2024:PHHC:140559-DB

Sr.No.1 (10 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 18.10.2024
Pronounced on : 25.10.2024

1) CR No.3407 of 2024 (O&M)

Hemant Bhagat and others …Petitioners

Versus

Prekshi Sood Bhagat ….Respondent

2) CR No.4311 of 2024 (O&M)

Tara Rani @ Tara Devi …Petitioner

Versus

Manju Sharma ….Respondent

3) CR No.4903 of 2024 (O&M)

Abhinav Verma …Petitioner

Versus

Isha Verma and others ….Respondents

4) CR No.4010 of 2024 (O&M)

Harjeet @ Harjit Kaur …Petitioner

Versus

Jaswinder Kaur ….Respondent

5) CR No.4896 of 2024 (O&M)

Ranjit Kaur …Petitioner

Versus

Amrik Singh and another ….Respondents

6) CR No.1100 of 2024 (O&M)

Nem Chand Goyal and another …Petitioners

Versus

Dr. Manisha Agrawal and another ….Respondents

7) CR-4834-2024 (O&M)

Santosh Kaur …Petitioner

Versus

Surinder Singh …Respondent

8) CR-5371-2024 (O&M)

Shashi Bala Grover …Petitioner

Versus

Akriti Kaura and others …Respondents

9) CR-5382-2024 (O&M)

Anshul Grover …Petitioner

Versus

Akriti Kaura and others …Respondents

10) CR-5669-2024 (O&M)

Sunil @ Sunil Garg …Petitioner

Versus

Seema and others …Respondents

CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Pankaj Midda, Advocate
for the petitioner(s) in CR-5382-2024 and CR-5371-2024.

Mr. Kashav Chadha, Advocate for
Mr. Rahul Bhargava, Advocate
for the petitioner(s) in CR-4311-2024.

Mr. R.M. Sharma, Advocate
for the petitioner(s) in CR-4896-2024.

Mr. Ramnish Puri, Advocate
for the petitioner(s) in CR-4834-2024.

Mr. Japjit Singh Johal, Advocate and
Mr. Nitin Sachdeva, Advocate
for the petitioner(s) in CR-1100-2024.

Mr. Deepak Negi, Advocate
for the petitioner(s) in CR-4010-2024.

Ms. Harmanpreet Kaur, Advocate
for the respondent(s) in CR-4010-2024.

Mr. Himanshu Arora, Panel Counsel for U.T. Chandigarh
with Ms. Radhika Mehta, Advocate.

Mr. Deepak Balyan, Addl.A.G., Haryana.

Mr. Saurav Khurana, Addl.A.G., Punjab.

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PANKAJ JAIN, J.

1. CR-3407-2024 is being taken as lead case. Shorn of details, brief facts that need to be noticed are that, complaint was filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*for brevity, referred to as 'the Act of 2005'*) by respondent-wife against maternal uncle and aunt of her husband seeking protection order under Section 18, residence order under Section 19 and compensation order under Section 22 of the Act of 2005. Surprisingly, husband was not arraigned as a party in the complaint. Petitioners approached this Court seeking quashing of the complaint claiming that the same has been filed by respondent-wife in collusion with her husband and is a counter-blast to the complaint filed by petitioners No.1 and 3 against husband of the complainant. The complaint is thus an abuse of process of law.

2. Instant revision petition was filed under Article 227 of the Constitution of India. It was claimed by counsel for the petitioners that petition under Section 482 Cr.P.C., seeking quashing of complaint filed under Section 12 of the Act of 2005, have been held to be not maintainable by a Coordinate Bench of this Court in ***CRM-M No.19553 of 2023*** titled as ***Jaspal Kaur @ Pinki and another vs. State of Punjab and another***. Petitioners having no alternate remedy have been constrained to approach this court invoking jurisdiction under Article 227 of the Constitution of India. Learned Single Bench of this Court in ***Jaspal Kaur @ Pinki's case***

(supra) has relied upon ratio of law laid down by Full Bench of Madras High Court in ***Arul Daniel and others vs. Suganya, 2022 SCC OnLine Mad 5435***.

3. At the stage of preliminary hearing, Single Bench expressed dissent with the view taken in ***Jaspal Kaur @ Pinki's case (supra)*** and referred the following questions to Larger Bench for adjudication:-

(i) *Once Section 28(1) prescribes that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure, 1973, can it be held that application of Section 482 Cr.P.C. is ousted?*

(ii) *In case Section 482 Cr.P.C. is not applicable, can an aggrieved person invoke power of superintendence of this Court under Article 227 of the Constitution of India?*

(iii) *In case the aggrieved person is entitled to invoke power of superintendence of this Court under Article 227 of the Constitution of India, can it be said that the same is limited only qua the issue of jurisdiction as held by Madras High Court?*

4. To answer the questions referred, it will be apt to peruse the Statement of Objects and Reasons behind the enactment. Act of 2005 was enacted by Parliament in discharge of India's commitment to **'The Vienna Accord of 1994'** and **Beijing Declaration and the Platform for Action (1995)**, wherein domestic violence was acknowledged as an issue related to human rights. Statement of objects and reasons of the Act of 2005 reads as under:-

*"**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 woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

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

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

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage 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."

5. The relevant provisions of law that need to be analyzed are reproduced herein below:

*"**Constitution of India***

Article 227. Power of superintendence over all courts by the High Court:

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction.

(2)Without prejudice to the generality of the foregoing provisions, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision or any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the Armed Forces.

Criminal Procedure Code

482. Saving of inherent powers of High Court.

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

Protection of Women from Domestic Violence Act, 2005.

*"**2.(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;*

***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.

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.

