



C.R.P.(PD)(MD)Nos.909 and 915 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.07.2021

Reserved On : 27.09.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

C.R.P.PD(MD).Nos.909 and 915 of 2021
and
CMP(MD)Nos.5177 and 5178 of 2021

C.R.P.PD(MD).No.909 of 2021 :

1.P.Ganesan : Petitioner/ Respondent

Vs.

M.Revathy Prema Rubarani : Respondent/ Petitioner

PRAYER: Civil Revision Petition filed Article 227 of Constitution of India, to call for the records pertaining to the petition in DVC.No.26 of 2020 on the file of the Judicial Magistrate No.I, Tirunelveli and set aside the same.

For Petitioner : Mr.Robert Chandra Kumar

C.R.P.PD(MD).No.915 of 2021 :

K.Rajasekar : Petitioner/ Accused No.1

Vs.

R.Sathiya : Respondent/ Complainant

1/33



PRAYER: Civil Revision Petition filed Article 227 of Constitution of India, to set aside the petition in DVC.No.8 of 2021 on the file of the learned Judicial Magistrate No.I, Kovilpatti.

For Petitioner : Mr.Z.Pinayagash

COMMON ORDER

The Civil Revision Petition in C.R.P.PD(MD)No.909 of 2021 has been filed under Article 227 of Constitution of India, seeking orders for setting aside the proceedings in D.V.C.No.26 of 2020, initiated under the provisions of Protection of Women from Domestic Violence Act, 2005, pending on the file of the Judicial Magistrate No.I, Tirunelveli.

2. The Civil Revision Petition in C.R.P.PD(MD)No.915 of 2021 has been filed under Article 227 of Constitution of India, seeking orders for quashing the proceedings in D.V.C.No.8 of 2021, initiated under the provisions of Protection of Women from Domestic Violence Act, 2005, pending on the file of the learned Judicial Magistrate No.I, Kovilpatti.

3.The case of the petitioner in C.R.P.PD(MD)No.909 of 2021 is that the marriage between himself and the respondent was solemnized on 27.05.1996,



that due to misunderstanding between them, the respondent got separated from the petitioner on 18.07.2010 and they were living separately for the past 10 years, that the respondent has filed a petition in D.V.C.No.26 of 2020 on the file of the Court of Judicial Magistrate No.I, Tirunelveli with sole intention to harass the petitioner, that the respondent had already collected her jewels from the petitioner on 30.01.2020, that the petitioner has been regularly paying the maintenance amount of Rs.10,000/- per month from 14.11.2017 and the respondent has been receiving the same, that the respondent has filed a petition in CrI.M.P.No.5055 of 2020 in M.C.No.1 of 2016 on the file of the Chief Judicial Magistrate, Tirunelveli for enhancement of maintenance and the same is pending, that the respondent has initiated the proceedings under the Domestic Violence Act, abusing the process of law and that therefore, the proceedings in D.V.C.No.26 of 2020 on the file of the Court of the Judicial Magistrate No.I, Tirunelveli are liable to be set aside.

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4. The case of the petitioner in C.R.P.PD(MD)No.915 of 2021 is that the marriage between himself and the respondent was solemnized on 24.06.2020, that the petitioner has already filed a petition in H.M.O.P.No.29 of 2021 on the file of the Subordinate Court, Kovilpatti for restitution of conjugal rights and the same is pending, that the respondent has sent a reply notice dated



26.11.2020, seeking mutual divorce, but subsequently, she has filed a case under the Domestic Violence Act against her husband and in-laws, that the learned Magistrate has rightly refused to take cognizance as against the parents of the petitioner, that the respondent has initiated the above proceedings with sole intention to harass the petitioner and her aged parents and that therefore, the proceedings pending in D.V.C.No.8 of 2021 on the file of the Court of the Judicial Magistrate No.1, Kovilpatti are liable to be quashed.

5. Previously, Section 482 of the Code of Criminal Procedure was invoked for challenging the proceedings initiated under the Protection of Women from Domestic Violence Act, 2005, pending on the file of the Judicial Magistrates, before this Court. In a batch of Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, in **Dr.P.Pathmanathan and others Vs. Tmt.Monica and another**, the **Hon'ble Mr. Justice N.Anand Venkatesh**, has passed a common order dated 18.01.2021, reported in **2021 (2) CTC 57**, holding that Section 482 Cr.P.C cannot be applied to quash the applications filed under Section 12 of Domestic Violence Act, but on the other hand, Article 227 of the Indian Constitution can be invoked.



