

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION Nos.599 of 2023, 1591 of 2023,
1566 of 2023, 1488 of 2023, 1484 of 2023,
1554 of 2023, 1555 of 2023, 1377 of 2023,
772 of 2023, 836 of 2023, 871 of 2023, 872 of 2023,
812 of 2023, 943 of 2023, 987 of 2023, 1012 of 2023,
899 of 2023, 1167 of 2023, 1172 of 2023,
1273 of 2023, 1288 of 2023, 1319 of 2023,
1090 of 2023, 1324 of 2023, 1344 of 2023,
1442 of 2023, 8257 of 2022, 1421 of 2023,
1857 of 2023, 1741 of 2023, 1714 of 2023,
1690 of 2023, 1601 of 2023, 1752 of 2023,
1810 of 2023 and 1787 of 2023

COMMON ORDER:

These Criminal Petitions, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC'), are filed by the respective petitioners to quash the proceedings initiated against them by the respective respondents under the provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DVC Act, 2005'). Since the issue involved in all the Criminal Petitions is one and the same, they are being disposed of, by way of this common order.

2. The question that crops up for consideration before this Court in these Criminal Petitions is –“as the remedies that are available under the provisions of the DVC Act, 2005 are civil in nature and as the proceedings under Section 28 (1) of the DVC Act, 2005 are governed by CrPC, whether the proceedings under Section 482 CrPC are maintainable or not in respect of the said proceedings?”

3. The DVC Act, 2005 was enacted to protect women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The main object of the Act is to protect women from all sorts of discrimination. The Legislation has been enacted to render justice to women who suffered domestic violence. ‘Domestic violence’ constitutes both civil and criminal act perpetrated upon a woman in domestic relationship with husband or any of the relatives of husband. It is pertinent to mention here that the victim woman can be referred to, as an ‘aggrieved person’. Under Section 2(g) of the Act, the word ‘domestic violence’ has the same meaning as assigned to it under Section 3 of the Act. Section 3 of the Act reads thus:

“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.”

Though ‘violence’ has not been defined under the Act, according to the Black’s Law Dictionary, ‘violence’ means ‘unjust or unwarranted exercise of force, usually with the accompaniment or vehemence, outrage or fury’. Explanation I to Section 3 of the Act defines ‘physical abuse’, ‘sexual abuse’, ‘verbal and emotional abuse’ and ‘economic abuse’. It is pertinent to mention here that

physical abuse would also include physical harm and injury caused in the process. 'Injury' has not been defined under the Act. Section 44 of the Indian Penal Code, 1860 (for short, 'IPC') defines injury. According to said Section, the word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

4. Domestic violence is an amalgamation of criminal offence and civil wrong. A woman may be subjected to sexual abuse, cruelty or criminal offence under the provisions of the IPC, at the same time, she may be denied of residential rights and shared household, monetary reliefs and custody of children.

5. Section 28 of the Act provides the procedure to be followed in the proceedings under Sections 12, 18 to 23 and the offences under Section 31 of the Act. The said Section reads thus:

"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.”

A perusal of the aforesaid Section goes to show that non-compliance with an Order under Sections 18 to 23 would be an offence under Section 31 of the Act. Section 29 of the Act contemplates an appeal against any order passed by the Magistrate, lies before the Court of Session.

6. 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 goes to show that the reliefs 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. Going by the said provision, option is given to an aggrieved person to seek reliefs either in the civil court, family court or a criminal court. The said provision is an enabling provision whereby in a case for judicial separation, restitution of conjugal rights or divorce pending before civil court or family court, an aggrieved person may make an application under Section 12 of the Act claiming one or more reliefs as provided in Sections 18 to 22 of the Act.

7. It is apparent that the reliefs sought by the aggrieved person under the Act are civil in nature, and protection order, residence order, monetary reliefs, custody order and compensation order are the reliefs sought for civil wrong. Insofar as Section 28 of the Act is concerned, in unambiguous terms, it states that all proceedings under Sections 12, 18 to 23 and offences under Section 31 of the Act, should be governed by the provisions of the CrPC.

8. In *Shyamlal Devda & others v. Parimala*,¹ it is held thus: (paragraphs 8, 9 and 10).

8. Section 18 of the Domestic Violence Act relates to protection order. In terms of Section 18 of the Act, intention of the legislature is to provide more protection to woman. Section 20 of the Act empowers the court to order for monetary relief to the “aggrieved party”. When acts of domestic violence are alleged, before issuing notice, the court has to be *prima facie* satisfied that there have been instances of domestic violence.

