the Court. After all, the order has been breached from the date when the party has failed to comply with the order directing payment of maintenance. Therefore, the contention raised by Mr. Dagga that the period of limitation begins from the date of the order, and not from the date the default is committed, is clearly untenable.

26. In the present case, admittedly the petitioner has failed to pay a single penny to the non-petitioner No. 1. Therefore, on every month, he has committed a breach of the order and every month he has defaulted in payment of the interim maintenance amount. Therefore, the default was committed from13.04.2007 till the application was filed on 07.03.2009. Hence, the application filed under Section 125(3) Cr.P.C. is well within the period of limitation. Therefore, the contention raised by Mr. Daga that the said application is hit by limitation is rejected.

27. Moreover, since the petitioner had failed to pay the interim maintenance amount, non-petitioner No. 1 did file an application under Section 31 of the Act in October, 2007 i.e., within a period of one year. It is only that the said application was rejected vide order dated 10.2.2009, and she was directed to avail the alternative remedy under Section 125 Cr.P.C. Thereafter, on 07.03.2009, the non-petitioner filed application under Section 125 Cr.P.C. Clearly, non-petitioner No. 1 has been pursuing her legal remedies with due diligence. Therefore, she cannot be faulted for delay and laches in filing the application under Section 125 Cr.P.C.

28. According to the petitioner, he has challenged the order dated 13.04.2009 by filing the revision petition before this Court. The said revision petition is presently pending before this Court. However, even if the judgment were passed in the said revision petition, the judgment would be prospective in nature. Therefore, the question whether the non-petitioner is entitled to the arrears of interim maintenance or not, the said issue shall not be affected by any judgment passed by this Court in the revision petition filed by the petitioner. Since the petitioner was directed to pay ₹ 7,000/- vide order dated 13.04.2007, since he has failed to pay the said amount till present, he is legally bound to pay the said amount to non-petitioner.

29. For the reasons stated above, this petition is devoid of any merit; it is, hereby, dismissed

Radha Raman Srivastava v. State of Bihar, 2013 Cr.L.J. 459 (Patna H.C.) (27.06.2012)

Judge: Birendra Prasad Verma

Order

1. Heard learned counsel appearing on behalf of the petitioner, learned Additional Public Prosecutor appearing on behalf the State of Bihar, and learned counsel appearing on behalf of the opposite party No. 2. The petitioner, being aggrieved by order dated 11.8.2008 passed in Cri. Appeal No. 241 of 2008 by learned Additional Sessions Judge-IV, Patna, affirming the judgment and order dated 22nd May, 2008 passed in Domestic Violence Case No. 9 of 2007 by the learned Judicial Magistrate, 1st Class, Patna, with some modification, has preferred the present revision application under sections 397 and 401 of the Code of Criminal Procedure, 1973, questioning the validity, correctness and propriety of the orders passed by the learned courts below.

2. It is admitted case of the parties that the petitioner had solemnized his marriage with opposite party No. 2 on 18.6.1999 in accordance with Hindu rituals. According to the petitioner, unfortunately, opposite party No. 2, from the very first day of her marriage, refused to co-habit with the petitioner and refused to have any physical relationship with him, despite all efforts made by him. Consequently, the petitioner filed Divorce Case No. 285 of 2000 before the learned Principal Judge, Family Court, Patna, seeking a decree of divorce from the opposite party No. 2 primarily on the ground of cruelty, which is still pending before learned Additional Principal Judge, Family Court, Patna, for its final adjudication.

3. It is also the admitted case of the parties that in the aforesaid Divorce Case filed by the petitioner an ad interim maintenance at the rate of ₹ 4,000/- per month was directed to be paid to opposite party No. 2 by an order dated 26.9.2006. Costs of the litigation of ₹ 5,000/- was also awarded in favour of opposite party No. 2.

4. It is the case of the petitioner that the amount of ad interim maintenance is being deducted from his salary by virtue of order passed by the Family Court, Patna, and is being paid to opposite party No. 2. However, for certain interregnum period, when the petitioner had not been paid his salary the amount of ad interim maintenance of opposite party No. 2 is still due, which the petitioner is, now, prepared to pay.

5. While the aforesaid Divorce case, filed by the petitioner, was still pending, opposite party No. 2 filed an application under Section 12 of The Protection of Women From Domestic Violence Act, 2005 (for short 'the PWDV' Act) giving rise to Domestic Violence Case No. 09 of 2007 in the court of learned Judicial Magistrate, Ist Class, Patna. It is the

case of opposite party No. 2 that on 13.9.2007, she visited the house of the petitioner for performing Teej festival, but she was not allowed to enter inside the house and was humiliated and was driven out from there. According to the opposite party No. 2 abuses were also hurled upon her by the petitioner and his other family members. Therefore, the petitioner is alleged to have committed domestic violence and as such opposite party No. 2 is entitled to have protection, compensation, and other reliefs under the provisions of the PWDV Act.

6. In the aforesaid Domestic Violence case, notice was issued to the petitioner and he filed his written statement disputing the allegation of opposite party No. 2. It was specifically pleaded that opposite party No. 2 was living separately for last several years, since after some time of her marriage, and there is absolutely no domestic relationship between the petitioner and opposite party No. 2. It was also pleaded that since opposite party No. 2 was getting ad interim maintenance at the rate of ₹ 4,000/- per month pursuant to the order passed by the learned Family Court, Patna in the Divorce case filed by the petitioner, therefore, the present application is not maintainable and opposite party No. 2 is not entitled to get any relief.

7. On consideration of materials produced by the parties, order dated 22.5.2008 was passed by learned Judicial Magistrate, Ist Class, Patna, whereby it was held that opposite party No. 2 is not entitled to get any relief under Sections 20, 22 and 23 of the PWDV Act. However, learned Judicial Magistrate has allowed her claim in terms of Sections 18 and 19 of the PWDV Act prohibiting the petitioner and his other family members from committing any act of domestic violence against the opposite party No. 2 and further directing the petitioner to allow her to live in his residential house, otherwise a rented house should be provided to her, and rent at the market rate should be paid.

8. The petitioner, being aggrieved by the aforesaid order, preferred Cri. Appeal No. 241 of 2008, which was finally heard and disposed of by the impugned appellate order dated 11th August, 2008, passed by the learned Additional Sessions Judge-IV, Patna, modifying the order passed by the learned Magistrate and directing the petitioner to pay a lumpsum amount of ₹ 1,000/- per month to opposite party No. 2 for her residence. Hence, the present criminal revision application.

9. Learned counsel appearing on behalf of the petitioner has raised a very short question. According to him on the basis of materials produced by the parties, the learned Magistrate has recorded a finding of fact that no domestic violence was committed by the petitioner against opposite party No. 2. It is also contended that since opposite party No. 2 is living separately, since immediately after some time of her marriage on 18.6.1999, there is absolutely no domestic relationship between the petitioner and opposite party No. 2;

though the Divorce case filed by the petitioner is still pending and the matter requires adjudication by the learned Family Court, Patna.

10. Learned counsel appearing on behalf of opposite party No. 2 has strenuously argued the matter and supported the impugned order passed by the learned Magistrate and affirmed by the learned appellate court with some modification. It is contended that till the matter in the Divorce case is finally decided by learned Family Court, opposite party No. 2 is legally wedded wife of the petitioner and, therefore, he cannot escape from his liability of maintaining and providing accommodation to his wife with full comfort. In support of his contention, he has placed reliance upon a judgment of the Apex Court in the Case of V. D. Bhanot v. Sabita Bhanot, reported in I (2012) DMC 482 (SC) : (AIR 2012 SC 965) and a judgment of the Delhi High Court.

11. After having heard the parties at length and on consideration of materials available on record, the following conclusions can easily be arrived:--

(a) The marriage between the petitioner and opposite party No. 2 had taken place on 18.6.1999 according to Hindu rituals.

(b) Immediately, after solemnization of marriage, relationship between the petitioner and opposite party No. 2 had taken an ugly turn. According to the petitioner, opposite party No. 2 refused to co-habit with the petitioner from the date of her marriage itself, though this allegation has been disputed and challenged by opposite party No. 2.

(c) Divorce Case No. 285 of 2000 filed by the petitioner seeking a decree of divorce on the ground of cruelty is still pending before the learned Family Court, Patna.

(d) By order dated 26.9.2006 passed by learned Additional Principal Judge, Family Court, Patna, an ad interim maintenance at the rate of ₹ 4,000/- per month was directed to be paid to opposite party No. 2 by the petitioner and that amount is being deducted from the salary of the petitioner excepting for certain interregnum period, when the petitioner was not being paid his salary. The petitioner has undertaken to pay the arrear amount of ad interim maintenance to opposite party No. 2 for the interregnum period, which could not be paid earlier.

(e) On the basis of materials produced by the parties, the learned Magistrate has recorded a finding of fact that opposite party No. 2 has failed to prove the case of domestic violence said to have taken place on 13.9.2007. The learned Magistrate has also recorded a finding of fact that the Protection Officer has not conducted proper enquiry regarding allegation of domestic violence made by opposite party No. 2.

12. In order to appreciate the points raised on behalf of the parties and in order to appreciate the validity and correctness of the impugned orders passed by the courts below, examination/scrutiny of Sections 18 and 19 of the PWDV Act would be relevant, which are reproduced herein below:--

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.

(Emphasis added)

13. On plain reading of Sections 18 and 19 of the PWDV Act, it is apparent that for passing any order under Section 18 of the PWDV Act, the Magistrate has to be satisfied about the domestic violence having taken place or is likely to take place.

However, for passing any order under Section 19 of the PWDV Act, the Magistrate is obliged to record his satisfaction about commission of domestic violence. Merely on surmises and conjecture, orders under Sections 18 and 19 of the PWDV Act cannot be passed. In the present case, the learned Magistrate has conclusively recorded a finding of fact that opposite party No. 2 has failed to prove charge of domestic violence having taken place on 13.9.2007. It is also apparent that opposite party No. 2 is already getting ₹ 4,000/- per month from the petitioner as an ad interim maintenance by virtue of an order passed in the Divorce case. She cannot claim that she is left in the lurch and is not in a position to maintain herself. Further, it is apparent that the petitioner and the opposite party No. 2 are living separately for more than 12 years, as the Divorce Case was filed by the petitioner in the year 2000. It is not the case of opposite party No. 2 that since the date of institution of the aforesaid case she ever lived with the petitioner in a shared household. Therefore, there does not appear to be domestic relationship between the petitioner and the opposite party No. 2.

14. Since the learned Magistrate has recorded a finding of fact that opposite party No. 2 has failed to prove the case of domestic violence having taken place as alleged by opposite party No. 2, therefore, to my mind, the learned Magistrate had no occasion to pass the impugned order allowing the claim of opposite party No. 2 in terms of Section 19 of the PWDV Act. The learned Magistrate has also not recorded a finding of fact that domestic violence is likely to take place or the petitioner has ever attempted to commit domestic violence on the separate abode of opposite party No. 2 after the institution of divorce case in the year 2000. The powers exercised by the learned Magistrate seem to be arbitrary and in violation of the mandates of The PWDV Act. The impugned order passed by the learned Magistrate is not sustainable in eye of law. Learned lower appellate court has also failed to appreciate the points involved in the present case, and has mechanically affirmed the order with minor modification. Consequently, the orders impugned cannot be sustained.

15. In the result, this application stands allowed. The impugned orders dated 22nd May, 2008 passed by the learned Judicial Magistrate, Ist Class, Patna, and the impugned appellate order dated 11th August, 2008 passed by the learned Additional Sessions Judge-IV, Patna are hereby set aside.

16. However, this does not conclude the matter. Admittedly, the petitioner has not paid the amount of ad interim maintenance to opposite party No. 2 for certain period. According to the averments made in the counter-affidavit filed on behalf of opposite party No. 2 in the present proceeding, more than ₹ 1.5 lacs is due against the petitioner towards

ad interim maintenance payable to her. The petitioner is hereby directed to pay the entire arrear amount of ad interim maintenance, as directed and calculated by the learned Additional Principal Judge, Family Court, Patna in Divorce Case No. 285 of 2000 and that should be paid to opposite party No. 2 within a maximum period of three months from today. If arrears amount of ad interim maintenance is not paid within the aforesaid prescribed time, then the learned Additional Principal Judge, Family Court, Patna shall be at liberty to take all coercive measures for recovery of the aforesaid arrear amount of ad interim maintenance either from the household property of the petitioner or from his salary through his employer, or through any other legal means. The parties are left to bear their costs of the present proceeding.

Sunil @ Sonu v. Sarita Chawla, 2009 (5) MPHT 319 (Madhya Pradesh H.C.)(31.08.2009)

Judge: N.K. Mody

Order

1. Being aggrieved by the judgment dated 18-4-2009 passed by Xth Additional Sessions Judge, Indore, in Cr.A. No. 162/2009, whereby the order dated 12-3-2009 passed by JMFC, Indore, in Criminal Case No. 1911/2009, whereby the application filed by the petitioners regarding maintainability of the proceedings was dismissed, was maintained, the present revision petition has been filed.

2. Short facts of the case are that the respondent filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (No. 43 of 2005) (which shall be referred hereinafter as 'Act'), wherein it was alleged that petitioners are father and son. It was alleged that marriage of respondent took place with one Shankar Chawla. Out of the wedlock respondent delivered three children and two years before Shankar Chawla died. Thereafter respondent fall in love with petitioner No. 1. It was alleged that thereafter the respondent was married to petitioner No. 1 in a temple as per Hindu rituals at Ujjain. It was alleged that thereafter respondent was living with petitioner No. 1 at Raviratan Apartment, Prem Nagar, Indore. It was alleged that before the marriage petitioner No. 1 assured that petitioner No. 1 shall take care of the three children of the respondent. It was alleged after the marriage petitioner No. 1 took the respondent and also her children to Ajmer, where they lived together for a period of one week. Thereafter respondent and petitioner No. 1 went to Jaipur and thereafter came back to Indore. It was alleged that thereafter the petitioner No. 1 quarreled with the respondent and committed the domestic violence. It was alleged that the respondent was pregnant and she was aborted

at Sourabh Hospital, Khajoori Bazar, Indore. It was alleged that the petitioner No. 1 is carrying his business of mobile and earning ₹ 25,000/- per month but is not paying any amount of maintenance to the respondent. In the complaint it was prayed that petition filed by the respondent be allowed and the petitioners be restrained from causing domestic violence. Along with the application petition was also filed under Section 23 of the Act for interim relief. The said application was contested by the petitioners. After hearing the parties learned Trial Court allowed the application vide order dated 22-7-2008 and directed the petitioner to pay maintenance @ ₹ 2,000/- per month, against this order the appeal was filed by the petitioners under Section 29 of the Act, which was numbered as Cri. Appeal No. 192/2009. This appeal was barred by time, therefore, prayer for condonation of delay was also made. The appeal was dismissed vide order dated 18-4-2009. Since the amount of maintenance was not paid by the petitioners in compliance of the interim order passed by the learned Trial Court, therefore, a complaint was filed by the respondent under Section 31 of the Act on 2-1-2009, wherein it was alleged that by not making the payment of maintenance as directed by this Court petitioners have committed offence, which is punishable under the Act. It was prayed that after taking cognizance petitioners be convicted. The application was contested by the petitioners by moving an application, whereby a preliminary objection was raised that complaint itself is not maintainable. After hearing the respondent vide order dated 13-7-2009 application filed by the petitioners for dismissal of the complaint was dismissed, against which an appeal was filed, which was also dismissed, against which the present petition has been filed.

3. Shri P.M. Bapna, learned Counsel for the petitioners argued at length and submits that the impugned orders passed by both the Courts below are illegal and deserve to be set aside. It is submitted that the learned Trial Court by the interim order passed on the application for grant of maintenance has directed the petitioner No. 1 to pay the maintenance but the application has been filed by the respondent under Section 31 of the Act against petitioner No. 2 as well while there was no direction against petitioner No. 2. It is submitted that on the face of it no action could have been taken against petitioner No. 2 but this important fact has not been looked into by both the Courts below. Learned Counsel further submits that the complaint itself is not maintainable under Section 31 of the Act. It is submitted that the proceedings can be initiated under Section 31 of the Act only upon the breach of protection order or interim protection order by the respondent. It is submitted that the word respondent has been defined in Sub-section (q) of Section 2 of the Act, which reads as under:

(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.

Learned Counsel submits that the protection order can be passed under Section 18 of the Act, which empowers a Magistrate to pass a protection order in favour of the aggrieved person and prohibit the respondent for committing any act of domestic violence. It is submitted that the word aggrieved person has been defined in Sub-section (a) of Section 2, which reads as under:

(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.

Learned Counsel submits that similarly the word protection order has been defined under Sub-section (o) of Section 2 as under:

(o) "protection order" means an order made in terms of Section 18.

Learned Counsel submits that since no protection order has been passed by the learned Court below, whereby the petitioners have been prohibited from committing any act of domestic violence, therefore, prosecution of the petitioner No. 1 under Section 31 of the Act itself is not maintainable. Learned Counsel submits that Section 28 of the Act lays down the procedure of the proceedings under Sections 12, 18, 19, 21, 22, 23 and offences under Section 31 of the Act, which has to be governed by the Code of Criminal Procedure. It is submitted that in view of the aforesaid provisions of law the impugned orders passed by the learned Courts below whereby the objection filed by the petitioners relating to maintainability of the complaint has been dismissed, is illegal and deserves to be quashed.

4. Shri AS. Rathore, learned Counsel for the respondent submits that the application filed by the petitioner has rightly been dismissed by both the Courts below as the interim order passed by the learned Trial Court, in exercise of the powers conferred under Section 23 of the Act was not complied with. It is submitted that the order, which was passed by the learned Court below is covered under Sub-section (1) of Section 18 of the Act. It is submitted that in the facts and circumstances of the case petition filed by the petitioners be dismissed.

5. From perusal of the record, it is evident that the interim order passed by the learned Trial Court regarding the payment of maintenance was confirmed by the Appellate Court as the appeal was dismissed on account of delay. The interim order was not further challenged. Thus same has attained finality. Now the only question, which requires consideration is whether the interim order passed by the learned Trial Court, whereby the maintenance was awarded is a protection order and on account of breach of protection order, the proceedings can be initiated against the petitioner under Section 31 of the Act. Section 18 of the Act empowers the Court for passing a protection order against a respondent, who commits any act of domestic violence. In exercise of the powers conferred by Section

37 of the Act the Central Govt, has framed the Rules. As per Rule 6 every application of the aggrieved person under Section 12 of the Act is required to be filed in Form 11. Sub-clause III of Form No. 1 deals with economic violence according to which not providing money for maintaining of food, clothes, medicine etc. is amounting to the economic violence for which the Court is empowered to pass a protection order. As per Sub-section (1) of Section 28 of the Act the proceedings are required to be governed by the provisions of Cr.PC. As per Sub-section (2) of Section 28, the Court is not prevent from laying down its own procedure for disposal of an application of Section 12 of the Act. In the facts and circumstances of the case where no amount of maintenance has been paid by the petitioner, no illegality was committed by the learned Trial Court in initiating the proceedings under Section 31 of the Act.

6. In view of this the petition filed by the petitioner has no merits and is hereby dismissed.

TEMPORARY CUSTODY ORDERS

A. Gomathieswar v. G. Rameena, Crl.O.P.No.569 of 2007 in M.P.Nos.1 & 2 of 2007 (Madras H.C.)(8.4.2008)

Judge: S. Palanivelu

Judgment

The first petitioner is the husband of the respondent. Second and third petitioners are his parents and fourth petitioner is his sister. The marriage of the petitioner with the respondent was solemnized on 05.09.2003 at Chennai. After the marriage there had been a strained relationship between the spouses which culminated in lodging of a complaint by the respondent in Crime No.13 of 2006 on 30.09.2006 on the file of the Thallakulam Police Station at Madurai, registered under Sections 498 and 342 IPC and under Section 4(1) of Dowry Prohibition Act. A son was born to them who has been named as 'Arumugam' and he is now aged at about three years. The respondent has filed H.M.O.P.No.443 of 2006 on the file of the Family Court, Madurai against the first petitioner for restitution of conjugal rights, while the first petitioner has instituted a matrimonial proceedings in O.P.No.284 of 2006 on the file of learned Principal Sub Judge, Chengelpet for dissolution of marriage.

2. The respondent filed a petition before the learned Judicial Magistrate II, Madurai under Sections 23(1) and 21 of Protection of Women from Domestic Violence Act, 2005 for the relief of custody of the child namely, Arumugam in her favour from the present petitioners.