6.The learned Judge has also formulated certain guidelines/directions to be followed by the parties as well by the Court while dealing with the proceedings initiated under the Domestic Violence Act. Thereafter, by changing the label and nomenclature of the petition, lot of petitions came to be filed as civil revision petitions under Article 227 of the Constitution. This Court, when the parties have approached this Court directly, has directed them to approach the concerned Magistrate Courts and workout their remedies in accordance with the directions issued in the Judgment above referred.

7.When the above two petitions were taken up for admission, the learned counsels appearing for the petitioners would submit that after the above said judgment, another Single Judge of this Court has taken a contra view that the proceedings under the Domestic Violence Act are criminal proceedings and as such, Article 227 of the Constitution cannot be invoked.

8.They would further submit that two Judges of this Court have taken inconsistent views with respect to the applicability of Section 468 of Cr.P.C to the proceedings initiated under the Domestic Violence Act and that therefore, these aspects need to be clarified by a larger Bench and they may be granted time for making comprehensive submissions.



9.I have heard Mr.Robert Chandra Kumar, learned counsel for the petitioner in C.R.P.PD(MD).No.909 of 2021 and Mr.Z.Pinayagash, learned counsel for the petitioner in C.R.P.PD(MD).No.915 of 2021.

10.Violence against women is a problem across the world and it is a violation of fundamental freedom and rights, such as the right to liberty and security, as mentioned in the charter of Fundamental Rights of the European Union. It affects women of all races, ethnic groups, classes and nationalities. Every age group of women have been facing violence in their life.

11.The phenomenon of domestic violence in India is widely prevalent, but has remained invisible in public domain. United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (Eighth Session, 1989) require the States to protect the women against violence of any crime especially that occurring within the family and accordingly, the Protection of Women From Domestic Violence Act, 2005, came to be enacted and came into force since 26th October 2006.



12.The term “Domestic Violence” has been widened in the meaningful manner to recognize domestic abuse as punishable offence and the said Act recognizes a women's right to a violence free home. An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person can file an application under Section 12 of the said Act before the concerned Magistrate for one or more reliefs under the said Act and the learned Magistrate can pass orders i.e., Protection Order under Section 18, Residence Orders under Section 19, providing Monetary Reliefs under Section 20, Custody Orders under Section 21 and Compensation Orders under Section 22 of the said Act. Section 31 of the said Act provides Penalty for breach of protection order and the said offence is categorized as cognizable and non-bailable offence.

13.It is pertinent to mention that the reliefs available under Sections 18, 19, 20, 21 and 22 can also be sought in any legal proceedings before a Civil Court, Family Court or a Criminal Court by the aggrieved person under Section 26 of the said Act. Section 27 of the said Act deals with the jurisdiction and the Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate, within local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed or the



respondent resides or carries on business or is employed or the cause of action has arisen, shall be the competent Court to grant a protection order or other orders and to try the offences under the said Act.

14. One other important provision of the said Act is Section 28, which deals with the Procedure and Sub Clause (1) of Section 28 contemplates that all proceedings under Sections 12, 18 to 23 and the offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. No doubt, Sub Section (2) states that nothing in Sub-Section (1) prevents the Courts from laying down its own procedure for disposal of an application under Section 12 or under Sub Section (2) of Section 23. In the above background, let us consider the nature of the proceedings, initiated under the provisions of the Protection of the Women from Domestic Violence Act.

15. At the out set, it is pertinent to note that the reliefs contemplated under Chapter IV of the D.V. Act are civil in nature. In the judgment reported in **2021 (2) CTC 57, [Dr.P.Pathmanathan and others Vs. Tmt.Monica]**, the learned Judge has held that the nature of the proceedings before the Magistrate under Chapter IV of the D.V. Act is purely civil in nature and that the Magistrate before whom the proceedings are pending cannot be said to be



exercising criminal jurisdiction as a criminal Court and the relevant passage is extracted hereunder ;

“32. In view of the decision in Kunapareddy v. Kunapareddy Swarna Kumari, (2016) 11 SCC 774, it is beyond any cavil that an application before a Magistrate for one or more reliefs under Chapter IV, all of which, are civil in nature, are proceedings to vindicate the civil rights of an aggrieved person. Applying the test laid down in S.A.L Narayan Rows case (cited supra), it is clear that the nature of proceeding before the Magistrate under Chapter IV of the D.V Act is purely civil in nature. As the jurisdiction exercised by the Magistrate does not partake the character of a criminal proceeding the result is that a Magistrate cannot be said to be exercising criminal jurisdiction as a Criminal Court while exercising jurisdiction under Chapter IV of the D.V Act.”