9. In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant 14 is the husband and Appellants 1 and 2 are the parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants 3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants 4, 6 and 10 are the wives of Appellants 3, 5 and 9 respectively. Appellants 7 and 8 are the parents of Appellant 1. Appellants 1 to 6 and 14 are residents of Chennai. Appellants 7 to 10 are the residents of the State of Rajasthan and Appellants 11 to 13 are the residents of the State of Gujarat. Admittedly, the matrimonial house of the respondent and Appellant 1 has been at Chennai. Insofar as Appellant 14 husband of the respondent and Appellants 1 and 2 parents-in-law, there are

¹ (2020) 3 SCC 14

averments of alleged domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of Appellant 14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was *prima facie* case against the other Appellants 3 to 13. Since there are no specific allegations against Appellants 3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.”

9. Section 18 of the DVC Act, 2005 relates to protection order. The intention of the legislature is to provide more protection to woman. Section 20 of the Act contemplates grant of monetary relief to the aggrieved party. When the aggrieved party attributes acts of domestic violence as against her husband or any of the relatives of her husband, before issuing notice, the Court has to satisfy *prima facie* that there have been instances of domestic violence. When specific accusations have been made against husband or his relatives, then a petition under the provisions of the DVC Act, 2005 can be filed

before the jurisdictional Magistrate. Section 27 of the DVC Act, 2005 contemplates thus:

“Jurisdiction:

(1) The Court of Judicial Magistrate of 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 or other orders under this Act and to try offences under this act.

(2) Any order made under this Act shall be enforceable throughout India.”

When once accusations of violation have been made as against the aggrieved person, a petition under the provisions of the DVC Act, 2005 has to be filed before the jurisdictional Magistrate. When such is the case, there is no reason why truth or otherwise of the said accusations made by the aggrieved person can be challenged in an unequivocal terms in a petition under Section 482 CrPC either to quash the said proceedings or seeking certain

directions. It is pertinent to mention here that in many of the cases, the aggrieved persons would be making accusations as against her husband and omnibus accusations would be made as against relatives of the husband, thereby roping in as many relatives of the husband as possible, only with a view to harass her husband and his relatives. (See. *Ashish Dixit & others v. State of U.P.* (2013) 4 SCC 176).

10. This Court, in *Challa Sivakumar & 2 others v. Challa Anita & 2 others*², expressed that a petition under Section 482 CrPC is not maintainable except in exceptional cases without there existed any domestic relationship as laid down under Section 2 of the DVC Act, 2005 between the parties. (paragraph 11)

“11. POINT: As extracted supra, in *Giduthuri Kesari Kumars case* (1 supra), this Court observed that in view of the remedies enlisted in the D.V. Act, which are civil in nature and enquiry is not a trial of criminal case, the quash petitions under Section 482 Cr.P.C. are not generally maintainable except in exceptional cases like, without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V. case

² 2018 SCC OnLineHyd 329

against the respondents or a competent Court has already acquitted the respondents of the allegations which are identical to the ones levelled in the Domestic Violence case etc.

- a) Now the petitioners seek to project the lack of domestic relationship between the parties as an exceptional ground for seeking quashment of the proceedings. Their case is that the 1st respondent herself obtained decree of divorce against 1st petitioner from the Court of Senior Civil Judge, Gudur, in HMOP No. 92/2012 on 18.12.2012 and thereafter she filed the D.V. case and therefore, the said case is not maintainable as the domestic relationship is no longer in existence. In *MediKoteswaraPrasads case* (3 supra), a learned Single Judge of this Court no doubt held that by virtue of the dissolution of the marriage between the parties, the 1st petitioner cannot be termed as an aggrieved person as defined in Section 2(a) of the D.V. Act. Learned Judge further observed that what is significant is that only concerned woman, who is or has been in domestic relationship with the respondent, who is alleged to have been subjected to any act of domestic violence by the respondent can alone be termed as aggrieved person who can file the complaint for relevant reliefs under different provisions of the D.V. Act. Learned Judge ultimately quashed the proceedings against the petitioners therein. In *Inderjit Singh Grewals case* (2 supra), Honble Apex Court held that petition under Section 12 of D.V. Act is not maintainable because parties were already divorced. We will presently see

that the said decision was rendered in a different context.

- b) Basing on the above rulings, the petitioners implored to quash the proceedings. I am afraid, the request of the petitioners cannot be conceded in view of the subsequent decision of Apex Court in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori*. One of the questions engaged in that case was, whether a divorced woman can seek for reliefs against her ex-husband under Sections 18 to 23 of the Domestic Violence Act, 2005. The Sessions Court and High Court of Bombay having considered the fact that the marriage between the parties was dissolved by Khula divorce on 09.05.2008, held the domestic relationship between the parties was severed by the date of filing of DVC on 28.09.2009 and therefore, the said D.V. case was not maintainable. However, Honble Apex Court on a threadbare analysis of the different provisions of the D.V. Act, has come to a different conclusion. Elucidating Section 2(a) which defines the term aggrieved person, Supreme Court observed that apart from the woman, who is in a domestic relationship, any woman, who has been in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent, comes within the meaning of aggrieved person. Similarly, analyzing Section 2(f), which deals with the term domestic relationship, the Apex Court held that a person aggrieved (wife herein), who at any point of time has lived together with husband in a shared

household is also covered by the meaning of domestic relationship.