3. The learned counsel for the petitioner Mr.S.Ravi, would contend that the petition before the learned Judicial Magistrate No.2 seeking custody of the child is not at all maintainable before the Judicial Magistrate Court, and that for the said relief the respondent has to approach the District Court under the Provisions of Guardian and Wards Act, 1890. It is his further contention that no provision has been embodied in Protection of Women from Domestic Violence Act, 2005 (herein after referred to as "the Act") and the filing of the petition for the very purpose of getting custody of the child is in violation to the provisions of the Act. It is his bottom-line argument that only in a proceedings under Sections 18 to 20 of the Act, section 21 of the Act could be invoked for the relief of temporary custody of the child and without initiating any proceedings under Sections 18 to 20, no petition will lie under Section 21 of the Act independently.

4. The learned counsel for the respondent Mr.S.Subbiah, would state that respondent has filed main complaint before the Judicial Magistrate Court No.II, Madurai under Section 21 of the Act, for the custody of the child in which, she has filed a miscellaneous petition for interim relief of temporary custody of the child.

5. In this context, it is to be mentioned here that Section 18 of the Act provides for protection norms to be passed by the competent Judicial Magistrate, Section 19 deals with residence norms to be issued by the Judicial Magistrate under Section 12(1) of the Act and Section 20 enlists the monetary reliefs available to the aggrieved person while disposing of an application under Section 12(1) of the Act. It is profitable to extract Section 21 of the Act, which reads as follows:

"21.Custody Orders - Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act 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. A close reading of Section 21 of the Act would candidly show that only if a protection petition is pending before the competent Judicial Magistrate, then the aggrieved person may seek relief of temporary custody of any child or children. Pendency of petition for protection order or any other relief under this Act is a sine quo non for filing of application under Section 21 of the Act. It is a conceded fact that no petition either for protection order or for any other relief under the Act has been filed by the respondent before the Judicial Magistrate Court. In view of this matter, the contention that the petition for temporary custody of the child before the Judicial Magistrate Court independently, i.e., without filing any petition for the relief provided in Sections 18 to 20, would stand, deserves to be discountenanced.

7. In the light of the above said observation, the petition filed by the respondent before the Judicial Magistrate Court for custody of child cannot be sustained as the Act does not provide for the same. She is always at liberty to invoke the jurisdiction of District Court under the Provisions of the Guardian and Wards Act, 1890 for necessary relief in this regard. This petition deserves to be allowed.

8. In fine, the petition is allowed quashing the proceedings in C.C.No.23 of 2007 on the file of the Court of Judicial Magistrate No.II, Madurai. Consequently, the connected miscellaneous petitions are closed.

Balwinder Singh v. Herpreet Kaur, 2013 Cr.L.J. (NOC) 409 (Punjab and Haryana H.C.) (10.07.2012)

Judge: Mehinder Singh Sullar

Judgment

1. Tersely, the facts, which need a necessary mention for the limited purpose of deciding the core controversy, involved in the instant revision petition and emanating from the record, are that, Harpreet Kaur (respondent-wife) filed a criminal complaint against her husband petitioner Balwinder Singh and his other relatives under Section 12 and 18 to 23 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter to be referred as "the Act"). She has also moved an application for interim custody of her minor girl Rupinder Kaur, aged 3 years. The Magistrate accepted her prayer, vide impugned order dated 12.12.2011, which, in substance is as under:-

   "Accordingly, the request of the interim relief of the custody of the minor child Rupinder Kaur made by the petitioner is, hereby accepted. However, the respondent would be at liberty to meet the minor children Rupinder Kaur as per the terms & conditions to be imposed by this Court after hearing the parties. Now to come up on 20.12.2011 for appearance of the petitioner and respondent No.1 in person and for further directions regarding the terms & conditions of a handing over the custody of the child Rupinder Kaur to the petitioner by the respondent No.1 as well as regarding permissible visits of the respondent No.1 to the minor child Rupinder Kaur."

2. Instead of complying with the directions contained in the impugned order of Magistrate, the petitioner-husband filed the appeal, which was dismissed as well by the Additional Sessions Judge, by virtue of impugned judgment dated 15.2.2012.

3. The petitioner-husband did not feel satisfied with the impugned orders and preferred the present revision petition, invoking the provisions of Section 401 Cr.PC.

4. After hearing the learned counsel for the parties, going through the record with their valuable help and after deep consideration over the entire matter, to my mind, there is no merit in the instant revision petition in this context.

5. Ex facie, the argument of learned counsel for petitioner-husband that since the Magistrate did not have the jurisdiction to grant interim custody of minor child to the respondent-wife, so, the impugned orders are illegal, is not only devoid of merit but misplaced as well.

6. As is clear that Section 21 of the Act postulates that "Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act 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." That means, the Magistrate has vast power to order interim custody of minor child and the contrary contention of learned counsel for petitioner "stricto sensu" deserves to be and is hereby repelled under the present set of circumstances.

7. Moreover, it is not a matter of dispute that Rupinder Kaur is only girl child of three years and a minor of such tender age requires the love, affection, emotion, care and maintenance by the mother. The paramount consideration in such matters is the welfare of the child. The Courts below have categorically recorded the finding that the welfare of Rupinder Kaur minor shall be best protected if her custody is given to her mother, where she would be able to have the company of her brother Satkar Singh. The learned counsel for petitioner did not point out any material/ground, muchless cogent, to indicate as to how and in what manner, a female child of three years would be better protected by the petitioner- husband than her mother, respondent-wife.

8. Meaning thereby, both the Courts below have rightly recorded the cogent grounds in the impugned orders. Such orders containing valid reasons cannot possibly be interfered with by this Court, in the exercise of limited revisional jurisdiction under Section 401 Cr.PC, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned orders deserve to be and are hereby maintained in the obtaining circumstances of the case.

9. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

10. In the light of aforesaid reasons, as there is no merit, therefore, instant revision petition is hereby dismissed as such.

COMPENSATION

Saraswathy v. Babu, 2014 Cr.L.J. 1000 (SC) (Supreme Court) (25.11.2013)

See page 474 for full text of judgment.

Sunil Singh v. Smt. Neetu Singh, First Appeal M 35 of 2010 (Chattisgarh H.C.) (03.09.2010)

Judge: T.P. Sharma, R.L. Jhanwar

Judgment

T.P. Sharma

1. Challenge in this appeal is to the order dated 25-2-2010 passed by the Judge, Family Court, Bilaspur in Misc. Criminal Case No.592/2005, whereby learned Judge, Family Court has awarded monetary relief of ₹ 3,000/- per month and ₹ 5 lakhs as one time payment under Sections 19 & 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act of 2005'), to the respondent.

2. Order is impugned on the ground that the Judge, Family Court was not having jurisdiction to award such relief and by awarding such relief, the Judge, Family Court has committed illegality.

3. Brief case of the parties is that the parties are legally wedded spouses and as per the application filed before the Judge, Family Court, Bilaspur on behalf of the respondent, originally the respondent has claimed maintenance of ₹ 5,000/- per month under Section 125 of the Code of Criminal Procedure, 1973 (for short 'the Code') against the appellant. The claim was denied by the appellant. During the pendency of the proceeding, the respondent has filed application under Sections 17, 18, 19, 20, 22 & 26 of the Act of 2005 read with Section 7 of the Family Courts Act, 1984 (for short 'the Act of 1984') for grant of monetary relief in terms of Section 20 of the Act of 2005. The application was objected by the appellant. Finally, after providing opportunity of hearing, the Judge, Family Court, while dismissing the application filed under Section 125 of the Code, granted aforesaid monetary relief under Sections 19 & 22 of the Act of 2005.

4. We have heard learned counsel for the parties, perused the order impugned and record of the Court below.

5. Learned counsel for the appellant vehemently argued that in the present case, the Judge, Family Court was not competent to grant any relief under the provisions of the Act of

2005 and only the Magistrate concerned was competent to grant relief under the provisions of the Act of 2005 may be in addition to any relief granted in any legal proceeding pending before the Civil Court, Family Court or Criminal Court. However, in the present case, the Judge, Family Court was not having jurisdiction, but has granted such monetary relief and, therefore, the order impugned is not sustainable under the law. Learned counsel further argued that the Act of 2005 came into force on 26-10-2006 and is not retrospective. Therefore, even otherwise, the Family Court is not competent to grant any relief for the act committed by the parties prior to enforcement of the aforesaid Act. Learned counsel placed reliance in the matter of Shyamlal & others v. Kanta Bai in which the High Court of Madhya Pradesh has held that the Act of 2005 is not retrospective, therefore, the parties are not entitled for any relief relating to the act committed prior to enforcement of the Act.

6. On the other hand, learned counsel for the respondent vehemently opposed the appeal and submitted that no provisions for appeal to High Court have been provided under the Act of 2005 and, therefore, the instant appeal is not maintainable. The Legislature has provided for appeal under the Act of 2005 that too before the Sessions Judge, therefore, appeal before this Court is not competent. Learned counsel for the respondent placed reliance in the matter of Smt. Neetu Singh v. Sunil Singh in which this Court has held that any application under Section 12 of the Act of 2005 is not maintainable before the Family Court and is only maintainable before the concerned Magistrate.

7. Vide order impugned, while denying the claim of maintenance of the respondent under Section 125 of the Code on the ground of her ability to maintain herself, the Judge, Family Court has awarded monetary relief to the respondent under Sections 19 & 22 of the Act of 2005. Section 19 of the Act of 2005 does not provide provision for maintenance or grant of compensation, but clause (d) of sub-section (1) of Section 20 of the Act of 2005 provides provision for maintenance in addition to an order of maintenance under Section 125 of the Code. Section 22 of the Act of 2005 provides for award of compensation on account of damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent. Para 41 of the order impugned reveals that impliedly the appellant has committed domestic violence and has caused mental torture and emotional distress to the respondent. Sections 20 & 22 of the Act of 2005 read as follows: -

"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, 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 to 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 incharge 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."

8. Definitely, in accordance with the provisions of Sections 20 & 22 of the Act of 2005, the Court competent to grant such relief is competent to award monthly maintenance in addition to an order passed under Section 125 of the Code and also competent to award compensation on account of mental torture and emotional distress caused by the appellant.

9. As regards competency to grant such relief by the Family Court, the Family Courts Act, 1984 (66 of 1984) came into force in the undivided State of Madhya Pradesh on 19-11-1986 vide notification No.79/6/86 dated 14-11-1986 and the Protection of Women from Domestic Violence Act, 2005 (No.43 of 2005) came into force on 26-10-2006.

10. As per Section 26 of the Act of 2005, any relief available under Sections 18, 19, 20, 21 and 22 of the Act of 2005, may also be sought in any legal proceeding, before a Civil Court, Family Court or a Criminal Court. Section 12 of the Act of 2005 provides for filing of an application by an aggrieved person before the Magistrate competent to grant such relief, but if any legal proceeding is pending before a Civil Court, Family Court or a Criminal Court relating to any relief which may be available to the person concerned under Sections 18, 19, 20, 21 and 22 of the Act of 2005, such relief may be sought in such legal proceeding.

11. While dealing with same question, this Court has decided that independent application under Section 12 of the Act of 2005 is not maintainable before the Family Court, but the application for grant of relief available under Sections 18, 19, 20, 21 and 22 of the Act of 2005 is maintainable before a Civil Court, Family Court or a Criminal Court in any pending proceeding.

12. Admittedly, the respondent has filed application before the Family Court in pending proceeding of Section 125 of the Code. Therefore, the Family Court was competent to pass order in terms of Section 26 of the Act of 2005.

13. As regards competency of this appeal, as per Section 29 of the Act of 2005, the order made by the Magistrate is appealable before the Court of Sessions. In the present case, the Magistrate has not passed any order and the Judge, Family Court has passed the order impugned under Section 26 of the Act of 2005. The order passed by the Judge, Family Court is appealable under sub-section (1) of Section 19 of the Act of 1984. Sub-section (2) of Section 19 of the Act of 1984 creates bar in filing appeal relating to consent order or any order passed under Chapter IX of the Code i.e. relating to maintenance. The order impugned has not been passed under Chapter IX of the Code or is not a consent order and, therefore, appeal under sub-section (1) of Section 19 of the Act of 1984 is competent.

14. As regards competency of the order in the light of prospective operation of the Act of 2005, the expression "aggrieved person" is defined in clause (a) of Section 2 of the Act of 2005 which reads as under: -

> "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;

15. In accordance with the definition of the expression "aggrieved person", 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 is an aggrieved person. It includes any woman who has been subjected to any act of domestic violence.

16. As per claim of the parties, the respondent is not a divorcee wife and marriage between the parties has not been dissolved by decree of divorce prior to enforcement of the Act of 2005 which may disentitle the respondent from claiming any relief under the Act of 2005 on the ground that after enforcement of the Act of 2005, the appellant has not committed any torture or has not caused emotional distress, still the respondent is legally wedded wife of the appellant and is residing separately. The Family Court has considered the factum of mental torture and emotional distress. In these circumstances, the Judge, Family Court was also competent to pass order under Sections 20 & 22 of the Act of 2005.

17. As regards the amount of maintenance and award, considering the ability of the appellant, the Judge, Family Court has awarded maintenance of ₹ 3,000/- per month to the respondent. Virtually, under Section 20 (1) (d) of the Act of 2005, the appellant was under obligation to maintain his wife in dignified manner, but instead of maintaining her, the appellant has deserted her. Therefore, the award of maintenance of ₹ 3,000/- per month under Section 20 (1) (d) of the Act of 2005 is neither excessive nor unjust.

18. As regards the compensation of ₹ 5 lakhs under Section 22 of the Act of 2005, the respondent has not proved any immovable property or definite source of income of the appellant on the ground of mental torture and emotional distress. The Judge, Family Court has awarded compensation of ₹ 5 lakhs. At the time of awarding compensation, the Courts are required to consider all surrounding circumstances. As per evidence of the parties, marriage between the parties was solemnized on 28-4-2003, they resided together till 16-9-2004 and they are issueless. Both the parties have made allegations against each other. The appellant was in dominating position and was under obligation to maintain his wife in dignified manner. However, the appellant has failed to discharge his aforesaid obligation. In these circumstances, definitely, the appellant is liable for payment of compensation to the respondent under Section 22 of the Act of 2005, but the amount of compensation of ₹ 5 lakhs is not only excessive and unjust, but award of such compensation is arbitrary. At the time of awarding compensation, the Courts are required to grant reasonable compensation. Considering the aforesaid facts, compensation of ₹ 50,000/- under Section 22 of the Act of 2005 would be just and proper.

19. Consequently, the appeal is partly allowed. Compensation of ₹ 5 lakhs awarded against the appellant under Section 22 of the Act of 2005 is hereby modified and instead of ₹ 5 lakhs the appellant is directed to pay compensation of ₹ 50,000/- to the respondent. However, the amount of maintenance of ₹ 3,000/- per month awarded to the respondent under Section 20 (1) (d) of the Act of 2005 is hereby maintained. No order as to costs.

20. Advocate fees as per schedule.

21. Decree be drawn up accordingly.

Yadvinder Singh v. Manjeet Kaur, Crl. Rev. No. 3131 of 2010 (Punjab and Haryana H.C.)(26.11.2010)

See page 352 for full text of judgment.

Swapan Kr. Das v. Aditi Das, 2012 (2) CHN 815 (Calcutta H.C.) (16.08.2011)

See page 481 for full text of judgment.

7. EVIDENCE, BURDEN OF PROOF AND STATUTORY INTERPRETATION

Madhusudan Bhardwaj. v. Mamta Bhardwaj, 2009 Cr.L.J. 3095, II (2010) DMC 57 (Madhya Pradesh H.C. (Gwalior Bench))(31.03.2009)

Judge: B.M. Gupta

Order

1. Feeling aggrieved with an order dated 6/9/2007 passed by 4th Additional Sessions Judge, Gwalior in Criminal Appeal No. 164/07, this revision has been preferred by all the three petitioners. Vide impugned order, the learned Judge has affirmed an order dated 9/7/2007 passed by Judicial Magistrate First Class, Gwalior in criminal case No. 5279/2007, whereby the learned Magistrate has partly allowed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act") filed by respondent-Mamta Bhardwaj, the wife of the petitioner No. 1-Madhusudan Bhardwaj and has- (1) restrained the petitioners not to create any domestic violence with the respondent, (2) directed the petitioners to permit the respondent to share her residence in family house or in alternate, petitioner No. 1 to arrange suitable house of the same status for her, (3) directed the petitioners to execute their bonds of ₹ 10,000/- (₹ Ten Thousand Only) each for a condition not to create domestic violence with the respondent, and (4) directed the petitioners to pay ₹ 10,000/- as compensation to the respondent in lieu of the cruelty played by them on her. Vide impugned order, the prayer of providing stridhan to the respondent has been negated.

2. The facts of the case, in brief, are that respondent has filed aforesaid application dated 17/5/2007 in the Court of learned Magistrate mentioning therein that she is wife of the petitioner No. 1. Petitioner No. 2 is her sister-in-law (Nanad) and petitioner No. 3

is her mother-in-law. Respondent was married with the petitioner No. 1 on 2/6/2006. After marriage, she started living with the petitioner No. 1 in his family house situated at 3-Saraswati Nagar, University Road, Thatipur, Gwalior. In the same house petitioner Nos. 2 and 3 are also living. Petitioner No. 2 is living alongwith her two minor children. Petitioner No. 2 has been deserted by her husband. On account of her desertion, she is jealous of happy family life of respondent and petitioner No. 1. After marriage, on demand of ₹ 5,00,000/- and a car, the behaviour of the petitioners was cruel with the respondent. She was usually beaten by them. When the cruelty could not be tolerated by the respondent, she lodged a criminal case No. 26/2007 against the petitioners under Section 498-A of IPC. On 1/4/2007 petitioners left the respondent in the aforesaid family house and left the house after locking the rooms alongwith jewellery and valuables on the pretext that they are going to attend some marriage in the relationship. Thereafter, on 16/4/2007 at 11:00 p.m. petitioner Nos. 1 and 2 alongwith two unknown persons came and uttered filthy abuses to the respondent. They gave a threat to the respondent to leave the house else she will be killed. She informed about it to Superintendent of Police. On 26/4/2007 at about 6:40 p.m. when respondent was alone at the family house, all the three petitioners came, started beating to the respondent and forcibly deserted her from the house. At about 8:00 p.m. on the same day she lodged FIR at University Police Station, which was registered at Crime No. 57/2007. Again she was beaten by petitioner Nos. 2 and 3 at the family house. At the time of desertion petitioners kept all stridhan of the respondent amounting to ₹ 13,74,500/- with them.

3. Vide reply, all the allegations, except the fact of marriage, have been denied by the petitioner No. 1. It was further mentioned in the reply that false allegations have been made on behalf of the respondent to cast aspersion on the pious relationship of brother and sister. On the ground of false allegation petitioners were to be arrested. The relation of wife and husband has become dead and now there is no possibility of living together. On account of the cruelty played by the respondent, the petitioner No. 1 has been compelled to live separately from his family house. The respondent brought antisocial elements at the family residence of the petitioners for the purpose of hooliganism. In these circumstances, petitioner No. 1 has been compelled to file a petition for divorce, which is pending.

4. Shri Prashant Sharma, learned Counsel appearing on behalf of the petitioners, has assailed the impugned order mainly on the ground, that without providing an opportunity of leading evidence, merely on the allegations mentioned in the application and hearing the oral arguments, the impugned order has been passed. In absence of the appropriate opportunity of hearing including opportunity of leading evidence, the impugned order is bad in law and deserves to be set aside. In support, he has drawn attention at Section 28 of the Act and Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as the "Rules") and has submitted that the procedure for

disposal of an application under Section 125 of Cr.P.C. ought to have been adopted by the learned Magistrate. Although the learned Magistrate is at liberty for laying down its own procedure under Sub-section (2) of Section 28 of the Act for disposal of such application, but not by excluding the procedure as laid down in Sub-section (1) of Section 28 of the Act and Sub-rule (5) of Rule 6 of the Rules, which provides same procedure as is applicable to applications under Section 125 of Cr.P.C. Applications under Section 125 of Cr.P.C. cannot be disposed of without providing opportunity of leading evidence. In support, he has drawn attention at the order of; Allahabad High Court in Het Ram v. Smt. Ram Kunwari 1975 CriLJ 656, Karnataka High Court in Sankarasetty Pompanna v. State of Karnataka and Anr., 1977 CriLJ 2072, and Gujarat High Court in Pendiyala Sureshkumar Ramarao v. Sompally Arunbindu and Anr., 2005 CriLJ 1455.