16.The learned Judge has further held that since the proceedings cannot be construed as criminal proceedings, Section 482 of Cr.P.C, has no application for challenging or quashing the proceedings initiated under Section 12 of the D.V.Act.

“40. As the proceedings before a Magistrate exercising jurisdiction under Chapter IV is not a criminal proceeding before a Criminal Court, the next question is whether a petition under Section 482 of the Code would lie to quash an application under



Section 12 of the D.V. Act. It is settled law that a petition under Section 482, Cr.P.C would lie only against an order of a criminal court. In **State of W.B. v. Sujit Kumar Rana**, (2004) 4 SCC 129, the Supreme Court has opined as under:

“33. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of the Code of Criminal Procedure would mean “a criminal court” or whence a power is exercised by the court under the Code of Criminal Procedure.”

41. As pointed out by a Division Bench of this Court in **Rajamanickam v State of Tamil Nadu**, 2015 (3) MWN Cri 379, Section 482 Cr.P.C preserves only the inherent criminal jurisdiction of the High Court. Thus, a petition under Section 482, Cr.P.C would be maintainable only if the order complained of is passed by a criminal Court or by a Court in exercise of powers under the Cr.P.C. Quashing an application under Section 12 of the D.V Act does not fall in either category, as what the Court is called upon to do at that stage is to interdict the exercise of civil jurisdiction by



the Magistrate at the threshold. As indicated *supra*, since the Magistrate is exercising only a civil jurisdiction in granting reliefs under Chapter IV of the Act, it follows that a Magistrate is not a criminal court for the purposes of proceedings under Chapter IV of the Act. It follows that an application under Section 482, Cr.P.C does not lie to quash an application under Section 12 of the D.V Act.

42. This does not, however, mean that an aggrieved respondent is remediless. The Magistrate exercising jurisdiction under Chapter IV of the D.V Act, is certainly a subordinate Court for the purposes of Article 227, and a petition under Article 227 of the Constitution would still be available challenging the proceedings under Chapter IV of the D.V Act, in an appropriate case.”

17.The learned Judge in Paragraph No.50 has held as follows:

“It follows that in view of the law laid down in *Narayan Row* (cited *supra*) and *Ram Kishan Fauji* (cited *supra*), that the character of a proceeding under the D.V Act, in so far as it relates to the reliefs under Sections 18 to 23, does not become criminal in character merely on account of the procedure under the Cr.P.C adopted by the Magistrate. In view of the foregoing discussion, the inevitable conclusion is that a petition to quash an application under Section 12 of the D.V. Act is maintainable only by way of a petition under Article 227 of the Constitution and not under Section 482, Cr.P.C.”



By holding so, the petitions filed under Section 482 Cr.P.C., were ordered to be dismissed as not maintainable and directed the parties to approach the concerned Magistrate and workout their remedies in accordance with the directions laid down in the said order.

18. Recently, the Hon'ble Supreme Court in **Satish Chander Ahuja Vs. Sneha Ahuja [Civil Appeal No.2483 of 2020]** reported in **2021 1 SCC 440**, had dealt with the question about the nature of proceedings initiated under the DV Act. It is necessary to refer paragraph Nos. 138 & 139 and 146, which read as follows :

“138. The proceedings under D.V. Act, 2005 are proceedings which are to be governed by Code of Criminal Procedure, 1973.

139. The procedure to be followed by the magistrate is provided under Section 28 of the D.V. Act and as per Section 28 of the D.V. 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. Even sub-section (2) of Section 28 provides that the magistrate can lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. However, for other proceedings, the procedure is to be followed as per the provisions of the Code of Criminal Procedure, 1973. The procedure to be followed under Section 125 shall be as per Section 126 of the



Cr.P.C. which includes permitting the parties to lead evidence. Therefore, before passing any orders under the D.V. Act, the parties may be permitted to lead evidence. However, before any order is passed under Section 12, the magistrate shall take into consideration any domestic incident report received by him from the protection officer or the service provider. That does not mean that magistrate can pass orders solely relying upon the domestic incident report received by him from the protection officer or the service provider. Even as per Section 36 of the D.V. Act, the provisions of the D.V. Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force. Even the magistrate can also pass an interim order as per Section 23 of the D.V. Act.”