- c) In the same lines, the Apex Court extrapolated the term shared household defined under Section 2(s) and observed that if the aggrieved person, at any stage has lived in a domestic relationship with the respondent in a house, the person aggrieved can claim a shared household. The Apex Court also happened to analyse Section 3, which defines the term domestic violence. It held that apart from physical abuse, sexual abuse and verbal and emotional abuse, the economical abuse also constitute domestic violence. Ultimately, the Apex Court held thus: Para 30: An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.”

11. In *Nandkishior Pralhad Vyawahare v. Mangala*³, the Bombay High Court held thus: (paragraphs 50, 51 and 58).

“50. Coming to the second part of section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions

³ MANU/MH/0855/2018

we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of the provisions of Criminal Procedure Code. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Criminal Procedure Code to all the proceedings under the D.V. Act, as laid down in section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under section 28(2) exists for speedy and effective disposal of an application under section 12 or under sub-section (2) of section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub-section (2) of section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under section 12 or section 23(2) and comes to an end the moment the proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so

as to exclude the applicability of the provisions of Criminal Procedure Code, forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, remedy of criminal revision under section 397 or invocation of High Court's inherent power under section 482 of Criminal Procedure Code, we would be doing violence to the language of entire provision of section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51. The purpose of the power given to the Court under section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with section 12 D.V. Act application in a given case and especially the Courts contemplated under section 26 of the D.V. Act before whom similar applications are filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

58. A plain reading of Section 482 Cr.P.C., which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to prevent abuse of the process of Court or to secure ends of justice. This would show that this power is capable of being used by either of the parties and not just by the respondent seeking quashing of the proceedings under Section 12 of the D.V.Act. If this power is removed from Section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.”

12. When the Hon’ble Apex Court in categorical terms observed that a petition can be preferred by an aggrieved person on the ground of violence as against her

husband before the jurisdictional Magistrate, if the concept of limited applicability of the said provisions of the CrPC, is accepted, it would defeat the very object of the Act which provided an effective protection to a woman against the incidents of domestic violence. The intention of the Parliament to provide for a remedy under civil law also intended to make the remedy more effective and meaningful while laying down the general applicability of the CrPC subject to certain exceptions carved in the Act. The Parliament has provided for general applicability of the provisions of the CrPC and also simultaneously gave freedom to the Court to devise its own procedure in a particular case so as to suit the exigencies of that case. Generally, provisions of the CrPC would be applicable to all the proceedings under Sections 12 to 23 of the DVC Act, 2005 and also in respect of the offence under Section 31 of the Act, subject to the exceptions provided for, in the Act including the one under sub-section (2) of Section 28 of the Act. Section 28 of the DVC Act, 2005 contemplates clearly and without any ambiguity the intention of the Parliament to apply CrPC generally subject to the exceptions given under the Act. It is needless to mention here that inherent

powers of the High Court under Section 482 CrPC, with certain self-imposed restrictions, including the factor of availability of an efficacious alternative remedy under Section 29 of the DVC Act, 2005, would be available for redressal of the grievances of the party arising from orders passed in a proceedings under Sections 12, 18 to 23 and 31 of the DVC Act, 2005.

13. In view of the aforesaid reasons stated supra, it can be inferred that since the proceedings under the DVC Act, 2005 are civil in nature, the provisions of CrPC may not apply, is too general and vague. Instances would arise where an aggrieved person also would have to seek the relief in respect of all the petitions filed before the jurisdictional Magistrate, and the option left to her would only be by way of initiating proceedings under Section 482 CrPC with certain self-imposed restrictions. In view of the principle laid down in *Nandkishior Pralhad Vyawahare v. Mangala* case (3 supra), this Court is of the opinion that inherent power of the High Court can be invoked subject to self-imposed restrictions, including availability of an efficacious alternative remedy under Section 29 of the DVC Act, 2005, so as to adhere to redressal of their grievances

arising out of the orders passed in a proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 of the DVC Act, 2005.

14. The present Criminal Petitions are filed seeking to quash the proceedings initiated against the petitioners under the provisions of the DVC Act, 2005. Though various contentions have been raised in the petitions, the only grievance of the petitioners is that their presence may be dispensed with, in the proceedings before the Court below. Having considered the submissions of the learned counsel, this Court dispenses with the presence of the petitioners, who are relatives of husband, except husband, before the Court below, except on those occasions when the learned Magistrate feels that their presence is necessary.

15. With the aforesaid observations and directions, the Criminal Petitions are disposed of. Miscellaneous petitions, if any pending, in the Criminal Petitions, shall stand closed.

JUSTICE K. SREENIVASA REDDY

.03.2023
DRK

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

COMMON ORDER
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