5. Shri Vishal Mishra and Smt. Sudha Dwivedi, learned Counsel appearing on behalf of the respondent have countered the aforementioned submissions of Shri Sharma. While drawing attention at Sections 18 and 28(2) of the Act and Rule 15 (6) of the Rules, it has been submitted that protection orders can be passed only after providing an opportunity of being heard. The Magistrate is at liberty for laying down its own procedure for disposal of such application. He has also submitted that copy of Adam check report, medical report, news paper clippings and CD were produced by the respondent alongwith her application. Those documents are sufficient evidence on which a Magistrate can become satisfied and issue a protection order. There is no requirement of providing an opportunity to the parties particularly the petitioners herein, to lead oral evidence in such cases. Although it is argued on behalf of the respondents that the CD was watched by the trial Court as well as by the Appellate Court in the open Court in the present of both the parties, but the same has not been admitted on behalf of the petitioners and none of the proceedings of both the Courts is indicative of this fact.

6. For appreciating the rival contentions, the procedure as adopted by the learned Magistrate is required to be seen at a glance, which has been mentioned in brief as under:

17/05/2007: Project Officer (Pariyojana Adhikari) Smt. Anju Shrivastava appeared alongwith respondent No. 2 before the learned Magistrate and filed an application under Section 12 of the Act supported by her affidavit alongwith one application of the same nature prepared by Project Officer on the information of the respondent and some documents, on which case No. 5279/2007 was registered. Notices to the petitioners were issued through the same Project Officer for 21/5/2007.

21/5/2007: Shri Prashant Sharma, learned Counsel appeared on behalf of the petitioners. Petitioners were directed to execute bail bond for their regular presence in the Court. They sought time to file reply. Time was given and the case was fixed for 4/6/2007. On the same day an oral prayer was made on behalf of the respondent to pass an interim

order, but the same was negated on the ground that no application for the purpose has been filed.

4/6/2007: Reply was filed on behalf of the petitioner No. 1. On demand, 2-3 days' time was given to both the parties for settlement. Case was fixed for 8/6/2007.

21/6/2007: One application for interim relief under Section 23 (ii) dated 4/6/2007 was filed on behalf of the respondent.

22/6/2007: Some documents were filed on behalf of the petitioners. Arguments heard, which could not be completed.

23/6/2007: Arguments heard. Case fixed for orders on 30/6/2007. On the same day an application for interim relief filed on 21/6/2007 on behalf of the respondent, was dismissed as not pressed on behalf of the respondent, as the case was already fixed for final arguments.

28/6/2007: Before 30/6/2007 an application for early hearing was filed on behalf of the petitioner No. 1 and filed some documents. Some documents were also filed on behalf of the respondent alongwith a CD.

30/6/2007: Final order could not be passed as watching of CD was felt necessary, hence, case was adjourned for 9/7/2007 for orders.

9/7/2007: Final order was passed.

7. To conclude the controversy between the parties perusal of relevant part of the provisions of Sections 18 and 28 of the Act and Rule 6(4) & (5) of the Rules alongwith the relevant part of the provisions of Section 126 of Cr.P.C. is required. (As provided by Rule 6(5) of the Rules, the procedure prescribed for disposal of an application under Section 125 of Cr.P.C., shall be applied for disposing of an application under Section 12 of the Act. On perusal of Section 125 of Cr.P.C., it provides the provision for maintenance of wives, children and parents, but procedure for disposal of such application has been given in Section 126 of Cr.P.C. Hence, instead of Section 125 of Cr.P.C., perusal of the procedure as prescribed in Section 126 of Cr.P.C., for disposal of an application under Section 125 of Cr.P.C., is required.). The same have been reproduced hereinbelow:

Section 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)to(g)....

Section 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.

Rule 6. Application to the Magistrate.-

(1) Every application of the aggrieved person under Section 12 shall be in Form II or as nearly as possible thereto.

(2) & (3)....

(4) The affidavit to be filed under Sub-section (2) of Section 23 shall be filed in Form III.

(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).*

Section 126 Cr.P.C. Procedure.-

(1) ....

(2) *All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made*, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that & (3)....

(Emphasis supplied)

8-A. It is true that nowhere in the Act any direction with regard to receiving or recording of evidence of the parties has specifically been mentioned. While inserting the provision with regard to procedure, Sub-section (1) of Section 28 of the Act a general and wide mandate has been given that all the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of the Act (including Section 12 of the Act also) shall be governed by the provisions of Code of Criminal Procedure, 1973. The word 'shall' gives a mandate that the procedure as laid down in Cr.P.C. shall have to be followed. It is also true that in Cr.P.C. for various type of cases different procedures have been mentioned e.g. in; (1) Chapter VIII, which deals with security for keeping the peace and for good behaviour, (2) Chapter IX, which deals with order for maintenance of wives, children and parents, (3) Chapter X, which deals with maintenance of public order and tranquility, and (4) Chapter XVIII to Chapter XXIX, which provide different procedures for trial of different offences. But, at the same time the Legislature in its wisdom has inserted Section 37 in the Act vesting powers with the Central Government to make Rules for carrying out different provisions of the Act. Sub-section (2) of Section 37 indicates that the Rule making power of the Central Government is very wide, in which it is provided that- in particular and without prejudice

to the generality of the foregoing powers, such Rules may provide for all or any of the following matters, namely, (a) to (m)…

8-B. Thus, although in Clause (a) to (I) some subjects have been enumerated on which the Rules may be framed by the Central Government, but at the same time it is also mentioned that this illustration of the subjects will not prejudice the generality of the powers given to the Central Government for framing Rules to carry out the provisions of the Act. This intention of the Legislature is further visible by perusing Clause (m) which provides that- rules may be framed on any other matter which has to be, or may be, prescribed. Under Section 37 of the Act, the Rules are framed which have been published in the Gazette of India. Extra., Pt.II, Section 3(i), dated 17th October, 2006, vide G.S.R No. 644(E), dated 17th October, 2006. Thus, these Rules framed by the Central Government are having statutory force and shall require to be given effect to. Although vide Sub-section (3) of Section 37 of the Act the parliament can amend or disagree with the Rules, yet unless such amendment or disagreement comes in existence, the operation of these Rules will remain in force and have to be effective. Perhaps considering the ambiguous situation, that in Section 28(1) of the Act the Legislature has given a mandate to follow the procedure as laid down in Cr.P.C., but the same has not been clarified as to what procedure will be adopted in dealing with the application under Section 12 of the Act, the Rule 6(5) has been framed. It appears that now the ambiguity has been removed by Rule 6(5) in further mandatory words by mentioning, that- the application under Section 12 shall be dealt with and order enforced in the same manner as laid down under Section 125 of Cr.P.C.

8-C. As observed by the three different Benches of High Court in aforementioned orders in the case of Het Ram (supra), Sankarasetty Pompanna (supra) and Pendiyala Sureshkumar Ramarao (supra) without providing opportunity of leading evidence such application cannot be disposed of. Similar is the procedure required to be adopted to deal with an application under Section 12 of the Act to comply the direction under Section 28(1) of the Act read with Rule 6(5) of the Rules.

8-D. In view of the aforementioned mandate, the learned Magistrate was required to comply with the provisions of this sub-rule read with Section 28(1) of the Act and was required to follow the procedure as laid down in the Code of Criminal Procedure for the application under Section 125 of Cr.P.C. Admittedly, that has not been followed. On this ground, the impugned order appears erroneous.

9-A. It is also true, that Sub-section (2) of Section 28 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 of the Act. By cumulative reading of Section 28 subsections (1) and (2) of the Act and Rule 6(5) of the Rules, it appears that Sub-section (2) of Section 28 of the Act appears to have been enacted looking to the peculiar nature of the Act and also the

existence of aforementioned ambiguity with regard to the provision of Section 28(1) of the Act, but now that ambiguity has been removed by the Central Government under its powers given by Section 37 of the Act.

9-B. Apart from the above, the arguments advanced on behalf of the respondent that merely by perusing the aforementioned documents viz. Adam check report, medical report, news paper clippings alongwith CD and also hearing of the arguments, the final order could have been passed. It neither appears in accordance with the intention of the Legislature nor practicable for a judicial forum, because there may be cases in which documents of the rival parties on record and arguments advanced by the parties in support thereof, may be contradictory on disputed facts. In such circumstances it may become difficult for a Magistrate to conclude that the stand of which of the parties is truthful. To overcome such ambiguous situation, the theory of leading evidence on oath, providing opportunity to cross-examine the witnesses of opposite party, has been followed since very long time and has also been tested on the touchstone of the principles of natural justice. On such evidence, the submissions of rival parties can be evaluated by a Magistrate for coming to a right conclusion. That may help him to conclude the controversy in justified manner. Without coming to a certain and justified conclusion, passing a protection order under Section 18 of the Act in favour of the applicant may some times cause injustice to the opposite party/respondent who may be not at fault, but in reality a victim of the misdeed or misbehaviour of the applicant. That is not and cannot be the intention, of the Legislature in enacting the Act. No doubt the intention of the Legislature behind enacting the Act is to provide more protection to the rights of women guaranteed under the Constitution who are victims of violence of any kind within the family and for matters connected therewith or incidental therewith. It is clear that the Act has been enacted for safeguarding the rights of a woman guaranteed under the Constitution and to provide protection against her victimization from domestic violence, interpretation of the provisions keeping this pious principle in mind is required . However, this principle cannot be accepted that in domestic violence always a woman is a victim or sufferer party. There may be cases where by misusing the sympathetic and favourable attitude of the society or law framers, male partners may be harassed and thereafter if Court of law gives a second push to the male partner, it may cause disorder in the society. In my considered opinion, at the time of administering such laws the Courts are required to be vigilant enough in deciding the dispute as to which part of the, family is a victim of the domestic violence. In view of this also, passing orders merely on the basis of the documents, without their formal proof and upon hearing the arguments has not been permitted by the law and in judicial process it ought not to be permitted and leaning attitude towards one party of the list is required to be avoided.

9-C. The submission on behalf of the respondent, that prescribing procedure by Central Government through framing Rules is beyond its powers, as in Clause (a) to (m) this subject is not covered. To some extent it may compel to give a second thought, but on deep consideration it does not deserve favour. The reasons behind are (1) that, as already mentioned the language of Section 37 is indicative that the subjects enumerated are not exhaustive but inclusive. These subjects are without prejudicing the generality of Rule making powers and also under Clause (m), such a rule could have been framed, (2) that, the rule has been favoured under the given authority of rule making and unless it is annulled or amended by parliament or declared ultra-vires by a competent legal forum, its existence shall be forceful, and (3) that, framing of such a rule is based on necessity, to give effect to the mandatory provisions of Section 28(1) of the Act, by which the provisions of the Act can be carried out in a Justified manner. In absence of this rule there was a felt difficulty, as to in what manner the mandate of Section 28(1) ought to be complied with. Hence, the submission cannot be sustained.

9-D. As argued, it is true that the opening words of the Section 18 are that- 'the Magistrate may, after giving the aggrieved person and 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...'. On perusal, two things are required before passing an order in favour of the aggrieved person; (1) opportunity of hearing to the parties, and (2) on being prima facie satisfied with regard to happening of the domestic violence or likely to happen thereof. For being prima facie satisfied some material is required. As observed hereinabove and as provided in Rule 6(5) evidence is required as the same is required for disposal of an application under Section 125 of Cr.P.C. It cannot be accepted that only upon providing an opportunity of hearing such orders are required to be passed.

10. In view of all, as discussed herein-above, for disposal of the application filed by the respondent, adopting the procedure as laid down for disposing of an application under Section 125 of Cr.P.C. was required. Admittedly, the same has not been followed by the learned Magistrate. Hence, the order deserves to be set aside.

11. Consequently the revision is allowed. The impugned order is set aside. The case is remanded back to the Court of Magistrate with a direction to take steps, as observed hereinabove, without any delay. The learned Magistrate will be at liberty to pass interim orders in accordance with law if requested and deemed fit by him under Section 23 and other provisions of the Act.

Lakshmanan v. Sangeetha, Crl. R.C. No. 576 of 2009 (Madras H.C.) (12.10.2009)

See page 458 for full text of judgment.

Mohit Yadam v. State of Andhra Pradesh, 2010 (1) ALD (Cri) 1, 2010 Cr. L.J. 3751 (Andhra H.C.) (13.11.2009)

See page 251 for full text of judgment.

Chandrakant Nivruti Wagh v. Manisha C. Wagh, I (2014) DMC 640 (Bombay H.C.)(4.4.2013)

Judge: Roshan Dalvi

Judgment

Rule. Made returnable forthwith.

1. The petitioner has applied for quashing of the order dated 21st October, 2010 passed by the learned 5th Judicial Magistrate, First Class, Kalyan on 21st October, 2010 and the dismissal of the appeal therefrom on 8th August, 2011 by the additional Sessions Judge, Kalyan.

2. The respondent No.1 who is the wife of petitioner No.1 filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act) for various reliefs under Section 17 to 22 of the Act and an application under Section 23 of the Act for interim and exparte order. The petitioners made an application for dismissal of her application on the ground that an application under the DV Act cannot be made against any adult female person under Section 2(q) of the Act which defines the term "respondent".

3. The petitioners also made the application that the application under the DV Act was not in a prescribed form which was mandatory under Section 12 as well as under Section 23 of the Act and that the applicant has not furnished details of the previous litigation required under form II.

4. The DV Act is a beneficial legislation. It is meant for protection of violated women. It is upon the acceptance that such women may not have the necessary legal advice.

5. It has been held by this Court that the DV Act being a beneficial and protective legislation for violated women, its provisions cannot be construed strictly. Hence in the case of Vishal Damodar Patil Vs. Vishakha Patil 2009 Cr.L.J. 107 it has been held that an interim relief

can be claimed without a separate interim application moved. Similarly in the case of Raosaheb Pandharinath Kamble Vs. Shaila Raosaheb Kamble 2010 Cr.L.J. 3596 it has been held that the proceedings under Act are quasi civil nature. Amendments thereto also can be allowed.

6. This has been followed in the case of Nandkishor s/o. Damodar Vinchurkar Vs. Kavita W/o. Nandkishor Vinchurkar in a Criminal Application No.2970 of 2008 dated 5th August, 2009 in which a report of the Protection Officer is held not to be mandatorily required to grant interim relief. It is observed: "If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated.

7. Consequently it is held that when the necessary material is placed before the Court in an application and the reply the provisions relating to calling for report need not be adhered.

8. Hence it is held in the case of Karimkhan Vs. State of Maharashtra 2011 Cr.L.J. 4793 that the interpretation of such a protective and beneficial legislation should be to further its objects and not to be bogged down by technicalities.

9. Consequently in the case of Manoj Harikisanji Changani Vs. Prema Shrinivas Changani in Criminal Application No.564 of 2011 decided on 11th January, 2012 it has been held that the Protection Officer's report is not mandatory and it is discretionary for the Court to call for it. Since the format of thereport is devised keeping in view the exploratory aspects and approach of the Act. The Protection Officer has to explore and retrieve the information on various aspects included in the format and inquire or investigate into the illtreatment meted out to the applicant. Various other connected matters would surface and the Protection Officer would bring the reality on record. It is also observed that there are various violated women who would claim protection under the Act. They would not be equipped to draft an application showing all the particulars. Some others could have obtained legal advice and would be able to do so on their own. The domestic violence report would be required in the former cases and not in the latter. It is observedin para 17 that:

"reading the provision as regard scaling the report of Protection Officer as a mandatory rule and equipping a respondent with a device of getting the application of a woman dismissed on the ground that Domestic Violence Report is not called would be at treatment harsher than the ailment".

10. Given that the legislation must further justice and not frustrate it and seeing that even if all particulars are not mentioned the Court can call for further particulars stated in the form set out in rules framed under the Act and accepting that as discretionary, it follows as a matter of corollary that if the application is not in the prescribed form and the required

details are not furnished as per Form II it should not deter any Magistrate or Court from granting any relief. The respondent

who is represented in the application would be entitled to bring on record facts as are deemed essential and which are not brought on record by the applicant. The Court would certainly consider the merits of the case when all such facts are brought on record by both the parties. If a form is filed, but contains certain blanks required in the prescribed form, also the merits would be considered.

11. The relevant aspects of the form would be considered on merits upon hearing the respondents/opponents in each application. The contention of the petitioners that those are mandatory and that any application made not upon the prescribed forms are liable to be rejected is incorrect. The beneficial legislation is required to be interpreted to enhance justice to women and not to frustrate it.

12. It may be mentioned that under Section 12(3), which was relied upon by the petitioners themselves, it is clear that the particulars to be mentioned to be in the form are as prescribed or "as nearly as possible thereto". The further Section 28(2) of the DV Act allows the Magistrate to lay down his own procedure for disposal of an application under Section 12 of the Act. Section 28 (2) runs thus:

"28. Procedure: –

(1) ….

(2) Nothing in subsection (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."

13. This would include acceptance of a form adopted by a violated woman who applies under the DV Act.

14. In the Judgment in the case of Sagar Sudhakar Shendge Vs. Naina Sagar Shendge in Criminal Writ Petition No. 236 of 2013 dated 4th April, 2013 it has been held that the Magistrate is free to follow his own procedure as allowed under Section 28(2) of the D.V. Act by which he can issue NBW for obtaining compliance of his own order by arresting the defaulting party in not obeying the order of maintenance even if it is not in compliance with Section 125(3) of the Cr.P.C as required under Section 28(1) of the D.V. Act as the spirit of the beneficial legislation made for protection of women has to be maintained.

15. Hence the technical aspects insisted upon by the petitioners in their application made as opponents in the learned Magistrate's Court, therefore, are required to be rejected and are rightly rejected by the learned Magistrate.

16. The aspect of law with regard to who the respondent should be, has been considered by the learned Magistrate upon the case law cited before me.

17. The learned Magistrate has considered the case of Archana Hemant Naik Vs. Urmilaben I. Naik 2010 Cri. L.J. 751 of this Court directly on the issue whether a respondent to an application could be a male relative and holding that under Section 2(q) of the DV Act relied upon by the petitioners herein (the opponents in that application) it has been held that it is clear from the proviso to Section 2(q) that the relatives referred in the proviso would not be only a male relatives. Section 2(q) including Act runs thus:

Section 2(q) of the Act, the term respondent has been defined as under:

"(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".

18. The proviso does not specify a male relative. Hence female relatives cannot be exempted therefrom. Besides, the proviso to Section 19 specifies an order under 19(1)(b) alone not to be passed against a woman. This also implies that an

order under all other such clauses of Section 19 being (a), (c), (d), (e) and (f) can be passed against a woman also. Hence those women would have to be made respondents.

19. The learned Magistrate has also considered the judgment relied upon by the petitioners herein in the case of Tehmina Qureshi Vs. Shazia Qureshi 2010 All MR (Cri.) Journal 97 Madhya Pradesh High Court and correctly distinguished it on the ground that that was in the case of Muslim parties where the concept of joint hindu family and coparcenary parties would not apply in the relationship.

20. Consequently learned Magistrate has been within the specific framework of the law. The order of the learned Magistrate cannot be faulted. The appeal of the petitioners is, therefore, rightly dismissed considering the case of Archana Naik (Supra).

21. Consequently, the petition is seen to be wholly misconceived. It is dismissed.

22. The learned Magistrate shall proceed to decide the application on merits against all the opponents/respondents before him/her.

8. ALTERATION OF ORDERS

Alexander Sambath Abner v. Miran Lada, 2010 1 LW (Crl) 93 (Madras H.C.) (14.09.2009)

Judge: T. Suganthiram

Order

1. The revision Petitioner herein is the husband of the first Respondent herein and father of the second and third Respondent. The first Respondent herein filed an application before the learned Judicial Magistrate II, Puducherry, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeking relief under Section 18 of the said Act. She also filed an interim application in Crl.M.P. No. 1700 of 2007 under Section 23(2) of the said Act. In the said petition, the reliefs sought for by the first Respondent are as follows:

a. restraining the Respondent and his men from committing any act of domestic violence.

b. restraining the Respondent and his men from dispossessing or in any other manner disturbing the possession and enjoyment of the house by the complainants, where they are living at No. 22, First Cross Street, Ezhil Nagar(North), Puducherry-8.

c. directing the Respondent to remove himself from the house of the complainant.

d. restraining the Respondent and his men from alienating or disposing off the house of the complainant in any manner.

2. After notice being given to the Petitioner herein as he had not filed any counter, the learned Magistrate after recording that no counter was filed, allowed the petition on 11.12.2007 in Crl.M.P. No. 1700 of 2007 and granted interim relief as prayed for. Then on the very same day, the Petitioner herein filed an application in Crl.M.P. No. 543 of 2008 under Section 25(2) r/w 23(2) of the said Act, seeking for the revocation of the order already passed. The Respondent herein also filed counter in that application and the learned Magistrate after hearing both parties, passed an order on 23.09.2008, modifying the earlier order permitting the Petitioner herein to reside in the shared household without committing any act of violence against the Respondent herein. The other interim relief order granted under Clause-a, b and d in Crl.M.P. No. 1700 of 2007 were made to remain as it is.