...

146. We make it clear that in the present case we are called upon to examine the consequences and effect of orders passed under Section 19 of D.V. Act, 2005 on civil proceedings in a court of competent jurisdiction. Thus, our consideration and exposition are limited qua orders passed under Section 19 of D.V. Act only, i.e., a conflict between orders passed in a criminal proceeding on a civil proceeding.”

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19. The learned Judge has referred the judgment of Hon'ble Apex Court in **Sathis Chander Ahuja's** case, but distinguished the same, as the questions framed for consideration in that decision were not concerned with the character



of the proceedings under D.V.Act and the relevant paragraph is extracted hereunder :

“38. The Hon’ble Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja*, Civil Appeal 2483 of 2020 decided on 15.10.2020, has proceeded on the basis that a proceeding under Section 19 of the D.V Act is a “criminal proceeding”. The eight questions framed for consideration in *Satish Chander Ahuja* (cited *supra*), have been set out in paragraph 27 of the said judgment and none of those questions were concerned with the character of the proceedings under the D.V Act. It is well settled that the ratio of a judgment cannot be decided by picking out words or sentences from the judgment averse to the context under question. When the nature of proceedings before the Magistrate under the D.V Act did not consciously engage the attention of the Hon’ble Supreme Court, it cannot be said to be a part of the ratio thereby constituting a binding precedent under Article 141 of the Constitution of India, (See *Nevada Properties Private Limited v State of Maharashtra*, (2019) 20 SCC 119).”

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20.The learned Judge has also referred the Full Bench Judgment of Bombay High Court in *Nandkishor Pralhad Vyawahare vs Sau. Mangala*, reported in **2018 CRI. L.J. 2992**, but disagreed with the decision of full Bench. Since there were conflicting decisions of two different Benches, on the point of applicability of Section 482 of Cr.P.C to the proceedings under D.V



Act, the matter was referred to be decided by a Larger Bench and when the matter was taken up by the Division Bench, another judgment of Division Bench of the same High Court was brought to its notice and hence, the matter was referred to the Larger Bench. The Full Bench of the Bombay High Court at Nagpur in **Nandkishor Pralhad Vyawahare vs Sau. Mangala** (Criminal Application No.578 of 2011), dated 03.05.2018 reported in **2018 (2) BOMCR (CRI) 626; 2018 CRI. L.J. 2992** after referring to various decisions has observed as follows :

“53. This would mean that generally the provisions of Cr.P.C. would be applicable, to all proceedings taken under Sections 12 to 23 and also in respect of the offence under Section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of Section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Cr.P.C. to the proceedings referred to in Section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the Section, which would have its last word. We have already held that Section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under Section 482 of Cr.P.C., subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate



remedy under Section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under Sections 12, 18, 19, 20 21, 22 and 23 and also in respect of the offence under Section 31 of the D.V. Act.

54. We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (supra), wherein it is observed that a proposition that because the proceedings are of civil nature, the Cr.P.C. may not apply, is too general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Cr.P.C. to the proceedings under the Act (Paragraph 16). It also held that the remedy under Section 482 of Cr.P.C. would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under:

“19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under Section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under Section 29 before the court of Session or revision under Section 397, the Court may decline entertainment of the petition under Section 482 of the Code. But such in any case would not



limit or affect the inherent power of the High Court under Section 482 of the Code.”

21. Agreeing with the decision of Division Bench of Gujarat High Court, the Full Bench of Bombay High Court has held that though the proceedings are civil in nature and the same are to be governed by Criminal Procedure Code as provided under Section 28 of the D.V.Act and that therefore, Section 482 of Cr.P.C is applicable.

22. Though the learned Single Judge of this Court has agreed with the finding of the Full Bench of Bombay High Court that the nature of the right in a proceeding under D.V.Act is purely civil in nature, but expressed his disagreement for the finding, that even though the nature of remedies under the D.V Act are civil in nature, the principle that a nature of the proceeding would determine its character would not apply in view of the intention of Parliament expressed through Section 28 D.V.Act, making the Cr.P.C applicable.

23. The High Court of Meghalaya at Shillong in **Masood Khan Vs. Smti.Millie Hazarika** (Criminal Petition No.1 of 2021), dated 04.03.2021, after referring various decisions on the subject, including the judgments of the



Hon'ble Supreme Court in **Sathish Chander Ahuja's** case and the decision of this Court in **Dr.P.Pathmanathan's** case, has held as follows :

“34. In fact, Section 28 of the DV Act 2005 specifically provides that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as Section 31 shall be governed by the provisions of the Code of Criminal Procedure, though liberty was also given to the court to lay down its own procedure.

35. The applicability of the said provision of Section 28 of the said DV Act in criminal proceedings was emphasized by the Hon'ble Supreme Court in the case of Satish Chander Ahuja (supra) at paragraphs 138 and 139 where it has restated that the procedure to be followed shall be under the Code of Criminal Procedure.

...

37. This Court is not in agreement with the submission of the learned counsel for the Respondent No. 2 on the observation of the Hon'ble Supreme Court in the said case of Satish Chander Ahuja (supra) to say that it is limited, when it is clearly seen that the Hon'ble Supreme Court has clearly spelt out its position on the nature of proceedings under the DV Act, 2005 being governed by the procedure under the Code of Criminal Procedure which is only a reiteration of the stated provision of Section 28 and as such, the relief or remedy may be civil in nature, but the procedure to be followed under the DV Act, particularly for proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 as well as under Section 31 has to be governed by the



provisions of the Code of Criminal Procedure. Even reference to paragraph 146 would also show that Section 19 of the DV Act which is under consideration, is one of the section indicated above to be governed by the procedure of Code of Masood Khan vs . Smti. Millie Hazarika on 4 March, 2021 Criminal Procedure.

....

39. With due respect, the decisions of the Hon'ble Kerala High Court and the Madras High Court cited above and relied upon by the learned Counsel for the Respondent No 2, as far as the procedural aspects under the DV Act is concerned, would not stand the test in the light of the decision of the Hon'ble Supreme Court in the case of Satish Chander Ahuja (supra).”

24. Now coming to the judgment of this Court rendered by the **Hon'ble Mr. Justice. S.M. Subramaniam, in P. Arun Prakash and others Vs. S. Sudhamary** reported in **2021 SCC Online Mad 1954**, when the Registry of this Court had raised an objection regarding the maintainability of the Transfer Civil Miscellaneous Petition as the relief sought for in the petition is to withdraw the proceedings in DVC case from the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai to the file of the Vth Additional Family Court, Chennai and the same was listed before the concerned Judge. The learned Judge after referring to the various provisions of the D.V. Act has held as follows :



“ 22. Cogent reading of all the provisions considered above, undoubtedly, the proceedings under the 'DV Act' are regulated under the Code of Criminal Procedure as contemplated under Section 28 of the 'DV Act'. Thus, a complaint registered under Section 12 of the Domestic Violence Act is criminal proceedings on the criminal side of the judiciary and accordingly, the said proceedings are to be regulated under the Criminal Procedure Code.

23. Section 26 of the 'DV Act' contemplates that reliefs under Sections 18 to 22 may be sought for by instituting proceedings before the Civil Court, Family Court or the Criminal Court. The said provision grant liberty to the litigants to file independent applications/petitions before the Family Court, Civil Court or Criminal Court under various provisions of the other Statutes. For example, a custody petition may be filed under the Guardian and Wards Act, a Maintenance Petition may be filed under Section 125 of the Cr.P.C., or before the Family Court as the case may be and such reliefs of Civil nature is contemplated, enabling the litigants to redress their grievances with reference to the other enactments. Such facility or option provided to the litigants would not change the character of the nature of criminal proceedings instituted under the 'DV Act' and it is only an alternate relief and in the event of obtaining any such order from any other Court, it is mandatory that such reliefs obtained must be informed before the Magistrate Court in the Domestic Violence Act proceedings. This being the rider clause



as contemplated, the intention of the legislatures are to provide multiple options to the women litigants to redress their grievances in a speedy manner and in the event of obtaining any such reliefs from any other Court, the said order or proceedings must be informed to the Magistrate Court in respect of the Domestic Violence litigation instituted under Section 12 of the 'DV Act'.

.....

56. The special enactments are for the protection of women and for their welfare. Thus, the multiple options provided under various special enactments, facilitating the aggrieved women to redress their grievances are to be dealt in accordance with the provisions of such enactments and speedy disposal being the paramount importance, Courts are bound to ensure all such cases, affecting the women must be disposed of at the earliest possible. Protraction and prolongation of such litigations can never be encouraged by the Courts.