3. The Respondents herein aggrieved by the modification order of the learned Judicial Magistrate, preferred an appeal before the Sessions Judge, Puducherry under Section 29 of the said Act in Crl.A. No. 24 of 2008. The learned Sessions Judge, allowed the appeal filed

by the Respondents herein, observing that no appeal has been filed under Section 29 of the Act by the Petitioner herein and it has to be taken that he had not challenged the interim order passed by the learned Judicial Magistrate under Section 22(3) of the Act and the learned Magistrate had no power to modify his own order by exercising his power under Section 25 of the Act, since there was no change in the circumstances. Aggrieved by the order of the learned Principal Special Judge, Puducherry, the Petitioner herein has preferred this revision petition before this Court.

4. The learned Counsel for the Petitioner submitted that originally interim order passed by the learned Magistrate on 11.12.2007 was only an ex parte order and the learned Magistrate had ample power to alter, modify or revoke the earlier order under Section 25(2) of the said Act. Though no counter was filed by the Petitioner herein on that day, without hearing the Petitioner herein, a stringent order has been passed by the learned Magistrate to remove him from the shared household and that order require a reconsideration and therefore after hearing the Petitioner herein, the learned Magistrate only modified the order. The learned Counsel for the Petitioner herein further submitted that the main petition is pending and while so, without hearing the Petitioner, the interim order has been passed causing great hardship to him and he had been particularly thrown out of the household and even that order being set right by the learned Judicial Magistrate himself, the learned Sessions Judge had erroneously allowed the appeal against the principles of natural justice.

5. The learned Counsel for the Petitioner reiterated that the application filed under Section 25(2) of the said Act is maintainable and there was no need for the Petitioner herein to prefer an appeal against the ex parte order passed by the learned Magistrate in Crl.M.P. No. 1700 of 2007.

6. The learned Counsel appearing for the Respondent submitted that once an order is passed by the learned Magistrate, it cannot be set aside or modified by the same Court by invoking Section 25(2) of the said Act, unless the Court is satisfied with the circumstances in the case requiring such alteration, modification or revocation order passed earlier. If person feels aggrieved by the order, the only remedy available is under Section 29 of the Act to file an appeal within 30 days from the date of receipt of that order.

7. Mr. R. Subramanian, learned Senior Counsel further submitted that even the learned Magistrate while modifying the order passed, has not pointed out any change of circumstance and the order passed by the learned Magistrate cannot be construed as an exparte order, since the Petitioner herein has not chosen to file any counter or objection petition.

8. The learned Senior Counsel also further submitted that the Sessions Judge had rightly held that the Petitioner herein instead of invoking Section 29 of the Act had wrongly invoked Section 25(2) of the Act.

9. The learned Counsel for the Petitioner herein submitted that there are ample materials available with the Petitioner to show that though the properties stands in the name of his wife, the plot was purchased and the house was constructed only by the Petitioner herein and it is an admitted fact that both the husband and wife were living together in the same house and if the Petitioner is sent out of the house, a grave injustice will be caused to him.

10. The learned Senior Counsel for the Respondent herein submitted that no injustice is caused to the Petitioner herein and the Protection of Women from Domestic Violence Act is the beneficiary Act for the affected women and special protection is given to the women and the first Respondent herein being harassed and ill-treated by the Petitioner herein, she had chosen to file the application before the learned Magistrate. The learned Senior Counsel also relied upon the Order of this Honourable High Court in W.P. No. 28521 of 2008 dated 03.04.2009, wherein the Court declined to hold that Section 12, 18, 19 and 23 of the Protection of Women from Domestic Violence Act, 2005, are unconstitutional, ultra virus and void.

11. The learned Senior Counsel also relied on the decision of this Court reported in 2008(1) MLJ 1315 Amar Kumar Mahadevan v. Karthiyayin, wherein it is observed as follows:

> 8. In construing the provisions of the Act, the Court has to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the aggrieved persons and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. It must be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim.

12. This Court considered the submission made by both sides and perused the records. The Respondent herein filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Judicial Magistrate II, Puducherry in the month of April, 2007. Along with the said application, a petition for interim order was filed under Section 23 (2) of the said Act. Though notice was also issued to the Petitioner herein and he had appeared before the learned Magistrate, he has not filed any counter and therefore, the learned Magistrate allowed the said application filed by the Respondent under Section 23(2) of the Act on 11.10.2007. By the said interim order, one of the relief granted to the Respondent herein directing the Petitioner herein to remove himself from the house of the Respondent herein. Of course, under Section 19 of the said Act, while disposing of an application under Sub-section (1) of Section 12, the Magistrate may pass such a residence order. The Magistrate also has power under Section 23 of the Act to pass such an interim order. It is an admitted fact that both the husband and wife had earlier occupied the residence. According to the Respondent herein, she is the owner of the

house, but according to the Petitioner herein, only he had spent money for the purchase of plot and constructing the house and originally the plot was purchased in the name of his mother-in-law and on the very same day, it was transferred to the first Respondent herein. According to the Petitioner herein, the order was passed by the learned Magistrate under Section 23(2) of the said Act in favour of the Respondent herein without hearing the Petitioner, and therefore, it amounts to an ex parte order. Immediately the application was also filed by the Respondent herein under Section 23(2) of the Act and the learned Magistrate also subsequently modified the earlier order. According to the learned Magistrate, the application filed under Section 25(2) of the said Act is maintainable and there was no need for the husband/Petitioner herein to file an appeal against that ex parte order.

13. The learned Magistrate has observed in his order as follows:

18. As per the above provisions of law, this Court has ample power to alter, modify or revoke the earlier order, if this Court has satisfied that there is a change in the circumstances for reasons to be required in writing, on application made by the affected party or the Respondent. In the present case in hand, the affected party namely the Respondent/husband filed this application in Cr.M.P. No. 543/08 Under Section 25(2) of the Protection of Women from Domestic Violence Act, 2005 to revoke the earlier order. As already discussed without hearing the Respondent or without contesting the allegations of the petition an interim order was granted by this Court to remove the Respondent from the shared household. The allegation regarding the violence committed by the Respondent and the counter allegations made by the Respondent/husband are matter to be decided after the trial in the main application. In the interim application, it is sufficient to see prima facie materials available to decide this case. Since a stringent order is passed against the Respondent i.e., to remove the Respondent from the shared household in the interim order in Cr.M.P. No. 1700 of 2007, without hearing the Respondent, it requires reconsideration.

14. In the appeal preferred by the Respondent herein before the Sessions Court, the learned Sessions Judge held that the Petitioner herein should have filed only an appeal against the order passed by the learned Magistrate under Section 23(2) of the said Act and further held that as the Petitioner herein has not chosen to file the appeal, it should be taken that he had not challenged the order of the learned Magistrate passed under Section 23(2) of the Act.

15. The learned Sessions Judge has further held that the Magistrate can also alter, modify or revoke his earlier interim order passed under Section 23 of me Act exercising power under Section 25 of the Act, but it may appear similar power has been given to the learned Magistrate as well as appellate court under Section 25 and 29 of the Act respectively. The appellate Court being a Sessions Judge is superior than the Magistrate Court and hence the

object of the Legislature could not be that similar power can be exercised by the Magistrate and the Appellate Court under Section 25 and 29 of the Act respectively. The powers that could be exercised under Section 25 and 29 of the Act operate in different fields and while that could be exercised under Section 25 and 29 of the Act operate in different fields and while the Magistrate can exercise his power under Section 25(2) of me Act only if there is a change in the circumstances, the Appellate Court can exercise its power under Section 29 of the Act to alter, modify or revoke the order of the Magistrate considering the merits of the order including the change in the circumstance. The Magistrate can alter, modify or revoke the earlier order as a matter of right considering me merits of me earlier order or by reviewing its earlier order. But it can exercise its power only in the change of circumstance. The learned Sessions Judge further held that the Magistrate has travelled beyond his power under Section 25 of the Act, and in fact, there is no change in the circumstance for varying or revoking the interim order passed under Section 23 of the said Act.

16. From the observations of the learned Magistrate and the learned Sessions Judge, the points which arise for determination are as follows:

i) Whether the interim order passed by the learned Magistrate without hearing the other side could be considered as ex parte order.

ii) If so, whether the affected party should file only an appeal under Section 29 of the Act or may invoke the provision under Section 25 of the said Act.

iii) While invoking the provision under Section 25 of the Act, whether by merely giving an opportunity to the affected party to be heard could it be considered as change of circumstance.

17. It is admitted that when the first interim order was passed by the learned Magistrate on 11.10.2007, the Petitioner herein has not chosen to file any counter and he has not made any submission on his behalf. Though the opportunity was given to the Petitioner herein, he had not chosen to utilise which amounts to remaining ex parte. Therefore, it is to be construed that the order passed by the learned Magistrate on 11.10.2007 is only an ex parte order. Further while passing that order, the learned Magistrate has not given any reasons for granting the relief and it is non-speaking order and it was not an order on merits.

18. The next question to be decided is that whether against that said ex parte order, only an appeal should be filed under Section 29 of the Act or application under Section 25(2) could be filed for the modification or revocation of the order.

19. Section 25(2) of the Protection of Women from Domestic Violence Act, 2005 is as follows:

25. Duration and alteration of orders:

(1).....

(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.

20. Section 29 of the said Act, is as follows:

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

21. It is held by the Honourable Kerala High Court in its decision reported in 2007 Crl.L.J 2057 Sulochana v. Kuttappan and Ors. as follows:

17. The learned Counsel for the Respondents contends that a person who has suffered an ex parte interim order under Section 23 can always go before the Magistrate and request for modification/vacation of the interim order or not to extend the interim order under Section 23. But the mere fact that such a course is available to him cannot at all persuade the Court to hold that such an interim order will be beyond the purview of Section 29 and no such appeal would at all be maintainable. In this context, I again look at the possible interim orders that can be passed under Section 23 read with Sections 18 to 22. I have no hesitation to agree that such interim orders passed under Section 23 read with Sections 18 to 22 would affect the rights of parties substantially and provisions for appeal under Section 29 will be available against such orders also.

21. The counsel for the Petitioners raises a further contention that under Section 12(4) normally an ex parte interim order will have a life of only 3 days that it is not necessary in these circumstances to confer on a person who has suffered an ex parte interim order with a right to appeal under Section 29. I am unable to accept this contention. Of course, under Section 12(4), the first date of hearing must be within 3 days of the date on which the Court passes the order. But the ex parte interim order may live longer. Moreover, in a case depending on the place where the Respondent is, the date of first hearing may suitably be fixed on a later date and in such event also, the period of life of the interim order may be longer. The mere fact that the Respondent who has suffered the interim order can go to the Magistrate seeking modification of the order passed under Section 23 and can secure an order with expedition is also according to me no ground to interpret Section 29 to exclude any right of appeal against an interim order under Section 23.

22. I have no hesitation to agree with the learned Counsel for the Petitioner that ordinarily and normally a person who has suffered the order would do well to appear before the learned Magistrate and pray for modification/vacation of the interim order or not to extend the interim order passed under Section 23. A Court considering the entertainment of an appeal against an interim ex parte order under Section 29 will certainly be

conscious of this fact - that the aggrieved persons can approach the Magistrate who passed the interim order and seek its variation under Section 23 read with Section 28(2) of the Act. A Court considering admission of an appeal under Section 29 must always remind itself of the fact that such a course/remedy is available to the aggrieved person and as a reasonably prudent person, a Court will certainly look for answers as to whey without and before exhausting that remedy resort is made to the provisions under Section 29 to prefer an appeal. But that is not to say that an appeal is not maintainable. Only in an appropriate case need the powers under Section 29 be invoked and the appeal entertained. That discretion vests with the appellate Court.But the jurisdiction or the competence to entertain an appeal cannot be doubted.

23. The learned Counsel for the Petitioners further submits that an order of stay has been granted without due and proper application of mind. I find force in this submission. The Court had not even referred to the contentions of the parties. The nature of the order of suspension passed also reveals that there has been no due and proper application of mind. In the same manner in which a sentence is suspended, an order of suspension has been passed also. An appellate Court considering the admission of an appeal and considering grant of stay against the interim orders appealed against, must certainly and alertly consider all the circumstances and then only grant interim orders of suspension. Not to do so, would be to do violence to the statutory rationale underlying a welfare statute enacted by the Parliament. I am in agreement with the learned Counsel for the Petitioner that great care and caution must be applied before granting ex parte orders of suspension/stay in appeals preferred under Section 29 of the Act.

From the above decision, it is made clear that an order passed under Section 23, an appeal may be preferred under Section 29 of the Act. At the same time, it is open to the aggrieved party seek for remedy under Section 25 of the Act before the same Court. Neither Section 25(2) excludes the right of the party under Section 29 of the Act to prefer an appeal nor Section 29 prevents the party from seeking the remedy under Section 25(2) of the said Act. At the same time for invoking provision under Section 25(2), there must be a change in the circumstance after the order being passed.

22. The next question in this case is that whether the learned Magistrate had noticed any change of circumstance to modify the order by invoking Section 25(2) of the Act. It has been observed by this Court already that the order passed by the learned Magistrate on 11.10.2007 was not a speaking order. A petition has been preferred under Section 25(2) of the Act by the Petitioner herein and he had made his submission before the learned Magistrate. When a party was not heard in earlier circumstance, but subsequently heard, it could be considered as a change of circumstance. Therefore an exparte order passed under Section 23(2) could be altered, modified or revoked by the same Court on an application from the aggrieved person under Section 25(2) of the said Act.

23. It is true that this Act is for the benefit of a women, at the same time, it should not be causing trouble or injustice to men. The learned Magistrate must have been careful while granting ex parte order under Section 23 of the Act. Only after the Magistrate satisfying himself with great care and caution must pass ex parte interim orders only to the extent necessary.

24. It is true that there is some dispute among the husband and wife and even with regard to the ownership of the property. It is open to the Petitioner herein to file his counter and also let in evidence with regard to his contention that he had spent money in the house property and he has got right over the property. It is an admitted fact that both the husband and wife were living in the same house and as such directing the husband to remove himself from the shared household must be only in extreme and compelling circumstance. Though the provisions are already declared to be constitutionally valid by this Honourable High Court, the Magistrate must exercise the power with great care and caution, especially in granting ex parte orders.

25. In the result, the judgment passed by the learned Principal Special Judge, Puducherry in Crl.M.P. No. 24 of 2008 is set aside and the order dated 23.05.2008 passed by the learned Judcial II, Puducherry in Crl.M.P. No. 543 of 2008 is restored. The revision petition is allowed accordingly. Consequently, M.P.I of 2009 is closed.

9. APPEALS UNDER SECTION 29

Shalu Ojha v. Prashant Ojha, 2015 Cr.L.J. 63 (Supreme Court) (18.9.2014)

Judges: J. Chelameswar and A.K. Sikri

Judgment

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 ₹ 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 ₹ 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 appellant's 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 respondent's annual income as can be seen from his income-tax returns for the last two years is only around ₹ 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 respondent's personal income is shown as ₹ 50 lakhs to ₹ 1 crore per annum and

monthly income of ₹ 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 ₹ 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 ₹ 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 Magistrate's legal authority to pass such an order is traceable to Section 20(1)(d) of the DV Act.

29. Questioning the correctness of the Magistrate's order in granting the maintenance of ₹ 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 respondent's 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 respondent's 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 respondent's 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 respondent's 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.

Abhijit Bhikaseth Auti v. State of Maharashtra, AIR 2009 (NOC) 808, 2009 Cr.L.J. 889 (Bombay H.C.) (16.09.2008)

Judge: A.S. Oka

Judgment

1. The submissions of the learned Counsel appearing for the parties were heard on the last date. Following questions arise for consideration in this petition:

(i) Whether an order passed on an application made under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the said Act") is appealable under Section 23 of the said Act?

(ii) Whether an appeal will lie under Section 29 of the said Act against every order passed by the learned Magistrate in proceedings initiated on the basis of an application made under Section 12 of the said Act?

(iii) What is the scope of an appeal under Section 29 of the said Act?

Apart from aforesaid questions, there are factual questions arising in this petition.

2. The 2nd respondent is the wife of the petitioner. The marriage between the petitioner and the 2nd respondent was solemnised on 22nd April 2004. According to the case made out by the 2nd respondent, after marriage, she stayed along with the petitioner in Flat No. B-10, Rambaug Colony, Kothrud, Pune. As the 2nd respondent found it inconvenient to attend to her duty by residing at the said premises, a flat being Flat No. B-13, Yashganga Residency, near Trimurti Hospital, Dhayari Phata, Pune was jointly acquired by the petitioner and the 2nd respondent. It is this flat which is the subject matter of dispute in this petition which is hereinafter referred to as "the said flat". It appears that there was a matrimonial dispute between the petitioner and 2nd respondent. The 2nd respondent filed an application under Section 12 of the said Act before the learned Judicial Magistrate First Class, Court No. 4, Pune seeking protection order under Section 18 of the said Act. The prayer in the said application is that the petitioner should be prohibited from committing any act of domestic violence and also from causing any kind of alienation of the said flat and from causing any disposition of the said flat or any encumbrance thereto and from preventing the 2nd respondent from having access to and fro to the said flat and enjoying the said flat as a residence. A prayer was also made for restraining the petitioner from preventing the enjoyment of the 2nd respondent of the said flat as a shared household. A relief was also sought under Section 19 of the said Act.

3. An application was made by the 2nd respondent in the main application under Section 12 of the said Act praying for grant of interim relief in respect of said flat. The said application was opposed by the petitioner by filing a reply. The petitioner filed a combined reply to the main application as well as to the application for interim relief. The said application was partly allowed by the learned Magistrate by order dated 1st March, 2007. The prayer made for interim relief as regards residential accommodation was rejected and a limited relief was granted preventing the petitioner from alienating the stridhan in his possession. The 2nd respondent preferred an appeal under Section 29 of the said Act. By impugned judgment and order dated 15th October, 2007, the appeal was partly allowed by the Sessions Court. The relevant part of the operative order read thus:

(3) The appellant/original applicant-Smt. Nisha Abhijit Auti is entitled to reside in Flat No. B-3, Yashganga Residency, Near Trimurti hospital, Dhayari Phata, Pune, during the pendency of the criminal proceeding.

(4) The respondent No. 1/opponent-husband is restrained from dispossessing or disturbing the possession of the appellant/applicant-wife from the share household i.e. the said flat, during the pendency of the main proceeding.

(5) The respondent No. 1/opponent-husband is further restrained from creating any encumbrances or third party interest in the said flat during the pendency of the main proceeding.

(6) The officer in charge of the nearest police station within the jurisdiction of which the said flat lies is directed to give protection and assistance to the applicant-wife while implementing this order.

4. The learned Counsel appearing for the petitioner has taken me through applications filed by the 2nd respondent and the orders passed by the learned Magistrate as well as by the Sessions Court. He pointed out that in the reply filed by the petitioner there was a categorical assertion that the petitioner never denied the residential accommodation of the said flat to the 2nd respondent and therefore there was no occasion to grant any interim relief in respect of said flat. The learned Counsel for the petitioner pointed out that though the said flat is purchased in the joint name of the petitioner and the 2nd respondent, the loan taken by them for acquiring the said flat was being repaid only by the petitioner and there is no contribution forthcoming from the 2nd respondent for repayment of the loan. Without prejudice to his rights and contentions, he submitted that if the 2nd respondent gives consent foi1 selling the said flat, another accommodation can be made available elsewhere to the 2nd respondent.

5. He submitted that no appeal will lie under Section 29 of the said Act against an interlocutory order and hence the appeal preferred by the 2nd respondent was not maintainable, He has placed reliance on several decisions of this Court and Apex Court in support of his submissions. His submission was that only against a final order passed by the learned Magistrate on application under Section 12 of the said Act, an appeal will lie under Section 29 and the order dated 1st March, 2007 passed by the learned Magistrate being purely an interlocutory in nature, the appeal itself was not maintainable. In any event, he submitted that there was no occasion to grant interim relief in respect of the said flat and no case was made out for granting any interim protection.

6. The learned Counsel appearing for the 2nd respondent submitted that under Section 29 of the said Act, an appeal was maintainable against every order passed under the provisions of the said Act. He submitted that an appeal will lie even against an interim order passed under Section 23 of the said Act. He submitted that interim order passed under Section

23 cannot be treated as purely an interlocutory order and in fact such orders are orders of moment affecting the rights of the parties. He submitted that the decisions relied upon by the counsel for petitioner and especially the decision of the Division Bench of this Court under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 will have no application as the scheme of the said Act is totally different. He pointed out the objects and reasons of the said Act. He invited my attention to the scheme of the entire Act and submitted that no interference was called for. He also stated that the order impugned has been already acted upon.

7. I have carefully considered the submissions. The object of the said Act is 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.

8. Section 3 of the said Act defines domestic violence. The definition of domestic violence is very wide and apart from other aspects it encompasses within itself physical abuse, verbal abuse, sexual abuse, emotional abuse and economic abuse. Section 12 forming part of Chapter IV of the said Act provides for an application being made by an aggrieved person or a protection officer or any other person on behalf of aggrieved person. The application is maintainable before a Judicial Magistrate First Class or a Metropolitan Magistrate as the case may be. Aggrieved person as defined by Clause (a) of Section 2 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. Sub-section (3) of Section 12 provides that every application under Sub-section (1) shall be in such form and contain such particulars as may be prescribed. The Protection of Women From Domestic Violence Rules, 2006 (hereinafter referred to as the said Rules) have been framed under the said Act. Rules 6 and 7 are the relevant Rules which lay down the procedure. The said Rule 6 and Rule 7 are as under:

6. Application to the Magistrate: (1) Every application of the aggrieved person under Section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under Sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under Sub-section (2) of Section 23 shall be filed in Form III.

(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).

7. Affidavit for obtaining ex parte orders of Magistrate: Every affidavit for obtaining ex parte order under Sub-section (2) of Section 23 shall be filed in Form III.

9. Form II of the said Rules incorporates a format of the application under Sub-section (1) of Section 12. The format requires that the nature of reliefs sought shall be incorporated in the application. Sub-rule (5) of Rule 6 provides that an application under Section 12 shall be dealt with and the orders passed thereon shall be enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the said Code"). The procedure which governs an application under Section 125 of the said Code will apply to the proceedings of an application under Section 12 of the said Act. The procedure contemplated by Chapter IX of the said Code which deals with applications under Section 125 is a summary procedure as indicated by Sub-section (2) of Section 126 of the said Code. Section 128 provides for enforcement of the order of maintenance. Thus, the orders passed by the learned Magistrate under the said Act are enforceable in the same manner as provided under Section 128 of the said Code.

10. While dealing with the procedure, it will be necessary to refer to Section 28 of the said Act which reads thus:

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) 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 (2 of 1974).

11. The reliefs which can be granted on an application under Section 12 the said Act can be broadly classified as under:

(i) protection orders under Section 18 which are for preventing the respondent from committing an Act of Domestic Violence;

(ii) residence orders under Section 19;

(iii) Monetary relief under Section 20 which includes maintenance, loss of earnings, medical expenses and loss caused due to destruction, damage or removal of any property from the control of the aggrieved person;

(iv) custody orders under Section 21 dealing with temporary custody of any child or children to the aggrieved person or visitation rights to aggrieved person under Section 21; and

(v) compensation orders under Section 22.

12. Section 17 reads thus:

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.

13. Sub-section (1) of Section 17 starts with a non-obstante Clause which has overriding effect over other statues. The Sub-section provides that every women in a domestic relationship shall have right to reside in a shared household whether or not she has any right, title or beneficial interest in the same. This is indeed a provision which enlarges the scope of the concept of matrimonial home under the existing laws dealing with matrimonial relationship. This is in the context of the definition of domestic relationship under Clause (f) of Section 2 which means 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 a marriage. The definition of shared household under Section 2(s) of the said Act is very wide. It even includes a household which may belong to the joint family of which the respondent is a member. Section 19 which gives power to the Magistrate to pass residence orders providing for grant of various orders in relation to a shared household for protecting the rights of the aggrieved person to occupy a shared household. The learned Magistrate in a given case can even direct the respondent to remove himself from a shared household.

14. Section 23 of the said Act reads thus:

23.Power to grant interim and ex parte orders: (1) In any proceedings 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.

15. There was some debate before this Court as regards the spheres in which Sub-section (1) and Sub-section (2) of Section 23 operate. A contention was sought to be raised by the learned Counsel appearing for the 2nd respondent that power under Sub-section (2) is confined to granting interim reliefs under Sections 18 to 22 of the said Act and the power under Sub-section (1) is a larger power which extends to grant of any interim order as the learned Magistrate deems it just and proper which may not be covered even by any of the Sections 18 to 22. On plain reading of Section 23, the legal position appears to be different. This Court has already held that when an aggrieved person desires to claim any interim relief under Section 23 of the said Act, it is not necessary for the aggrieved person

to take out a separate application for interim relief and the only requirement of law is that an affidavit in prescribed Form HI of the said Rules has to be filed by the aggrieved person. Sub-section (2) provides that when such an affidavit is filed in the prescribed form by the aggrieved person and if the application under Section 12(1) of the said Act prima facie discloses that the respondent thereto 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, the learned Magistrate may grant ex parte order under Sections 18, 19, 20, 21 or as the case may be under Section 22 against the respondent. Thus, Sub-section (2) of Section 23 confers a power on the Magistrate to grant an ex parte ad interim relief. The said ex parte ad interim relief can be granted in terms of reliefs under Section 18 to Section 22 of the said Act. Sub-section (1) deals with grant of an interim relief or interim order. Thus, the scheme of the Section 23 appears to be that under Sub-section (2) on the basis of an affidavit, an ex parte ad interim order without prior notice to the respondent can be passed by the learned Magistrate in terms of Sections 18, 19, 20, 21 or 22 of the said Act against the respondent. Sub-section (1) provides for passing an interim order which is to operate till the final disposal of the main application under Sub-section (1) of Section 12 or till the same is modified earlier. Though a separate application is not necessary to be made for grant of interim relief, principles of natural justice require that before granting interim relief in terms of Sub-section (1) of Section 23, the respondent in the main application will have to be heard. Therefore, before granting interim relief under Sub-section (1) of Section 23, a notice will have to be served to the respondent. It is well settled position of law that an interim relief can be granted only in the aid of final relief which can be granted in the main proceedings. In the case of proceedings under Sub-section (1) of Section 12 of the said Act, the learned Magistrate can pass final orders covered by Sections 18, 19, 20, 21 or 22 of the said Act and therefore it is obvious that interim order which can be granted under Sub-section (1) of Section 23 can be only in terms of reliefs provided for in Sections 18 to 22 of the said Act. Under Sub-section (1) of Section 23 a relief which is not covered by any of the Sections 18 to 22 of the said Act cannot be granted. Thus in short, the power under Sub-section (2) of Section 23 is of grant of an ex parte ad interim relief in terms of Sections 18 to 22 of the said Act and the power under Sub-section (1) is of grant of interim relief pending final disposal of the main application under Section 12(1) of the said Act.

16. It will be necessary to refer to Section 29 of the said Act which reads thus:

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

17. On plain reading of the Section 29 which provides for an appeal to the Court of Session against an order made by the Magistrate which is served on the aggrieved person or the respondent as the case may be. The orders contemplated under the said Act can be broadly divided into three categories. The first category is of the final order passed on application under Sub-section (1) of Section 12. The second category is of the ex pat ,e ad interim orders under Sub-section (2) of Section 23 of the said Act and the third category will be of the interim orders under Sub-section (1) of Section 23 of the said Act.

18. Certain submissions were made on the basis of a decision of Division Bench of this Court in the case of Central Bank of India v. Kurian Babu 2004 (4) MLJ 1006 : AIR 2005 (Bom) 562 . In the said decision, the Division Bench of this Court has dealt with provision of appeals under Section 20 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the said Act of 1993). After considering the decision of the Apex Court in the case of Central Bank of India v. Gokal Chand, [1967]1SCR310 as well as in the case of Shankarlal Aggarwal v. Shankarlal Poddar, [1964]1SCR717 , the Division Bench held that though Section 20 of the said Act provides for an appeal against every order made by the tribunal constituted under the said Act of 1993, the orders which are purely procedural which do not affect the substantive rights of the parties are not appealable under Section 20(1) of the said Act of 1993.

19. It will be necessary to consider the decision of the Apex Court in the case of Shankarlal Aggarwal, [1964]1SCR717 (supra). The Apex Court was dealing with a provision relating to an appeal under Section 202 of the Companies Act, 1913 which provided for an appeal from any order or decision given in the matter of winding up of the company by the Court. The Apex Court held that by virtue of Section 202 of the said Act of 1913, an appeal will not lie against purely procedural orders which do not affect the rights or liabilities of the parties. In the case of Central Bank of India (supra), the Apex Court was dealing with Section 38 of the Delhi Rent Control Act, 1958 which provided for an appeal against every order passed by the Controller. The Apex Court relied upon the decision in the case of Shankarlal Aggarwala, [1964]1SCR717 (supra) and held that though the phraseology used in the Section 38 was very wide, the said Section excludes merely procedural orders or orders which do not affect the rights or liabilities of the parties.

20. Now turning to Section 29 of the said Act, it is true that an appeal will lie against every final order passed by a learned Magistrate. The question which arises is whether an appeal will lie against an ex parte ad interim order passed under Sub-section (2) and against an interim order under Sub-section (2) of Section 23. The learned Counsel appearing for the 2nd respondent relied upon the decision of the Apex Court in the case of Amarnath and Ors. v. State of Haryana and Ors., 1977 CriLJ 1891 . He submitted that every interim order cannot be treated as an interlocutory order. He submitted that as observed by the Apex

Court there are orders which are matters of moment and which affect or adjudicate the rights of the parties or a particular aspect of the trial. He pointed out that the Apex Court has held that such orders cannot be interlocutory orders. On plain reading of Section 29 of the said Act, the orders which are made under Sub-section (1) and Sub-section (2) of Section 23 will have to be held to be an orders made by Magistrate under the provisions of the said Act. The power under Section 23 is of grant of ex parte ad interim and interim relief in terms of Sections 18 to 22 of the said Act. Therefore, the orders passed both under Sub-section (1) and Sub-section (2) will be appealable. However, the scope of interference in appeal against such ad-interim or interim orders will be naturally limited. The orders contemplated by Section 23 are discretionary orders. The Apex Court had an occasion to deal with the power of the Appellate Court and scope of appeals against interim orders which are discretionary in nature. In the case of Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel and Ors., 2006(33)PTC281(SC) the Apex Court dealt with an appeal provided under Rule 1(r) of Order XLIII of the Code of Civil Procedure, 1908 against an interim order of injunction. Paragraph Nos. 125 and 126 of the said judgment read thus:

125. We are not oblivious that normally the appellate Court would be slow to interfere with the discretionary jurisdiction of the trial Court.

126. The grant of an interlocutory injunction is in exercise of discretionary power and hence, the appellate Courts will usually not interfere with it. However, the appellate Courts will substitute their discretion if they find that discretion has been exercised arbitrarily, capriciously, perversely, or where the Court has ignored the settled principles of law regulating the grant or refusal of interlocutory injunctions. This principle has been stated by this Court time and time again.

(Emphasis added)

21. In view of what is held by the Apex Court, while the Court of Session deals with an appeal from an order made under Section 23, the Court of Session will be governed by the aforesaid constraints. Thus, the scope of appeal against an order under Section 23 will be limited. While dealing with an appeal against an ex parte ad interim order, the Sessions Court will be very slow in interfering with such orders unless the orders are perverse or patently illegal. However, the scope of an appeal against a final order on application under Section 12(1) of the said Act will not be governed by the aforesaid constraints.

22. As held by the Apex Court in the case of Central Bank of India, [1967]1SCR310 (supra) and Shankarlal Aggarwal, [1964]1SCR717 (supra), an appeal under Section 29 will not be maintainable against the purely procedural orders such as orders on application for amendment of pleadings, orders refusing or granting adjournments, order issuing witness summons or orders passed for executing the orders passed under the said Act etc.

23. My attention was also invited to Section 26 of the said Act. If relief under the provision of Sections 18 to 22 of the said Act is granted by a Civil Court or Family Court, an appeal will not lie under Section 29 inasmuch as an appeal under Section 29 will lie only against an order of the learned Magistrate.

24. Now turning to the facts of the case in hand, it must be stated that it is an admitted position that the said flat has been acquired in the joint names of the petitioner and the 2nd respondent. It is true that in the reply filed by the petitioner he has stated that he has never denied residential accommodation of the said flat to the 2nd respondent. However, while considering the prayer under Section 23 of the said Act, the learned Magistrate is required to consider the averments made in the main application under Sub-section (1) of Section 12. The learned Additional Sessions Judge has adverted to the averments made by the 2nd respondent and has passed a discretionary order granting protection to the 2nd respondent in respect of said flat which prima facie appears to be a shared accommodation within the meaning of Section 17 of the said Act. In so fat as suggestion given by the counsel appearing for the petitioner is concerned, the parties cannot be compelled to accept the said suggestion. The order passed by the learned Additional Sessions Judge is an interim order which will remain in force till final disposal of application under Sub-section (1) of Section 12 of the said Act. In view of the admitted position that the flat is acquired in the Joint names of the petitioner and 2nd respondent, no case for interference is made out.

25. Thus, the conclusions which can be summarized are as under:

(i) An appeal will lie under Section 29 of the said Act against the final order passed by the learned Magistrate under Sub-section (1) of Section 12 of the said Act;

(ii) Under Sub-section (2) of Section 23 of the said Act, the learned Magistrate is empowered to grant an ex parte ad interim relief in terms of Sections 18 to 22 of the said Act. The power under Sub-section (1) is of granting interim relief in terms of Sections 18 to 22 of the said Act. Before granting an interim relief under Sub-section (1), an opportunity of being heard is required to be granted to the respondent.

(iii) An appeal will also lie against orders passed under Sub-section (1) and Sub-section (2) of the Section 23 of the said Act which are passed by the learned Magistrate. However, while dealing with an appeal against the order passed under Section 23 of the said Act, the Appellate Court will usually not interfere with the exercise of discretion by the learned Magistrate. The appellate Court will interfere only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that the Court has ignored settled principles of law regulating grant or refusal of interim relief.

(iv) An appeal under Section 29 will not be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

26. Before parting with this judgment, appreciation has to be recorded about the able assistance given by the learned Counsel appearing for the petitioner and 2nd respondent.

27. Hence, I pass the following order:

(i) The petition is rejected with no orders as to costs.

(ii) The learned Magistrate will finally decide the application under Sub-section (1) of Section 12 of the said Act within a period of three months from the date of production of authenticated copy of operative part of this order.

Smita Singh v. Bishnu Priya Singh, 2013 Cr.L.J. 4826, I (2014) DMC 365 (Orissa H.C.) (6.5.2013)

Judge: B.K. Nayak

Order

1. Heard learned counsel for the petitioner and learned counsel for the opposite parties. The petitioner has filed Criminal Misc. Case No. 6 of 2009 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short "the Act") in the Court of the learned S.D.J.M. (Sadar), Cuttack seeking certain reliefs against the present opposite parties. Opposite party No. 5 is the husband of the petitioner, whereas, the other opposite parties who are all women are the in-laws of the petitioner. The opposite parties filed a petition before the learned S.D.J.M. (Sattar), Cuttack to exclude opposite party Nos. 1 to 4 from the category of respondents on the ground that they being women relatives of the husband of the petitioner, they cannot be added as respondents. The said petition was allowed by order dated 26-10-2009 which is impugned in this criminal revision.

2. At the very out set, learned counsel for the opposite parties raises objection to the maintainability of this criminal revision stating that the impugned order is appealable under Section 29 of the Act.

Learned counsel for the petitioner, on the other hand, contends that an appeal lies against any order which is passed under any of the provisions of the Act and that the present order, being not one under any of the provisions of the Act, is not appealable.

3. Learned counsel for both the parties rely on some decisions of different High Courts in support of their respective contentions.

4. The Kerala High Court in the case of Chithrangathan v. Seema, (2008) 1 DMC 365 examined the question of maintainability of revision against an ad interim order passed under Section 23(2) of the Act and held that the order impugned was appealable under Section 29 of the Act and revision was not maintainable.

The Kerala High Court also in W.P. (C) 19032 of 2008 between Girijan v. Subhadra, decided on 25-6-2008, examined the question with reference to an interim order and held that the order impugned was appealable under Section 29 of the Act.

In AIR 2009 (NOC) 507 (Utr) (Manish Tandon v. Richa Tandon), it has been held that the word 'order' used in Section 29 of the Act connotes all type of orders passed by the Magistrate Irrespective of its description and nature which has been made appealable and, therefore, the petition under Section 482, Cr.P.C. would not be maintainable.

5. The Bombay High Court in Criminal Writ Petition No. 2218 of 2007 in the case of Mr. Abhijit Bhikaseth Auti v. State of Maharashtra disposed of on 16-9-2008 (Reported in 2009 (1) AIR Bom R 212) examined the question whether an order passed by the Magistrate in a proceeding under the Act refusing partly to grant interim relief was appealable or not and held that an appeal would lie against any final order passed by the Magistrate under Section 12 of the Act and all interim orders passed under Section 23 of the Act, but no appeal under Section 29 of the Act, would be maintainable against purely procedural orders which do not decide or determine the rights and liabilities of the parties.

6. Relying on the decision of the Bombay High Court referred to above, learned counsel for the petitioner submits that the present impugned order, being a procedural orders, which does not decide any rights or liabilities of the parties, cannot be made appealable under Section 29 of the Act. He further submits that appeal lies only against orders contemplated in different provisions of the Act and copies whereof have been served free of cost on the parties as per Section 24 of the Act.

7. Section 29 of the Act, which provides for appeal, runs as under:

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

Section 24 of the Act provides as follows:--

24. Court to give copies of order free of cost -- The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider has registered a domestic incident report, to that service provides.

8. Apparently, the provision for appeal under Section 29 of the Act is not restricted to order passed under any specific provision of the Act. Right to appeal under Section 29 of the Act is also not confined only to those orders in respect of which copies are served in accordance with the provisions of Section 24 of the Act. Section 29 of the Act refers to service of copy of order only for the purpose of deciding the question of limitation of thirty days

for filing of an appeal from the date of service of copy of the order. In other words, mere non-service of copy of an order would not take away the right of appeal.

Questions whether the Magistrate has jurisdiction to entertain a proceeding under the Act; whether a proceeding is maintainable under the Act; or whether a person can be impleaded as a respondent in the proceeding so that relief can be granted to the aggrieved person against such respondent are matters which must be decided by the Magistrate when such question is raised before proceeding to consider about granting of relief to the aggrieved person. These are matters not merely relating to procedure, but they are so fundamental that the determination of rights and liabilities of the parties in the proceeding depends on the decision of such questions. The right to proceed against a person is inherent and has direct nexus with the question to seek relief from him under the provisions of the Act. If a Magistrate decides that a person proceeded against under the Act cannot be impleaded as a respondent within the meaning of the Act, the whole proceeding has to be dropped. Such orders which scuttle the rights of the applicants to get relief under the Act or bring the proceeding to an end at the threshold must be held to be appealable under Section 29 of the Act.

Therefore, this Court is of the view that the order impugned in the present criminal revision is appealable under Section 29 of the Act. The Criminal Revision is therefore dismissed but liberty is given to the petitioner to challenge the order in appeal before the learned Sessions Judge. Question of delay in filing the appeal shall be dealt with by the appellate Court keeping in view the pendency of this revision before this Court.

10. SECTION 482 CR.P.C. PETITIONS TO QUASH PROCEEDINGS

Vijayalakshmi Amma v. Bindu, ILR 2010 (1) Kerala 60, 2010 (1) KLT79 (Kerala H.C.) (02.12.2009)

Judge: S. Sasidharan Nambiar

Order

1. Second respondent in M.C. 36/2009 on the file of Judicial First Class Magistrate Court-II, Thiruvananthapuram, a petition filed under Section 12 of Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as the Act,) is the petitioner. Respondents 1 and 2 are the petitioners before the Magistrate. This petition is filed under Section 482 of the Code of Criminal Procedure to quash the proceedings as against her contending that the allegations in Annexure A complaint do not disclose or prove any domestic violence as defined under Section 3 of the Act, and first respondent has no right

over the property of the petitioner and it is not a shared household. It is contended that petitioner being a female person is not a respondent as defined under Section 2(q) of the Act and therefore proceedings under the Act as against the petitioner is not maintainable and is to be quashed.

2. Learned Counsel appearing for the petitioner was heard.

3. The argument of the learned Counsel is that respondent as defined under Section 2(q) of the Act can only be a male person and not a female and therefore the proceedings initiated by the learned Magistrate on Annexure A1 complaint as against the petitioner is not sustainable and is an abuse of process of the court and hence it is to be quashed. It is also argued that the house involved in the petition is the exclusive property of the petitioner and is not a shared household of respondents 1 and 2 and on that ground also the petition is not maintainable. Relying on the decision of Madhya Pradesh High Court in Ajay Kant v. Smt. Alka Sharma 2008 Crl. L.J. 264, learned Counsel argued that a female person could be proceeded against under the Act only on a complaint for violation of an order under Section 18 or 23 and proceedings under Section 12 of the Act cannot be continued before the learned Magistrate against the petitioner. Relying on the decisions of this Court in Surendran v. State of Kerala 2009 (3) KLT 967 and the High Court of Andhra Pradesh in Mohammad Maqeenuddin Ahmed v. State of A.P. 2007 Crl.L.J. 3361 it was argued that High Court has jurisdiction to quash a petition filed under Section 12 of the Act pending before the Magistrate and when continuation of the proceedings as against the petitioner is an abuse of process of the court, it is to be quashed.