57. Conjoint reading of Section 44 of the Indian Penal Code and Section 3 of the Domestic Violence Act portrays the nature of injuries for initiation of proceedings under the Domestic Violence Act. Undoubtedly, all such bodily injuries are serious in nature and affecting the fundamental rights of women. Thus, initiation of proceedings under the Domestic Violence Act with reference to the bodily injuries contemplated under the provisions of the Act, are Criminal acts and therefore,



the Domestic Violence proceedings are criminal in nature and to be tried by the competent Judicial Magistrate. The word “injury” is defined in Section 44 of the Indian Penal Code as the word “injury” denotes '*any harm whatsoever illegally caused to any person, in body, mind, reputation or property*'.

58. Thus, the injuries enumerated under the provisions of the Domestic Violence Act are bodily injuries, which all are offences as contemplated under the Penal laws. Thus, all such offences / bodily injuries as contemplated under the Domestic Violence Act are against the society at large and therefore, the proceedings are criminal proceedings and the competent criminal Court of Law is empowered to try those cases. Section 28 of the Domestic Violence Act states that the proceedings are to be regulated under the Criminal Procedure Code. Thus, such criminal proceedings instituted under the Domestic Violence Act cannot be converted as Civil proceedings nor construed as proceedings of civil nature, so as to transfer such criminal proceedings before the Civil Court or Family Court by exercising the supervisory powers under Article 227 of the Constitution of India. सत्यमेव जयते

59. In view of the discussions made elaborately in the aforementioned paragraphs, this Court has no hesitation in concluding that all proceedings initiated under the provisions of the Domestic Violence Act are criminal proceedings and the competent criminal Court of Law is empowered to try such



proceedings. Thus, any transfer petition, if at all filed to transfer a case registered under the Domestic Violence Act must be entertained only under the Code of Criminal Procedure and certainly not by invoking the powers under Article 227 of the Constitution of India, to transfer the said case to the Civil Court or Family Court.”

The learned Judge has taken a contra view that the proceedings initiated under the provisions of D.V. Act are criminal proceedings and that therefore, Article 226 of Constitution cannot be invoked to transfer the criminal proceedings from Criminal Court to the Civil Court or Family Court.

25. Considering the above, it is very much clear that two different Benches of this Court have taken conflicting views. Moreover, considering the judgment of the Hon'ble Supreme Court in **Satish Chander Ahuja's** case and the Full Bench judgment of Bombay High Court in **Nandkishor Pralhad Vyawahare's** case and also the conflicting views of two different Benches of this Court, the above aspects need to be clarified by a larger Bench.

Applicability of Section 468 of Cr.P.C :

26. As already pointed out, Section 31 of Domestic Violence Act contemplates that a breach of protection order or an interim order shall be an



offence under the said Act and is punishable with imprisonment for a term which may extend to one year or with fine, which may extend to Rs.20,000/- or both.

27. The Hon'ble Apex Court in **Inderjit Singh Grewal Vs. State of Punjab and another** reported in (2011) 12 SCC 588, while deciding the main question involved in that appeal as to whether the judgment and decree of a competent Civil Court can be declared null and void in collateral proceedings, that too, criminal proceedings has incidently held that Section 468 of Cr.P.C is applicable to the proceedings initiated under the Protection of Women from Domestic Violence Act. The relevant paragraphs are extracted hereunder :

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

33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the



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

28.Subsequently, the Hon'ble Supreme Court in **Krishna Bhattacharjee Vs. Sarathi Choudhury and another** reported in (2016) 2 SCC 705, seems to have approved the view expressed in the **Inderjit Singh Grewal's** case regarding applicability of Section 468 for filing a complaint under Section 12 of the D.V Act. It is necessary to refer the paragraphs No.32 and 33 hereunder :

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



the said Act. Economic abuse as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in **Inderjit Singh Grewal** (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of “continuing offence” gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of



continuing offence and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.”