4. The questions to be decided in the petition are:

1. Whether a female person could be a respondent, in a petition filed under Section 12 of the Act.

2. Whether the powers under Section 482 of Code of Criminal Procedure is to be invoked, to quash a petition filed under Section 12 of the Act, on the ground of abuse of process of the court or on the ground that petitioner before the Magistrate is not an aggrieved person or respondent is not a respondent as defined under the Act or the disputed house is not a shared household/as provided under the Act.

5. Clause (a) of Section 2 defines "an aggrieved person" as "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." As is clear from the definition, an aggrieved person provided under the Act can only be a woman. Respondent is defined under Clause (q) of Section 2 as follows:

"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.

If there is no proviso to Clause (q), it could be contended that a respondent could only be a male person and a female person cannot be the respondent. But under the proviso an aggrieved wife or a female living in a relationship in the nature of marriage can file a complaint against a relative of the husband. But it is not provided that such a complaint could be filed only against a male relative of the husband. Instead it is against a relative of the husband or the male partner. The Legislatures in their wisdom used "a male person" in the main definition of the respondent and purposely did not use "a male relative" and instead used only a relative. The proviso makes it clear that an aggrieved wife or a 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 proviso consciously avoided using "a male relative" and instead used only a "relative" of the husband or male partner. A relative could be both male and female. Hence a female relative is not excluded by the proviso. If that be so, contention that a female relative of the husband cannot be a respondent, as defined under Section 2(q) of the Act cannot be accepted. There are sufficient indications in the Act to strengthen the said conclusion.

6. Section 19 provides for residence orders. Sub-section (1) of Section 19 reads:

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.

(underline supplied)

The proviso makes it absolutely clear that the prohibition is only against passing an order under Clause (b) against a person who is a woman. That means except in the case of Clause (b), orders could be passed as against the woman also. Otherwise there is no necessity to specifically provide by a proviso that no order under Clause (b) passed against a woman. If a woman cannot be a respondent, when no order could be passed against such a person, there is no need to provide such a proviso as even otherwise in any event an order cannot be passed against a woman who is not the respondent. Moreover in that case there is no rational for providing that no order could be passed under Clause (b) alone, thereby enabling to pass orders under the other clauses of Section 19. Clause (b) provides for passing a residence order, directing the respondent to remove himself from the shared household. In view of proviso, Magistrate cannot direct a woman, to remove herself from the shared household. Under Section 19, residence orders could be passed as against a woman also in respect of Clause (a) and (c) to (f). It is therefore clear that under Clause (a) Magistrate can pass an order restraining the respondent from dispossessing or in any other manner disturbing possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household. Similarly under Clause (c) an order restraining the respondent or any of his relative from entering any portion of the shared household in which the aggrieved person resides could be passed. There also it is not restricted as against the male relative alone. Under Clause (d) an order restraining the respondent from alienating or disposing off the shared household or encumbering the same could be passed. Under Clause (e) respondent could be restrained from renouncing his rights in the shared household, except with the leave of the Magistrate. Under Clause (f) the respondent could be directed 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. In all these cases such a restraining order could be passed against the woman also as is clear by the proviso to Section 19(1) as those clauses are not included in the proviso. If such an order can be passed against a woman, as it is permissible under the Act, that woman against whom such an order is to be passed should necessarily be a respondent in the petition before the Magistrate. If that be so, it can never be said that a female person cannot be a respondent under the Act.

7. A learned single Judge of the Madhya Pradesh High Court has taken a different view in Ajay Kant v. Smt. Alka Sharma 2008 Crl.L.J. 264 for the reason that proviso to Clause (q) of Section 2 enables an aggrieved wife or female living in a relationship in the nature of a marriage to file a complaint against a relative of the husband and as 'complaint' is not defined in the Act and Section 12 provides for filing only an application and not a complaint, the definition of "complaint" in Clause (d) of Section 2 of the Code of Criminal Procedure is to be followed and if so the complaint contemplated under the proviso to

Section 2(q) could only be in respect of offences provided under Section 31(1) and 33 of the Act. It was therefore held that scope of the respondent cannot be widened to include a female.

8. It is to be borne in mind that Sub-section (1) of Section 31 only provides that a breach of protection order or of an interim protection order, by the respondent shall be an offence under the Act and shall be punishable with the sentence provided therein. Section 32 provides for cognizance and proof of the offence. Under Sub-section (1) notwithstanding anything contained in the Code of Criminal Procedure, the offence under Sub-section (1) of Section 31 shall be cognizable and non-bailable. Under Sub-section (2) of Section 32, upon the sole testimony of the aggrieved person, the court may conclude that an offence under Section 31(1) has been committed by the accused. Under Sub-section (1) of Section 31 it is only the breach of a protection order under Section 18 or an interim protection order under Section 23 which is made punishable. As is clear from Sub-section (1) of Section 31, such breach shall be by the "respondent". Therefore unless the "respondent" could be a female person, an offence cannot be committed by breach of such an order by a female person. If that be so, the complaint provided under proviso to Clause (q) of Section 2, cannot be a complaint as interpreted by the learned Judge, as it is an impossibility because if a female person cannot be a respondent as defined under Section 2(q), no protection order under Section 18 or interim protection order under Section 23 could be passed against the female person and in that case the proviso enabling filing of a complaint against the female relative of the husband would be reduntant. If that be so, it could only be taken that the complaint provided in the proviso to Clause (q) of Section 2 is the application filed under Section 12, though inadvertently an application is referred in the Section as complaint. A learned single Judge of this Court in Remadevi v. State of Kerala 2008 (4) KLT 105 has taken an identical view that respondent as defined under Section 2(q) could also be a female person. It cannot be said that proceedings under Section 12 cannot be initiated against a female person.

9. The next question is whether the extraordinary jurisdiction of this Court under Section 482 of Code of Criminal Procedure is to be invoked to quash a petition filed by a person claiming to be an aggrieved person against a respondent, for the reliefs provided under the Act.

10. Undoubtedly the High Court possess inherent powers under Section 482 of the Code. These inherent powers are meant to act ex-debito justitiae to do real and substantial justice for the administration of justice or to prevent abuse of process of court. Inherent powers under Section 482 can be exercised either (1) to give effect to an order under the Code or (2) to prevent abuse of process of court and (3) to otherwise secure the ends of justice. Apex Court in State of Haryana v. Bhajan Lal 1992 Supp.(1) SCC 335 enunciated the

principles relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Code of Criminal Procedure as follows:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings, and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(underline supplied)

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The content of the inherent power under Section 482 of the Code of Criminal Procedure were examined and laid down in Madhu Limaye v. State of Maharashtra 1977 KLT SN 29 (C. No. 73) SC : (1977) 4 SCC 551 as follows:

(1) that the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In R.P. Kapur v. State of Punjab AIR 1960 SC 866 Apex Court summarised some categories of cases where inherent powers are to be exercised to quash the proceedings as follows:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

The question whether the extraordinary inherent powers under Section 482 of Code of Criminal Procedure is to be exercised by the court to quash a proceeding initiated under the Protection of Women from Domestic Violence Act, 2005 is to be considered in the background of the settled legal position. For a better appreciation of the relevant aspects, it is necessary to bear in mind the object and purpose of the Act. The Act was enacted to provide for more effective protection of rights of woman guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and incidental thereto. Relevant portion of the Statement of Objects and reasons of the Act reads:

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.

(underline supplied).

11. It is clear that the Act was enacted to provide "a remedy under civil law" to protect the woman from being victims of domestic violence and to prevent occurrence of domestic violence in the society.

12. The definition in Clause (a) of Section 2 shows that an "aggrieved person" could only be a 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. Chapter IV provides the procedure for obtaining orders of reliefs under the Act. Under Sub-section (1) of Section 12, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application before the Magistrate seeking one or more reliefs under the Act. Under Sub-section (2), the reliefs 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. Under Sub-section (3) every such application shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto. Prescribed is defined

under Clause (m) of Section 2, means prescribed by rules made under the said Act. Sub-section (5) of Section 12 provides that Magistrate shall endeavour to dispose of every application made under Sub-section (1) within a period of sixty days from the date of its first hearing. Section 16 provides that if the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under the Act in camera. Section 17 provides for the right of an aggrieved person to reside in a shared household. Under Sub-section (1) of Section 17, 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. Shared household is defined under Clause (s) of Section 2. Under Sub-section (2) of Section 17, 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 procedure established by law. Section 18 provides for protection orders. Under Section 18, 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 committing any acts as provided under Clause (a) to Clause (g). Section 19 provides for Residence orders. Under Sub-section (1) while disposing of an application under Sub-section (1) of Section 12 and on being satisfied that domestic violence has taken place, Magistrate may pass a residence order 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 or directing the respondent to remove himself from the shared household or restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides or restraining the respondent from alienating or disposing off the shared household or encumbering the same or restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate or 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. Proviso makes it clear that no order shall be passed against any person who is a woman under Clause (b) directing the respondent to remove herself from the shared household. Sub-section (2) enables the Magistrate to impose any additional condition or pass any other direction which may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person. Sub-section (3) enables the Magistrate to require from the respondent to execute, a bond with or without sureties, for preventing commission of domestic violence. Sub-section (4) makes it clear that an order under Sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of

Criminal Procedure and shall be dealt with accordingly making it clear that other orders are not to be treated as orders passed under the Code of Criminal Procedure as essentially they are orders in respect of the civil liability. Sub-section (5) provides that while passing an order under Sub-section (1) or Sub-section (2) or Sub-section (3), 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. Sub-section (6) enables the Magistrate while making an order under Sub-section (1) to impose on the respondent obligations, relating to the discharge of rent or other payments having regard to the financial needs and resources of the parties. Sub-section (7) provides that 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. Under Sub-section (8) 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 20 provides for monetary reliefs. Under Sub-section (1) while disposing the application under Sub-section (1) of Section 12, Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person or her child as a result of domestic violence. Sub-section (2) makes it clear that the monetary relief granted under Sub-section (1) shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Sub-section (6) provides that on the failure of the respondent to make payment in terms of the order under Sub-section (1), Magistrate may direct the employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit in court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent and that amount may be adjusted towards the monetary relief payable by the respondent. Section 21 provides that notwithstanding anything contained in any other law for the time being in force, Magistrate may, at any stage of hearing of the application for protection order or for any other relief under the Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, the arrangements for visit of such child or children by the respondent. Section 22 provides for compensation orders. Under the said Section in addition to other reliefs as may be granted, 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 respondent, by acts of domestic violence. Section 23 provides the power to grant interim and ex parte orders. Section 25 provides for duration and alteration of the orders. Under Sub-section (1) a protection order made under Section 18 shall be in force till the aggrieved person applies for discharge. Under Sub-section (2), on receipt of an application from the aggrieved person or the respondent if satisfied that there

is a change in the circumstances requiring alteration, modification or revocation or any order made under the Act, for reasons to be recorded in writing he may pass such order as he may deem appropriate. Section 26 provides for relief in other suits and legal proceedings. Under Sub-section (1) any relief available under Section 18 to 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of the Act. Sub-section (2) provides that 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. Sub-section (3) mandates that in case any relief has been granted in favour of the aggrieved person in any proceedings other than a proceeding under the Act, she shall be bound to inform the Magistrate of the grant of such relief.

13. Section 28 provides the procedure. It reads:

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.

Therefore under Sub-section (1) all proceedings under Sections 12, 18 to 23 and offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure, 1973. Sub-section (2) 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 of the Act. Section 29 provides for an appeal against the order, by either the aggrieved person or by the respondent within thirty days from the date of passing of the order.

14. Section 31 and 33 are the only penal provisions in the Act. Section 31 reads:

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.

15. Section 32 provides cognizance and proof. Under Sub-section (1) notwithstanding anything contained in the Code of Criminal Procedure, the offence under Sub-section (1) of Section 31, shall be cognizable and non-bailable. Under Sub-section (2) the court may on the sole testimony of the aggrieved person conclude that an offence under Sub-section (1) of Section 31, has been committed by the accused. Only if the respondent, against whom a protection order or interim protection order is passed, commits breach of that order, an offence under the Act is attracted. Under Sub-section (2), the said offence, as far as practicable, shall be tried by the Magistrate who had passed the order the breach of which has been alleged to have been caused by the accused. Under Sub-section (3) while framing charge for the offence under Sub-section (1), Magistrate may also frame charge under Section 498A of Indian Penal Code or any other provisions of the Indian Penal Code or Dowry Prohibition Act, if the facts disclose the commission of such an offence. Section 33 provides that if any Protection Officer fails or refuses to discharges his duties as directed by the Magistrate in the protection order, without any sufficient cause, he shall be punished with imprisonment as provided therein. Under Section 34 Magistrate is not competent to take cognizance of such an offence unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf. Section 35 provides for protection, taken in good faith, to the Protection Officer. Section 36 provides that the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

16. It is thus clear that though under Sub-section (1) of Section 28, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of the Act and offence under Section 31, shall be governed by the provisions of Code of Criminal Procedure, the penal provisions under the Act are under Sub-section (1) of Section 31 and Section 33 of the Act. When under Section 34, cognizance of offence under Section 33 could only be taken by the Magistrate on a complaint filed with the previous sanction of the State Government or an officer authorised by it on that behalf. Under Sub-section (1) of Section 32, an offence under Sub-section (1) of Section 31 is cognizable and no complaint is necessary for the Magistrate to take cognizance of that offence.

17. In an application filed under Section 12-claiming reliefs either under Sections 18, 19, 20, 21 or 22, the Magistrate can pass an interim order under Section 18 to 23. All these reliefs are in respect of the civil liability and not the criminal liability. If that be so, it is not for this Court under Section 482 of the Code of Criminal Procedure, to quash the proceedings invoking the extraordinary inherent powers provided under the Code, as such order is necessary neither to give effect to any order under the Code nor to prevent abuse of

the process of any court nor to secure the ends of justice. An offence under Sub-section (1) of Section 31, or an offence under Section 33 taken cognizance by the Magistrate or an order passed by the Magistrate directing the respondent to execute a bond as provided under Sub-section (3) of Section 19, which by the mandate under Sub-section (5) that such order is to be treated as an order under Chapter VIII of Code of Criminal Procedure, stand on different footing. They are truly criminal proceedings. Except in respect of such proceedings it is not for the High Court to exercise the extraordinary inherent jurisdiction to quash the proceedings pending before the Magistrate.

18. A person to whom notice was issued by the Magistrate in a petition filed under Section 12 of the Act can appear before the Magistrate and contend that the proceedings is not maintainable either on the ground that the person who filed the application is not an aggrieved person as defined under Section 2(a) or the application is not filed for an aggrieved person. He is also entitled to contend that he is not a respondent, as defined under Section 2(q) of the Act. He is also entitled to contend that there is no domestic violence as defined under Section 2(g) or the reliefs sought for are not the reliefs provided under the Act. In all such cases, it is not for this Court to consider the question, when it could legitimately be raised and decided before the Magistrate. So long as the respondent is not an accused in a proceeding initiated under the Act and pending before the Magistrate and he is not obliged to apply for bail in respect of such proceedings and even his personal presence is not mandatory for hearing and disposing a petition under Section 12, it is not for this Court to consider the question whether the petitioner before the Magistrate is an aggrieved person as defined under Section 2(a) or the respondent is a respondent as defined under Clause (q) of Section 2 or the household is a shared household as defined under Clause (s) or whether there is any domestic relationship between the parties or whether the reliefs sought for in the petition could be granted. These are matters which are to be considered by the Magistrate, before granting relief in the petition filed under Section 12, either under Sections 18 or 19 or 20 or 21 or 22 or 23.

19. Learned Counsel appearing for the petitioner pointed out that in various decisions of this Court and the other High Courts and Apex Court, proceedings initiated under Section 12 of the Act were quashed invoking the powers under Section 482 of Code of Criminal Procedure and in such circumstance, it cannot be held that inherent powers under Section 482 of the Code of Criminal Procedure is not to be exercised. In none of those decisions, the question was addressed as stated above and in fact in none of those decisions, question whether the inherent jurisdiction under Section 482 of Code of Criminal Procedure is to be invoked to quash a proceeding initiated under the Act which is enacted to provide a remedy under the civil law was not considered. In such circumstances, for the reason that proceeding under the Act was quashed invoking the powers under Section 482 of the Code of Criminal Procedure it cannot be said that the powers under Section 482 is to be

invoked in all cases. I am of the firm view that a party against whom proceedings were initiated by the Magistrate under Section 12, on a petition filed under Section 12(1) of the Act seeking relief under Section 18 to 23, has adequate remedy before the Magistrate, it is not for the High Court to exercise the extraordinary inherent powers and quash the proceedings. Section 482 is to be invoked in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of process of any court or to secure the ends of justice, when cognizance was taken by the Magistrate for an offence under Sub-section (1) of Section 31 or Section 33 of the Act. In all other cases, the affected party could raise the question and seek an order from the Magistrate including the maintainability of the proceedings and if an order is passed against him, he is at liberty to file an appeal as provided under Section 29 of the Act. If that be so, it is not for this Court to invoke the extraordinary jurisdiction under Section 482 of the Code of Criminal Procedure, to quash a proceeding initiated under Section 12(1) of the Act.

The petition is dismissed.

Nidhi Kumar Gandhi v. The State, 2015 Cr.L.J. 63 (Supreme Court) (18.9.2014)

See page 495 for full text of judgment.

Sujoy Kumar Sanyal v. Shakuntala Sanyal (Halder), C.R.R. 1835 of 2010 (Calcutta H.C.) (06.10.2010)

See page 390 for full text of judgment.

Amit Sundra v. Sheetal Khanna, 2008 Cr.L.J. 66 (Delhi H.C.) (31.08.2007)

Judge: V.B. Gupta

Judgment

1. The appellant has filed the present petition under Article 227 of the Constitution of India challenging the impugned order dated 1st August, 2007 passed by the Ld. Metropolitan Magistrate, New Delhi.

2. The respondent herein had filed an application under Section 23 of The Protection of Woman from Domestic Violence Act, 2005 before the Magistrate praying for grant of interim relief seeking therein her entry into the shared house hold at 7, Sunder Nagar, New Delhi and also prayed for interim maintenance of ₹ 45,000/- per month.

3. Vide the impugned order, the Ld. Magistrate directed the present petitioners to allow the respondent to enter into the aforesaid shared house hold at Delhi and stay over there under the prosecution of Protection Officer. Petitioners were also directed to pay interim maintenance of ₹ 8,000/- per month to the respondent. However, it was made clear that this relief passed in the favor of the respondent shall not create any special equities in her favor for passing any further order in the case and nothing in this order shall have any effect upon the merits of the case.

4. Being dissatisfied with the order passed by the Magistrate, the appellants challenged this order by way of present petition. Along with this petition an application under Section 482 Cr.P.C. has also been filed seeking stay of the operation of the impugned order and for giving a direction to the Protection Officer to remove the respondent and her family members from the house.

5. On the stay application, an ex-parte order was passed by this Court on 10th August, 2007, staying the operation of the impugned order dated 1st August, 2007.

6. After passing of ex-parte order, the respondent on 13th August, 2007, filed an application under Section 482 Cr.P.C. for directions/vacations of stay of the order of Ld. Magistrate dated 1st August, 2007 praying that petitioners be directed to maintain a status quo till the next date of hearing and not to dispossess the applicant.

7. I have heard the learned Counsel for the parties on the application for vacation of ex-parte stay. Petitioners counsel has also placed his rebuttal submissions in writing on record.

8. For the purpose of disposal of the present application Under Section 482 Cr.P.C. for directions/vacation of ex-parte stay order passed by the Magistrate on 1st August, 2007, it is not necessary for this Court, at this stage, to express any opinion on the merits of the respective contentions.

9. At the outset, it may be pointed out that the impugned order has been passed by the Ld. Magistrate under The Protection of Women from Domestic Violence Act, 2005. As per this Act the Magistrate has got ample power to modify, alter or revoke any order made under it and further there is specific provision for filing of appeal to the Court of Session against the order of Magistrate under the Act. The relevant provisions in this regard are Section 25 and Section 29 of the Act, which read as under:

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.

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

10. So, according to Section 25 of the Act, any aggrieved person may make an application before the Magistrate and the Magistrate after being satisfied that there is change in the circumstances requiring alteration, modification and 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.

11. Further, Section 29 of the Act provides for appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent.

12. When specific remedy by way of appeal or by way of alteration, modification or revocation of any order, has been provided under the Act, prima-facie, the present petition under Article 227 of the Constitution of India, under these circumstances is not maintainable before this Court.

13. It has been laid down in various judicial decisions by this Court as well as by the Apex Court that where the specific remedy is open to the party under specific Act, the High Court will not interfere under Section 482 of Cr.P.C. In case of N.P. Ponnuswami v. Returning Officer, Namakkal Constituency and Ors. 1952 SCR 218, the Apex Court has laid down that:

where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed off.

14. Here, in the case in hand, the Act under which the Magistrate has passed the impugned order, specifically provide the remedy by way of appeal or by way of modification, alteration etc.

15. So, under these circumstances there are sufficient and reasonable grounds for vacation of the interim ex-parte order passed by this Court on 10th August, 2007 and moreover as per prayer made in application under Section 482 Cr.P.C. by the petitioner, it has sought for giving directions to the Protection Officer to remove the respondent and the family members from the house, which goes on to show that the respondent is already in possession of the house that is why such direction has been sought for removing her from the house.

16. Accordingly, the present application for vacation of ex-parte stay granted by this Court on 10th August, 07 is allowed and ex-parte stay granted is hereby vacated and the parties are directed to maintain status quo till the next date of hearing and not to dispossess the respondent who is already in the possession.

17. List the matter on 22nd November 2007, the date already fixed.

CHAPTER 3

Appendices

APPENDIX I: THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE Act, 2005
No. 43 of 2005, 13 September 2005

CHAPTER I: PRELIMINARY

1. Short title, extent and commencement.—

(1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

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;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of section 22;

(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(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;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961);

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(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.

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(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.

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II: DOMESTIC VIOLENCE

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 wellbeing, 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.

CHAPTER III: POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

4. Information to Protection Officer and exclusion of liability of informant.—

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

5. Duties of police officers, service providers and Magistrate.—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);

(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant:

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

6. Duties of shelter homes.—If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

7. Duties of medical facilities.—If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

8. Appointment of Protection Officers.—

(1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

9. Duties and functions of Protection Officers.—

(1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(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;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

10. Service providers.—

(1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

(2) A service provider registered under subsection (1) shall have the power to—

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to

be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. Duties of Government.—The Central Government and every State Government, shall take all measures to ensure that—

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective coordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV: PROCEDURE FOR OBTAINING ORDERS OF RELIEF

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.

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

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

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

13. Service of notice.—

(1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

14. Counselling.—

(1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under subsection (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. Assistance of welfare expert.—In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

16. Proceedings to be held in camera.—If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act in camera.

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 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 subsection (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, 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 subsection (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under subsection (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.

21. Custody orders.—Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act 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:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

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.

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.

24. Court to give copies of order free of cost.—The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-incharge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

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.

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 subsection (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.

27. Jurisdiction.—

(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made this Act shall be enforceable throughout India.

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.

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

CHAPTER V: MISCELLANEOUS

30. Protection Officers and members of service providers to be public servants.—The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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.

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.

33. Penalty for not discharging duty by Protection Officer.—If any Protection Officer fails or refuses to discharges his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished 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.

34. Cognizance of offence committed by Protection Officer.—No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

35. Protection of action taken in good faith.—No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

36. Act not in derogation of any other law.—The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

37. Power of Central Government to make rules.—

(1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under subsection (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of subsection (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of subsection (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause of subsection (1) of section 9;

(g) the rules regulating registration of service providers under subsection (1) of section 10;

(h) the form in which an application under subsection (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under subsection (3) of that section;

(i) the means of serving notices under subsection (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under subsection (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under subsection (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under subsection (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before

the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

APPENDIX II: THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE RULES, 2006

1. Short title and commencement.—

(1) These rules may be called the Protection of Women from Domestic Violence Rules, 2006.

(2) They shall come into force on the 26th day of October, 2006.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) "Act" means the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

(b) "complaint" means any allegation made orally or in writing by any person to the Protection Officer;

(c) "Counsellor" means a member of a service provider competent to give counselling under sub-section (1) of section 14;

(d) "Form" means a form appended to these rules;

(e) "section" means a section of the Act;

(f) words and expressions used and not defined in these rules but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Qualifications and experience of Protection Officers.—

(1) The Protection Officers appointed by the State Government may be of the Government or members of non-governmental organizations: Provided that preference shall be given to women.

(2) Every person appointed as Protection Officer under the Act shall have at least three years experience in social sector.

(3) The tenure of a Protection Officer shall be a minimum period of three years.

(4) The State Government shall provide necessary office assistance to the Protection Officer for the efficient discharge of his or her functions under the Act and these rules.

4. Information to Protection Officers.—

(1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed may give information about it to the Protection Officer having jurisdiction in the area either orally or in writing.

(2) In case the information is given to the Protection Officer under sub-rule (1) orally, he or she shall cause it to be reduced to in writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.

(3) The Protection Officer shall give a copy of the information recorded by him immediately to the informant free of cost.

5. Domestic incident reports.—

(1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate.—

(1) Every application of the aggrieved person under section 12 shall be in Form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

(3) In case the aggrieved person is illiterate, the Protection Officer shall read over the application and explain to her the contents thereof.

(4) The affidavit to be filed under sub-section (2) of section 23 shall be filed in Form III.

(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).

7. Affidavit for obtaining *ex-parte* orders of Magistrate.—Every affidavit for obtaining *ex-parte* order under sub-section (2) of section 23 shall be filed in Form III.

8. Duties and functions of Protection Officers.—

(1) It shall be the duty of the Protection Officer—

(i) to assist the aggrieved person in making a complaint under the Act, if the aggrieved person so desires;

(ii) to provide her information on the rights of aggrieved persons under the Act as given in Form IV which shall be in English or in a vernacular local language;

(iii) to assist the person in making any application under section 12, or sub-section (2) of section 23 or any other provision of the Act or the rules made thereunder;

(iv) to prepare a "Safety Plan" including measures to prevent further domestic violence to the aggrieved person, in consultation with the aggrieved person in Form V, after making an assessment of the dangers involved in the situation and on an application being moved under section 12;

(v) to provide legal aid to the aggrieved person, through the State Legal Aid Services Authority;

(vi) to assist the aggrieved person and any child in obtaining medical aid at a medical facility including providing transportation to get the medical facility;

(vii) to assist in obtaining transportation for the aggrieved person and any child to the shelter;

(viii) to inform the service providers registered under the Act that their services may be required in the proceedings under the Act and to invite applications from service providers seeking particulars of their members to be appointed as Counsellors in proceedings under the Act under sub-section (1) of section 14 or Welfare Experts under section 15;

(ix) to scrutinise the applications for appointment as Counsellors and forward a list of available Counsellors to the Magistrate;

(x) to revise once in three years the list of available Counsellors by inviting fresh applications and forward a revised list of Counsellors on the basis thereof to the concerned Magistrate;

(xi) to maintain a record and copies of the report and documents forwarded under sections 9, 12, 20, 21, 22, 23 or any other provisions of the Act or these rules;

(xii) to provide all possible assistance to the aggrieved person and the children to ensure that the aggrieved person is not victimized or pressurized as a consequence of reporting the incidence of domestic violence;

(xiii) to liaise between the aggrieved person or persons, police and service provider in the manner provided under the Act and these rules;

(xiv) to maintain proper records of the service providers, medical facility and shelter homes in the area of his jurisdiction.

(2) In addition to the duties and functions assigned to a Protection Officer under clauses (a) to (h) of sub-section (1) of section 9, it shall be the duty of every Protection Officer—

(a) to protect the aggrieved persons from domestic violence, in accordance with the provisions of the Act and these rules;

(b) to take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person, in accordance with the provisions of the Act and these rules.

9. Action to be taken in cases of emergency.—If the Protection Officer or a service provider receives reliable information through e-mail or a telephone call or the like either from the aggrieved person or from any person who has reason to believe that an act of domestic violence is being or is likely to be committed and in a such an emergency situation, the Protection Officer or the service provider, as the case may be, shall seek immediate assistance of the police who shall accompany the Protection Officer or the service provider, as the case may be, to the place of occurrence and record the domestic incident report and present the same to the Magistrate without any delay for seeking appropriate orders under the Act.

10. Certain other duties of the Protection Officers.—

(1) The Protection Officer, if directed to do so in writing, by the Magistrate shall—

(a) conduct a home visit of the shared household premises and make preliminary enquiry if the court requires clarification, in regard to granting ex-parte interim relief to the aggrieved person under the Act and pass an order for such home visit;

(b) after making appropriate inquiry, file a report on the emoluments, assets, bank accounts or any other documents as may be directed by the Court;

(c) restore the possession of the personal effects including gifts and jewellery of the aggrieved person and the shared household to the aggrieved person;

(d) assist the aggrieved person to regain custody of children and secure rights to visit them under his supervision as may be directed by the Court;

(e) assist the Court in enforcement of orders in the proceedings under the Act in the manner directed by the Magistrate, including orders under section 12, section 18, section 19, section 20, section 21 or section 23 in such manner as may be directed by the Court;

(f) take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

(2) The Protection Officer shall also perform such other duties as may be assigned to him by the State Government or the Magistrate in giving effect to the provisions of the Act and these rules from time to time.

(3) The Magistrate may, in addition to the orders for effective relief in any case, also issue directions relating general practice for better handling of the cases, to the Protection

Officers within his jurisdiction and the Protection Officers shall be bound to carry out the same.

11. Registration of service providers.—

(1) Any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a company registered under the Companies Act, 1956 (1 of 1956) or any other law for time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance and desirous of providing service as a service provider under the Act shall make an application under sub-section (1) of section 10 for registration as service provider in Form VI to the State Government.

(2) The State Government shall, after making such enquiry as it may consider necessary and after satisfying itself about the suitability of the applicant, register it as a service provider and issue a certificate of such registration: Provided that no such application shall be rejected without giving the applicant an opportunity of being heard.

(3) Every association or company seeking registration under sub-section (1) of section 10 shall possess the following eligibility criteria, namely:—

(a) It should have been rendering the kind of services it is offering under the Act for at least three years before the date of application for registration under the Act and these rules as a service provider.

(b) In case an applicant for registration is running a medical facility, or a psychiatric counselling centre, or a vocational training institution, the State Government shall ensure that the applicant fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.

(c) In case an applicant for registration is running a shelter home, the State Government shall, through an officer or any authority or agency authorised by it, inspect the shelter home, prepare a report and record its finding on the report, detailing that—

(i) the maximum capacity of such shelter home for intake of persons seeking shelter;

(ii) the place is secure for running a shelter home for women and that adequate security arrangements can be put in place for the shelter home;

(iii) the shelter home has a record of maintaining a functional telephone connection or other communication media for the use of the inmates.

(4) The State Government shall provide a list of service providers in the various localities to the concerned Protection Officers and also publish such list of newspapers or on its website.

(5) The Protection Officer shall maintain proper records by way of maintenance of registers duly indexed, containing the details of the service providers.

12. Means of service of notices.—

(1) The notices for appearance in respect of the proceedings under the Act shall contain the names of the person alleged to have committed domestic violence, the nature of domestic violence and such other details which may facilitate the identification of person concerned.

(2) The service of notices shall be made in the following manner, namely:—

(a) The notices in respect of the proceedings under the Act shall be served by the Protection Officer or any other person directed by him to serve the notice, on behalf of the Protection Officer, at the address where the respondent is stated to be ordinarily residing in India by the complainant or aggrieved person or where the respondent is stated to be gainfully employed by the complainant or aggrieved person, as the case may be.

(b) The notice shall be delivered to any person in charge of such place at the moment and in case of such delivery not being possible it shall be pasted at a conspicuous place on the premises.

(c) For serving the notices under section 13 or any other provision of the Act, the provisions under Order V of the Civil Procedure Code, 1908 (5 of 1908) or the provisions under Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) as far as practicable may be adopted.

(d) Any order passed for such service of notices shall entail the same consequences, as an order passed under Order V of the Civil Procedure Code, 1908 (5 of 1908) or Chapter VI of the Code of Criminal Procedure, 1973 (2 of 1974) respectively, depending upon the procedure found efficacious for making an order for such service under section 13 or any other provision of the Act and in addition to the procedure prescribed under the Order V or Chapter VI, the court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

(3) On a statement on the date fixed for appearance of the respondent, or a report of the person authorised to serve the notices under the Act, that service has been effected

appropriate orders shall be passed by the court on any pending application for interim relief, after hearing the complainant or the respondent, or both.

(4) When a protection order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of section 25.

13. Appointment of Counsellors.—

(1) A person from the list of available Counsellors forwarded by the Protection Officer, shall be appointed as a Counsellor, under intimation to aggrieved person.

(2) The following persons shall not be eligible to be appointed as Counsellors in any proceedings, namely:—

(i) any person who is interested or connected with the subject matter of the dispute or is related to any one of the parties or to those who represent them unless such objection is waived by all the parties in writing.

(ii) any legal practitioner who has appeared for the respondent in the case or any other suit or proceedings connected therewith.

(3) The Counsellors shall as far as possible be women.

14. Procedure to be followed by Counsellors.—

(1) The Counsellor shall work under the general supervision of the court or the Protection Officer or both.

(2) The Counsellor shall convene a meeting at a place convenient to the aggrieved person or both the parties.

(3) The factors warranting counselling shall include the factor that the respondent shall furnish an undertaking that he would refrain from causing such domestic violence as complained by the complainant and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, electronic mail or through any medium except in the counselling proceedings before the counsellor or as permissibly by law or order of a court of competent jurisdiction.

(4) The Counsellor shall conduct the counselling proceedings bearing in mind that the counselling shall be in the nature of getting an assurance, that the incidence of domestic violence shall not get repeated.

(5) The respondent shall not be allowed to plead any counter justification for the alleged act of domestic violence in counselling the fact that and any justification for the act

of domestic violence by the respondent is not allowed to be a part of the Counselling proceeding should be made known to the respondent, before the proceedings begin.

(6) The respondent shall furnish an undertaking to the Counsellor that he would refrain from causing such domestic violence as complained by the aggrieved person and in appropriate cases an undertaking that he will not try to meet, or communicate in any manner through letter or telephone, e-mail, or through any other medium except in the counselling proceedings before the Counsellor.

(7) If the aggrieved person so desires, the Counsellor shall make efforts of arriving at a settlement of the matter.

(8) The limited scope of the efforts of the Counsellor shall be to arrive at the understanding of the grievances of the aggrieved person and the best possible redressal of her grievances and the efforts shall be to focus on evolving remedies or measures for such redressal.

(9) The Counsellor shall strive to arrive at a settlement of the dispute by suggesting measures for redressal of grievances of the aggrieved person by taking into account the measures or remedies suggested by the parties for counselling and reformulating the terms for the settlement, wherever required.

(10) The Counsellor shall not be bound by the provisions of the Indian Evidence Act, 1872 (1 of 1872) or the Code of Civil Procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1973 (2 of 1974), and his action shall be guided by the principles of fairness and justice and aimed at finding way to bring an end to domestic violence to the satisfaction of the aggrieved person and in making such an effort the Counsellor shall give due regard to the wishes and sensibilities of the aggrieved person.

(11) The Counsellor shall submit his report to the Magistrate as expeditiously as possible for appropriate action.

(12) In the event the Counsellor arrives at a resolution of the dispute, he shall record the terms of settlement and get the same endorsed by the parties.

(13) The court may, on being satisfied about the efficacy of the solution and after making a preliminary enquiry from the parties and after, recording reasons for such satisfaction, which may include undertaking by the respondents to refrain from repeating acts of domestic violence, admitted to have been committed by the respondents, accept the terms with or without conditions.

(14) The court shall, on being so satisfied with the report of counselling, pass an order, recording the terms of the settlement or an order modifying the terms of the settlement on being so requested by the aggrieved person, with the consent of the parties.

(15) In cases, where a settlement cannot be arrived at in the counselling proceedings, the Counsellor shall report the failure of such proceedings to the Court and the court shall proceed with the case in accordance with the provisions of the Act.

(16) The record of proceedings shall not be deemed to be material on record in the case on the basis of which any inference may be drawn or an order may be passed solely based on it.

(17) The Court shall pass an order under section 25, only after being satisfied that the application for such an order is not vitiated by force, fraud or coercion or any other factor and the reasons for such satisfaction shall be recorded in writing in the order, which may include any undertaking or surety given by the respondent.

15. Breach of Protection Orders.—

(1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include—

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;

(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;

(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;

(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

(e) an order prohibiting the consumption of alcohol or other drugs;

(f) any other order required for protection, safety and adequate relief to the aggrieved person.

16. Shelter to the aggrieved person.—

(1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

(3) If the aggrieved person so desires, the shelter home shall not disclose the identity of the aggrieved person in the shelter home or communicate the same to the person complained against.

17. Medical facility to the aggrieved person.—

(1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report: Provided that the medical facility shall not refuse medical

assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.

(3) If no domestic incident report has been made, the person-in-charge of the medical facility shall fill in Form I and forward the same to the local Protection Officer.

(4) The medical facility shall supply a copy of the medical examination report to the aggrieved person free of cost.

APPENDIX III: FORMS

FORM I

[See rule 5(1) and (2) and 17(3)]

DOMESTIC INCIDENT REPORT UNDER SECTIONS 9(B) AND 37(2)(C) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)

1. Details of the complainant/aggrieved person

(1) Name of the complainant/aggrieved person:

(2) Age:

(3) Address of the shared household:

(4) Present Address:

(5) Phone Number, if any:

2. Details of Respondents:

S. No.	Name	Relationship with the aggrieved person	Address	Telephone No, if any.

3. Details of children, if any, of the aggrieved person:

(a) Number of Children:

(b) Details of children:

Name	Age	Sex	With whom at present residing

4. Incidents of domestic violence:

S. No.	Date, place and time of violence	Person who caused domestic violence	Types of violence	Remarks
(i) Physical violence Please tick mark ☑ the column applicable.				
			☐ Causing hurt of any kind, please specify	

(ii) Sexual violence Please tick mark ☑ the column applicable.				
			☐ Forced sexual intercourse. ☐ Forced to watch pornography or other obscene material ☐ Forcibly using you to entertain others ☐ Any other act of sexual nature, abusing, humiliating, degrading or otherwise violative of your dignity (please specify details in the space provided below):	
(iii) Verbal and emotional abuse				
			☐ Accusation/aspersion on your character or conduct, etc. ☐ Insult for not bringing dowry, etc. ☐ Insult for not having a male child. ☐ Insult for not having any child ☐ Demeaning, humiliating or undermining remarks/ statement ☐ Ridicule ☐ Name calling ☐ Forcing you to not attend school, college or any other educational institution. ☐ Preventing you from taking up a job ☐ Preventing you from leaving the house	

(iii) Verbal and emotional abuse				
			☐ Preventing you from meeting any particular person ☐ Forcing you to get married against your will ☐ Preventing you from marrying a person of your choice ☐ Forcing you to marry a person of his/their own choice ☐ Any other verbal or emotional abuse (please specify in the space provided below)	
(iv) Economic violence				
			☐ Not providing money for maintaining you or your children ☐ Not providing food, clothes, medicine, etc, for you or your children ☐ Forcing you out of the house you live in ☐ Preventing you from accessing or using any part of the house ☐ Preventing or obstructing you from carrying on your employment	

(iv) Economic violence				
			☐ Not allowing you to take up an employment ☐ Non-payment of rent in case of a rented accommodation ☐ Not allowing you to use clothes or articles of general household use ☐ Selling or pawning your stridhan or any other valuables without informing you and without your consent ☐ Forcibly taking away your salary, income or wages etc. ☐ Disposing your stridhan ☐ Non payment of other bills such as electricity, etc. ☐ Any other economic violence (please specify in the space provided below)	
(v) Dowry related harassment				
			☐ Demands for dowry made, please specify; ☐ Any other detail with regard to dowry, please specify. Whether details of dowry items, stridhan, etc. attached with the form ☐ Yes ☐ No	

(vi) Any other information regarding acts of domestic violence against you or your children				

(Signature or thumb impression of the complainant/aggrieved person)

5. List of documents attached

Name of document	Date	Any other detail
Medico legal certificate		
Doctor's certificate or any other prescription		
List of Stridhan		
Any other document		

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005

S. No.	Orders	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

7. Assistance that you need

S. No.	Assistance available	Yes/No	Nature of assistance
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceedings		
(4)	Shelter home		
(5)	Medical facilities		
(6)	Legal aid		

8. Instruction for the Police officer assisting in registration of a Domestic Incident Report:

Wherever the information provided in this From discloses an offence under the Indian Penal Code or any other law, the police officer shall-

(a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974)

(b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has request-

ed that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

(c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

(Counter signature of Protection Officer/Service provider)

Place: Name:

Date: Address:

(Seal)

Copy forwarded to:-

1. Local Police Station
2. Service Provider/Protection Officer
3. Aggrieved person
4. Magistrate

Form II

[See rule 6(1)]

APPLICATION TO THE MAGISTRATE UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)

.....