29.The learned Single Judge of this Court in CrI.OP (MD) Nos. 10110 & 15734 of 2011 reported in **CDJ 2018 MHC 7018** dated 28.08.2018 [**Coram : Hon'ble Mr.Justice.G.R.SWAMINATHAN**], following the decision of Hon'ble Supreme Court in **Krishna Battcharjee's** case, has held that Section 468 of Cr.P.C does not apply to a petition filed under Section 12 of D.V.Act and the relevant passages are extracted hereunder :

“10. It is true that Section 28 of the Central Act 43 of 2005 states that all proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 shall be governed by the provisions of Code of Criminal Procedure, 1973. Therefore, applicability of Cr.PC to a proceeding initiated under Section 12 of the D.V act 2005 cannot be in doubt. But, now the question is whether Section 468 of Cr.PC can be said to apply to a petition filed under Section 12 of the D.V Act, 2005. Section 468 of Cr.PC engrafts a bar to taking cognizance after lapse of the period of limitation. Chapter 36 of Cr.PC which includes Section 467 to 473 bears the title “Limitation for taking cognizance of certain offences”. Therefore, this Chapter and particularly Section 468 of Cr.PC cannot have any bearing or applicability in respect



of proceedings which do not deal with taking cognizance of offences.

11. Section 31 of the Central Act 43 of 2005 prescribes penalty for breach of protection order by the respondent. Section 33 embodies penalty for not discharging duty by Protection Officer . Therefore, Section 468 of Cr.PC will come into play when cognizance is sought to be taken in respect of offences set out under the Protection of Women from Domestic Violence Act, 2005. When a person aggrieved seeks certain reliefs under provisions such as 12, 18, 19, 20, 21 and 22 etc., she does not call upon the court concerned to take cognizance of any offence committed by the opposite party. She only wants certain reliefs to be ordered in her favour. Therefore, respectfully following the later decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 705 (Krishna Bhattacharjee vs. Sarathi Choudhury), I hold that Section 468 of Cr.PC does not apply to a petition filed under Section 12 of the Prevention of Women from Domestic Violence Act, 2005. Hence, the contention raised by the learned Senior Counsel appearing for the petitioner deserves to be negated.”

30.Subsequently, another learned Single Judge of this Court (**Coram Hon'ble Mr.Justice.G.ILANTHIRAYAN,**) has decided two cases in **V.Nagarajan and others Vs. B.P.Thangaveni** reported in **2019 (1) L.W. [Criminal] 936** and **N.Prasath Vs. Haritha Laxmi** reported in **CDJ 2020 MHC 2541**, following the judgment of Hon'ble Supreme Court in **Inderjit**



Singh Grewal's case, and held that in both cases, since the respondent left the matrimonial home in the year 2014, the complaint filed in the year 2017 was barred by time and consequently, quashed the proceedings.

31. In view of the conflicting views expressed by two different Benches of this Court, limitation aspect also needs to be clarified by a larger Bench.

Transfer of cases :

32. One another incidental aspect is brought to the notice of this Court, where the contradictory views were expressed by two different Benches of this Court. As already pointed out, the learned single judge in **P.Arun Prakash and others Vs. S.Sudhamary** reported in 2021 SCC Online Mad 1954, [Coram: **Hon'ble Mr.Justice.S.M.Subramanian**], has specifically held that the proceedings under the Domestic Violence Act are criminal proceedings and any petition to transfer a case registered under the Domestic Violence Act, must be entertained only under the code of criminal procedure and certainly not by invoking the Article 227 of Indian Constitution to transfer the said case to the Civil Court or Family Court.

33. Another learned Judge of this Court **The Hon'ble. Mr. Justice.A.D.Jagadish Chandira**, in **G.Jayakumar Vs. Jeyanthi** in



CrI.O.P.No.17235 of 2016, dated 12.02.2021, after referring to **Dr.Padmanathan's** case above referred, has held that the proceedings seeking reliefs under Section 12 and under Chapter IV of the D.V Act being civil in nature, there cannot be a bar for transferring the proceedings to the file of the Family Court. Since two different Benches of this Court expressed conflicting views regarding the transfer of the cases filed under D.V Act pending before the Magistrate to some other Civil Court or Family Court, the same needs to be referred to a larger Bench for having a binding decision.

34.In view of the aforesaid, I refer the following questions/issues to be decided by a larger Bench of this Court.

(i) Whether the proceedings initiated under the provisions of the Protection of Women from Domestic Violence Act before the Magistrate Courts are the Civil proceedings or Criminal proceedings?

(ii) Assuming that the proceedings are civil in nature, whether the High Court can exercise its power under Section 482 of Cr.P.C, in respect of the said proceedings ?

(iii) Whether the provisions of Section 468 of Cr.P.C, are applicable for the proceedings initiated under the Domestic Violence Act ?



(iv) Assuming that Section 468 Cr.P.C, is not applicable, what is the period of limitation for initiating the proceedings under the Domestic Violence Act ?