To

The Court of Magistrate

.....

.....

.....

.....

Application under section _____of the Protection of Women from Domestic Violence Act,2005 (43 of 2005)

SHOWETH:

1. That the application under section.....of Protection of Women from Domestic Violence Act, 2005 is being filed along with a copy of Domestic Incident Report by the:-

(a) Aggrieved person ☐

(b) Protection Officer ☐

(c) Any other person on behalf of the aggrieved person ☐

(tick whichever is applicable)

2. It is prayed hat the Hon'ble court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case.

(a) Pass protection orders under section 18 and /or

(b) Pass residence orders under section 19 and /or

(c) Direct the respondent to pay monetary relief under section 20 and /or

(d) Pass orders under section 21 of the act and /or

(e) Direct the respondent to grant compensation or damages under section 22 and /or

(f) Pass such interim orders as the court deems just and proper

(g) Pass any orders as deems fit in the circumstances of the case.

3. Orders required:

(i) Protection Order under section 18

- ☐ Prohibiting acts of domestic violence by granting an injunction against the Respondent/s from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- ☐ Prohibiting Respondent(s) from entering the school/college/workplace
- ☐ Prohibiting from stopping you from going to your place of employment
- ☐ Prohibiting Respondent(s) from entering the school/college/any other place of your children
- ☐ Prohibiting Respondent(s) from stopping you from going to your school
- ☐ Prohibiting any form of communication by the Respondent with you
- ☐ Prohibiting alienation of assets by the Respondent
- ☐ Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same
- ☐ Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- ☐ Any other order, please specify

(ii) Residence Order under section 19

An order restraining Respondent(s) from

- ☐ Dispossessing or throwing me out from the shared household
- ☐ Entering that portion of the shared household in which I reside
- ☐ Alienating/disposing/encumbering the shared household
- ☐ Renouncing his rights in the shared household
- ☐ An order entitling me continued access to my personal effects
- ☐ An order directing Respondent (s) to
  - ☐ Remove himself from the shared household
  - ☐ Secure same level of alternate accommodation or pay rent for the same
  - ☐ Any other order, please specify

(iii) Monetary reliefs under section 20

☐ Loss of earnings, Amount claimed

☐ Medical expenses, Amount claimed

☐ Loss due to destruction/damage or removal of property from the control of the aggrieved person. Amount claimed

☐ Any other loss or physical or mental injury as specified in clause 10 (d)

Amount claimed

☐ Total amount claimed

☐ Any other order, please specify

(iii) Monetary reliefs under section 20

☐ Directing the Respondent to pay the following expenses as monetary relief:

☐ Food, clothes, medications and other basic necessities, Amount per month

☐ School fees and related expenses Amount per month

☐ Household expenses Amount per month

☐ Any other expenses Amount per month

☐ Any other order, please specify

(v) Custody Order under section 21

Direct she Respondent to hand over the custody of the child or children to the

☐ Aggrieved Person

☐ Any other person on her behalf, details of such person

(vi) Compensation order under section 22

(vii) Any other order, please specify

4. Details of previous litigation, if any

(a) ☐ Under the Indian Penal Code, Sections .....
..... Pending in the court of
[ ]
☐ Disposed off, details of relief

(b) ☐ Under CrPC, Sections .....
..... Pending in the court of
[ ]
☐ Disposed off, details of relief

(c) ☐ Under the Hindu Marriage Act, 1956, Sections .....
..... Pending in the court of
[ ]
☐ Disposed off, details of relief

(d) ☐ Under the Hindu Adoptions and Maintenance Act, 1956, Sections .....
..... Pending in the court of
[ ]
☐ Disposed off, details of relief

(e) ☐ Application for Maintenance, under section .....
..... under [ ] Act
Interim maintenance Rs. [ ] p.m.
Maintenance granted Rs. [ ] p.m.

(f) ☐ Whether Respondent was sent to Judicial Custody

☐ For less than a week ☐ For less than a month ☐ For more than a month

Specify period ☐

(g) Any other order, please specify

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief (s) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place: COMPLAINANT/AGGRIEVED PERSON THROUGH

Dated:

COUNSEL

Verified at .....(place) on this day of.....that the contents of Paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

DEPONENT

Countersignature of Protection Officer with date.

Form III

[See rule 6(4) and 7]

AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)
IN THE COURT OF.....; MM,.....

P/S:.....

IN THE MATTER OF

Ms. ..... & Others ....COMPLAINANT

VERSUS

Mr. ..... & Others ....RESPONDENT

AFFIDAVIT

I,.....W/o Mr. ....., R/o..... D/o Mr. ...., R/o....., presently residing at..... do hereby solemnly affirm and declare on oath as under:

1. That I am the Applicant in the accompanying Application for .... filed for myself and for my daughter/son.
2. That I am the natural guardian of ....
3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
4. That the Deponent had been living with the Respondent/s at .... since ..... to.....
5. That the details provided in the present Application for the grant of relief under Section (s) ..... have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/ Hindi/any other local language (Please specify .....).

7. That the contents of the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.

8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.

9. That the Respondent has threatened the Applicant that .....
.....
.....
.....
.....

10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts of domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte ad-interim basis.

11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

DEPONENT VERIFICATION:

Verified at ..... on this ..... day of ..... 20 .... That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed there from.

DEPONENT

Form IV

[See rule 8(1) (ii)|

INFORMATION ON RIGHTS OF AGGRIEVED PERSONS UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)

1. If you are beaten up, threatened or harassed in your home by a person with whom you reside in the same house, then you are facing domestic violence. The Protection of Women from Domestic Violence Act, 2005, gives you the right to claim protection and assistance against domestic violence.

2. You can receive protection and assistance under the Act, if the person(s)with whom you are/ were residing in the same house, commits any of the following acts of violence against you or a child in your care and custody -

1. Physical Violence:

For example-

(i) Beating,

(ii) Slapping,

(iii) Hitting,

(iv) Biting,

(v) Kicking,

(vi) Punching,

(vii) Pushing,

(viii) Shoving or

(ix) Causing bodily pain or injury in any other manner.

2. Sexual Violence:

For example-

(i) Forced sexual intercourse;

(ii) Forces you to look at pornography or any other obscene pictures or material;

(iii) Any act pf sexual nature to abuse, humiliate or degrade you, or which is otherwise violative of your dignity or any other unwelcome conduct of sexual nature;

(iv) Child sexual abuse

3. Verbal and Emotional Violence:

For example-

(i) Insults;

(ii) Name-calling;

(iii) Accusations on your character or conduct etc.;

(iv) Insults for not having a male child;

(v) Insults for not bringing dowry etc.;

(vi) Preventing you or a child in your custody from attending school, college or any other educational institution;

(vii) Preventing you from taking up a job;

(viii) Forcing you to leave your job;

(ix) Preventing you or a child in your custody from leaving the house;

(x) Preventing you from meeting any person in the normal course of events;

(xi) Forcing you to get married when you do not want to marry;

(xii) Preventing you from marrying a person of your own choice;

(xiii) Forcing you to marry a particular person of his/their own choice;

(xiv) Threat to commit suicide;

(xv) Any other verbal or emotional abuse.

4. Economic Violence:

For example-

(i) Not providing you money for maintaining you or your children;

(ii) Not providing food, clothes, medicines etc. for you or your children;

(iii) Stopping you from carrying on your employment;

(iv) Disturbing you in carrying on your employment;

(v) Not allowing you to take up an employment;

(vi) Taking away your income from your salary, wages etc.;

(vii) Not allowing you to use your salary, wages etc.;

(viii) Forcing you out of the house you live in;

(ix) Stopping you from accessing or using any part of the house;

(x) Not allowing use of clothes, articles or things of general household use;

(xi) Not paying rent if staying in a rented accommodation, etc.

3. If an act of domestic violence is committed against you by a person/s with whom you are/were residing in the same house, you can get all or any of the following orders against the person(s)-

(a) Under section 18:

(i) To stop committing any further acts of domestic violence on you or your children;

(ii) To give you the possession of your stridhan, jewellery, clothes etc.;

(iii) Not to operate the joint bank accounts or lockers without permission of the court.

(b) Under section 19:

(i) Not to stop you from residing in the house where you were residing with the person/s;

(ii) Not to disturb or interfere with your peaceful enjoyment of residence;

(iii) Not to dispose off the house in which you are residing;

(iv) If your residence is a rented property then either to ensure payment of rent or secure any other suitable alternative accommodation which offers you the same security and facilities as earlier residence;

(v) Not to give up the rights in the property in which you are residing without the permission of the court;

(vi) Not to take any loan against the house/property in which you are residing or mortgage it or create any other financial liability involving the property,

(vii) Any or all of the following orders for your safety requiring the person/s to-

(c) General Order:

(i) Stop the domestic violence complained/reported

(d) Special Orders:

(i) Remove himself/stay away from your place of residence or workplace;

(ii) Stop making any attempts to meet you;

(iii) Stop calling you over phone or making any attempts to communicate with you by letter, e-mail etc;

(iv) Stop talking to you about marriage or forcing you to meet a particular person of his/ their choice for marriage;

(v) Stay away from the school of your child/children, or any other place where you and your children visit;

(vi) Surrender possession of firearms, any other weapon or any other dangerous substance

(vii) Not to acquire possession of firearms, any other weapon or any other dangerous substance and not to be in possession of any similar article;

(viii) Not to consume alcohol or drugs with similar effect which led to domestic violence in the past;

(ix) Any other measure required for ensuring your or your children's safety.

(e) An order for interim monetary relief under sections 20 and 22 including -

(i) Maintenance for you or your children,

(ii) Compensation for physical injury including medical expenses,

(iii) Compensation for mental torture and emotional distress,

(iv) Compensation for loss of earning,

(v) Compensation for loss caused by destruction, damage, removal of any property from your possession or control.

Note. - I. Any of the above relief can be granted on an interim basis, as soon as you make a complaint of domestic violence and present your application for any of the relief before the court.

II. A complaint of domestic violence made in Form I under the Act is called a "Domestic Incident Report")

4. If you are a victim of domestic violence, you have the following rights:

(i) The assistance of a Protection Officer and service providers to inform you about your rights and the relief which you can get under the Act under section 5.

(ii) The assistance of a Protection Officer, service providers or the officer in charge of the nearest police station to assist you in registering your complaint and filing an application for relief under sections 9 and 10.

(iii) To receive protection for you and your children from acts of domestic violence under section 18.

(iv) You have right to measures and orders protecting you against the particular dangers or insecurities you or your child are facing.

(v) To stay in the house where you suffered domestic violence and to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the house and the amenities facilities therein, by you or your children under section 19.

(vi) To regain possession of your stridhan, jewellery, clothes, articles of daily use and other house hold goods under section 18.

(vii) To get medical assistance, shelter, counseling and legal aid under sections 6, 7, 9 and 14.

(viii) To restrain the person committing domestic violence against you from contacting you or communicating with you in any manner under section 18.

(ix) To get compensation for any physical or mental injury or any other monetary loss due to domestic violence under section 22.

(x) To file complaint or applications for relief under the Act directly to the court under sections 12, 18, 19, 20, 21, 22 and 23.

(xi) To get the copies of the complaint filed by you, applications made by you, reports of any medical or other examination that you or your child undergo.

(xii) To get copies of any statements recorded by any authority in connection with Domestic Violence.

(xiii) The assistance of the Protection Officer or the Police to rescue you from any danger.

5. The person providing the form should ensure that the details of all the registered service providers are entered in the manner and space provided below. The following is the list of service providers in the area;

Name of Organization	Service Provided	Contact Details

Form V

[See rule 8(1)(iv)]

SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns C and D are to be filled in by the Protection Officer, Police Officer or any other service provider, as the case may be, in consultation with the complainant and with her consent.

2. The aggrieved person in case of approaching the Court directly may herself provide details in columns C and D.

3. If the aggrieved person leaves columns C and D blank and approaches the Court directly, then details in the said columns are to provided by the Protection Officer to the Court, in consultation with the complainant and with her consent.

	A	B	C	D	E
SI. No.	Violence by the Respondent	Consequences of violence mentioned in column A suffered by the Aggrieved Person	Apprehensions of the Aggrieved Person regarding violence mentioned in Column A	Measures required for safety	Orders sought from the court

Form VI

{See rule 11(1)}

FORM FOR REGISTRATION AS SERVICE PROVIDERS UNDER SECTION 10(1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

1.	Name of the applicant	
2.	Address along with Phone number, e-mail address, if any.	
3.	Services being rendered	☐ Shelter ☐ Psychiatric Counselling ☐ Family counselling ☐ Vocational Training Centre ☐ Medical Assistance ☐ Awareness Programme ☐ Counselling for a group of people who are victims of domestic violence and family disputes ☐ Any other, specify.
4.	Number of persons employed for providing such services:	

5.	Whether providing the required- services in your institution requires certain statutory minimum profession alqualification? If yes, please specify and give details.	
6.	Whether list of names of the persons and the capacity in which they are working and their professional qualification is attached?	☐ Yes ☐ No
7.	Period for which the services are being rendered:	☐ 3 years ☐ 4 years ☐ 5 years ☐ 5 years ☐ More than 6 years
8.	Whether registered under any law/regulation	☐ Yes ☐ No
	If yes, give the registration Number	
9.	Whether requirements prescribed by any regulatory body or law fulfilled?	
	If yes, the name and address of the regulatory body:	
Note.-- In case of a shelter home, details under column 10 to 18 are to be entered by registering authority after inspection of the shelter home.		
10.	Whether there is adequate space in the shelter home	☐ Yes ☐ No
11.	Measured area of the entire premise	
12.	Number of rooms	
13.	Area of the rooms	
14.	Details of security arrangements available	
15.	Whether a record available for maintaining a functional telephone connection for the use of inmates for the last 3 years	
16.	Distance of the nearest; dispensary/ clinic/medical facility	

17.	Whether any arrangement: for regular visits by a medical professional has been made?	☐ Yes ☐ No
	If yes, name of the Medical Professional Address Contact number Qualification Specialization	
18. Any other facilities available, specify		
Note:- In case of a counseling centre, details under column 19 to 25 are to be entered after inspection by registering authority		
19. Number of counselors in the, centre		
20. Minimum qualification of the counselors, specify ☐ Under graduate ☐ Graduate ☐ Post graduate ☐ Diploma holder ☐ Professional degree ☐ Any other, specify		
21. Experience of the counselors ☐ Less than a year ☐ 1 year ☐ 2 years ☐ 3 years ☐ More than 3 years		

22. Professional qualification/experience of counselors

☐ Professional degree

☐ Experience in family counseling as a.....(designation) in, the. .....(Name of the organization)

☐ Experience in psychiatric counseling as.....(designation) in the.....(Name of the organization)

☐ Any other relevant experience, please specify

23. Whether a list of names of counselors along with their qualifications has been annexed

☐ Yes

☐ No

24(A). Type of counseling provided

☐ Supportive one-to-one counseling

☐ Cognitive behavioural therapy (CBT)
{Mental process that people use to remember, reason, understand, solve problems and judge things}

☐ Providing counseling to a group of people suffering

☐ Family counseling

24(B). Facilities provided

☐ Offering personal professional and confidential counseling sessions

☐ A safe environment to discuss problems and express emotions

☐ Information on counseling services, support groups and mental health care resources

☐ One to one counseling and group work

☐ Therapies, ongoing counseling and health related support

☐ Any other, please specify

24(C). Any other service

(1) Services being provided

(2) Personnel appointed

(3) Statutory minimum qualifications required for providing such service

(4) Whether a list of names of Personnel engaged for providing service along with their professional qualification is annexed

☐ Yes ☐ No

(5) Any other details which the service provider desirous of registration may provide

.....If necessary continue on a separate sheet.

Place: Signature of authorised official

Date: Designation:

(Seal)

Form VII

[See rule 11(1)]

NOTICE FOR APPEARANCE UNDER SECTION 13 (1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
IN THE COURT OF.....

P/S:.....

IN THE MATTER OF

Ms. ....COMPLAINANT

VERSUS

Mr. ....RESPONDENT

To,

Mr.....

S/o.....

R/o .....

.....

.....

WHEREAS the Petitioner has filed an application (s) under section..... of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the ..... day of .... 20 ..... at _____ o'clock in the _____ noon personally or through a duly authorized counsel of this Court to show cause why the relief (s) claimed by the Applicant against you should not be granted, failing which the court shall proceed *ex parte* against you.

Given under my hand and the seal of the Court of ..... on the ..... day of ..... 20.....

Signature

Seal of the Court

[F. No. 19-3/2005-WW]
PARUL DEBI DAS, Jt. Secy.

APPENDIX IV: CODE OF CRIMINAL PROCEDURE, 1973, SECTIONS 125-128 [AS AMENDED TO DATE]

125. ORDER FOR MAINTENANCE OF WIVES, CHILDREN AND PARENTS.

- (1) If any person having sufficient means neglects or refuses to maintain.-

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself,

*[a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate as such magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:]

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

*[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:]

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.";

Explanation.-For the purposes of this Chapter.-

(a) "minor" means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

*[(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(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 port of each month's allowanc *[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:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.-If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding , as the case may be from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her, husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.]

*[Modified vide Code of Criminal Procedure Amendment Act, 2001]]

126. PROCEDURE.-

(1) Proceedings under section 125 may be taken against any person in any district.—

(a) where he is, or

(b) where he or his wife resides, or

(c) where he last resided with his wife, or as the case may be, with the mother of the illegitimate child.

(2) All evidence to such proceedings shall be taken in the presence of the person against whom an order for payment of maintenance is proposed to be made, or, when his personal attendance is dispensed with in the presence of his pleader, and shall be recorded in the manner prescribed for summons-cases:

Provided that if the Magistrate is satisfied that the person against whom an order for payment of maintenance is proposed to be made is wilfully avoiding service, or wilfully neglecting to attend the Court, the Magistrate may proceed to hear and determine the case *ex parte* and any order so made may be set aside for good cause shown on an application made within three months from the date thereof subject to such terms including terms as to payment of costs to the opposite party as the Magistrate may think just and proper.

(3) The Court in dealing with applications under section 125 shall have power to make such order as to costs as may be just.

127. ALTERATION IN ALLOWANCE.-

*[(1) On proof of a change in the circumstances of any person, receiving, under section 125 a monthly allowance for the maintenance or interim maintenance, or ordered under the same section to pay a monthly allowance for the maintenance, or interim maintenance, to his wife, child, father or mother, as the case may be, the Magistrate may make such alteration, as he thinks fit, in the allowance for the maintenance or the interim maintenance, as the case may be.";]

Provided that if he increases the allowance, the monthly rate of five hundred rupees in the whole shall not be exceeded.

(2) Where it appears to the Magistrate that, in consequence of any decision of a competent civil Court, any order made under section 125 should be cancelled or varied, he shall cancel the order or, as the case may be, vary the same accordingly.

(3) Where any order has been made under section 125 in favour of a woman who has been divorced by, or has obtained a divorce from, her husband, the Magistrate shall, if he is satisfied that.-

(a) the woman has, after the date of such divorce, remarried, cancel such order as from the date of her remarriage;

(b) the woman has been divorced by her husband and that she has received, whether before or after the dale of the said order, the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce, cancel such order-

(i) in the case where such sum was paid before such order, from the date on which such order was made,

(ii) in any other case, from the date of expiry of the period, if any, for which maintenance has been actually paid by the husband to the woman;

(c) the woman has obtained a divorce from her husband and that she had voluntarily surrendered her rights to *[maintenance as interim maintenance, as the case may be] after her divorce, cancel the order from the date thereof.

(4) At the time of making any decree for the recovery of any maintenance or dowry by any person, to whom a *[monthly allowance for the maintenance and interim maintenance or any of them has been ordered] to be paid under section 125, the civil Court shall take into account the sum which has been paid to, or recovered by, such person as *[as monthly allowance for the maintenance and interim maintenance or any of them, as the case may be, in pursuance of] the said order.

*[Modified by Code of Criminal Procedure Amendment Act, 2001]

128. ENFORCEMENT OF ORDER OF MAINTENANCE.-

A copy of the order of *[maintenance or interim maintenance and expenses of proceeding, as the case may be] shall be given without payment to the person in whose favour it is made, or to hi s guardian, if any, or to the person to *[whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the *[allowance or as the case may be expenses, due].

* [Modified by Code of Criminal Procedure Amendment Act, 2001