(v) Whether the proceedings initiated under the Domestic Violence Act and pending before the Magistrate Court can be transferred to the Civil Court or Family Court, by invoking Article 227 of Constitution of India.?

35.The Registry is directed to place the matter before the Hon'ble Chief Justice for considering the issues for resolution by a larger bench, as found fit and proper by the Hon'ble Chief Justice.

36.The learned counsels appearing for the revision petitioners would submit that in case of referring the matter to a larger Bench, the proceedings pending before the Magistrate Courts may be stayed and that the personal appearance of the petitioners may also be dispensed with.

37. Considering the nature of the questions/issues referred and other attending circumstances, this Court is not inclined to stay the further proceedings of the cases pending before the learned Judicial Magistrates. Moreover, in the judgment of this Court in **Dr.Padmanathan's** case referred



supra, it has been specifically observed in the guidelines issued therein that personal appearance of the petitioners shall not be ordinarily insisted upon, if the parties are effectively represented through counsel and that Form - VII of the Domestic Violence Rules makes it clear that the parties can appear before the Magistrate either in person or through duly authorized counsel. Even if the petitioners fail to appear either in person or through their counsel, the Magistrate can only proceed to set ex-parte and then to decide the application and therefore, it is not mandatory for the revision petitioners to appear personally for all the hearings. Hence, the learned Judicial Magistrates are directed not to insist the personal appearance of the petitioners as per the guidelines referred above for the hearing in which, the personal appearance of the petitioners is not necessary.

27.09.2021

Index : Yes/No
Internet : Yes/No
das

To

1. The Judicial Magistrate No.I, Tirunelveli.
2. The Judicial Magistrate No.I, Kovilpatti.



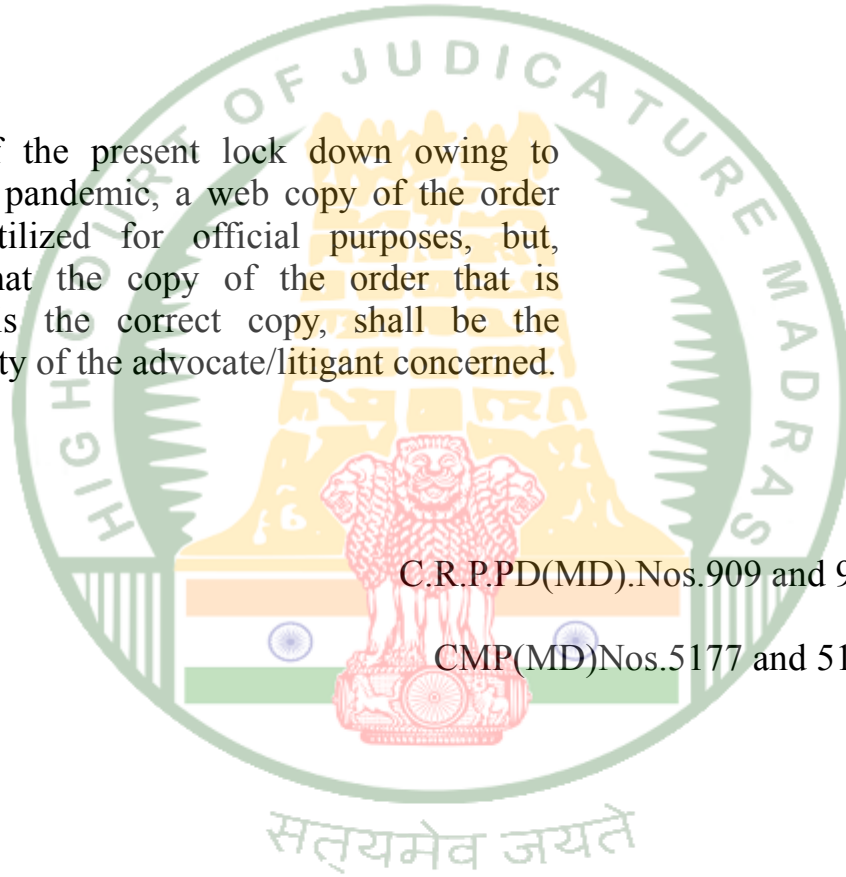
C.R.P.(PD)(MD)Nos.909 and 915 of 2021

K.MURALI SHANKAR, J.

das

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



C.R.P.D(MD).Nos.909 and 915 of 2021
and
CMP(MD)Nos.5177 and 5178 of 2021

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