> ***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.*
>
> ***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."*
>
> ***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.*

6. Full Bench of the Madras High Court, while coming to the conclusion that Section 482 Cr.P.C. cannot be invoked in the proceedings arising out of petitions under Section 12 of the Act of 2005, relied upon

certain observations made by Supreme Court in the case of ***Kamatchi vs. Lakshmi Narayanan, (2022) SCC OnLine 446***, wherein the Supreme Court observed that the proceedings arising out of complaint filed under Section 12 of the Act of 2005 deal with civil rights. Similar observations were made by Apex Court in the case of ***Kunapareddy vs. Kunapareddy Swarna Kumari, (2016) 11 SCC 774***. Thus, before adverting to the proposition as canvassed by Madras High Court, it will be apt to peruse the observations made by Apex Court in ***Kunapareddy's case (supra)***.

7. The issue before Supreme Court was *qua* amendment in the complaint. It was held that complaint contemplated under the provisions of the Act of 2005 was different from the complaint as enumerated under Section 2(d) of the Code of Criminal Procedure, 1973. The reliefs being civil in nature, amendment of complaint was permissible. Apex Court in ***Kunapareddy's case (supra)*** observed as under:-

> *"xxxx xxxx xxxx*
>
> *16. We understood in this backdrop, it cannot be said that the court dealing with the application under the DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events (escalation of prices in the instant case) or to avoid multiplicity of litigation, court will have the power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that Respondent was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the*

pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in S.R. Sukumar v. S. Sunaad Raghuram, (2015) 9 SCC 609in the following paragraphs:

> *"18. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In U.P. Pollution Control Board v. Modi Distillery, (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint, that is, instead of Modi Industries Ltd. the name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:*
>
> > *'6. … The learned Single Judge has focused his attention only on the technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in Para 2 of the complaint so as to make the controlling company of the industrial unit figure as the accused concerned in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Ltd., the company owning the industrial unit, in place of Modi Distillery. … Furthermore,*

the legal infirmity is of such a nature which could be easily cured.'

19. What is discernible from U.P. Pollution Control Board case, (1987) 3 SCC 684 is that an easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the court shall not allow such amendment in the complaint.

20. In the instant case, the amendment application was filed on 24-5-2007 to carry out the amendment by adding Paras 11(a) and 11(b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of the complaint before the disposal of amendment application. Firstly, the Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem Khalnayakaru being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore, to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined [S.R. Sukumar v. S. Sunaad Raghuram, 2012 SCC OnLine Kar 1619] to interfere with the order passed by the Magistrate allowing the amendment application and the

> *impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India."*

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

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

> *"23.(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."

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

xxxx xxxx xxxx"

8. In ***Kamatchi's case (supra)***, while dealing with issue of limitation governing complaint filed under Section 2(d) of the Act of 2005, Apex Court observed that since Sections 468 and 470 of the Code of Criminal Procedure govern the limitation in relation to offences, the same would not govern the proceedings arising out of complaint under Section 12 of the Act of 2005 and observed as under:-

"xxxx xxxx xxxx

17. It is, thus, clear that though Section 468 of the Code mandates that "cognizance" ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over.

18. The dictum in Sarah Mathew has to be understood in light of the situations which were dealt with by the Constitution

Bench. If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution.

xxxx xxxx xxxx xxxx

27. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in P. Pathmanathan [P. Pathmanathan v. V. Monica, 2021 SCC OnLine Mad 8731] as under :

> *"19. In the first instance, it is, therefore, necessary to examine the areas where the DV Act or the DV Rules have specifically set out the procedure thereby excluding the operation of CrPC as contemplated under Section 28(1) of the Act. This takes us to the DV Rules. At the outset, it may be noticed that a "complaint" as contemplated under the DV Act and the DV Rules is not the same as a "complaint" under CrPC. A complaint under Rule 2(b) of the DV Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d)CrPC is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the DV Rules. A complaint under the DV Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the DV Rules.*

> *20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d)CrPC, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the DV Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d)CrPC, given to a Magistrate and not to an application under Section 12 of the Act."*

28. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

29. It is, however, true that as noted by the Protection Officer in his domestic inspection report dated 2-8-2018, there appears to be a period of almost 10 years after 16-9-2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

30. Lastly, we deal with the submission based on the decision in Adalat Prasad [Adalat Prasad v. Rooplal Jindal, (2004) 7 SCC 338 : 2004 SCC (Cri) 1927]. The ratio in that case applies when a Magistrate takes cognizance of an offence and

> *issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the statute so that after considering the rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad would not get attracted at a stage when a notice is issued under Section 12 of the Act.*
>
> *xxxx xxxx xxxx xxxx"*

9. The aforesaid observations made by Supreme Court were relied upon by the Full Bench of Madras High Court in ***Arul Daniel's case (supra)*** to hold that petitions filed under Section 482 Cr.P.C. to challenge proceedings arising out of the Act of 2005 are not maintainable. Following questions were referred to the Full Bench in ***Arul Daniel's case (supra)*** :-

> *(a) "Whether a proceeding under Section 12 of the D.V. Act can be challenged under Article 227 of the Constitution or under Section 482 of Cr.P.C.?*
>
> *(b) Whether the aforesaid remedy is available to an aggrieved person before approaching the learned Magistrate and, if necessary, the Court of Sessions by way of an appeal under Section 29 of the D.V. Act?"*

10. Answering the aforesaid questions, the Full Bench observed as under:-

> *"xxxx xxxx xxxx*
>
> *86. We now summarise our conclusions to the questions set out in paragraph 1 of this opinion:*
>
> *a. A petition under Section 482 Cr.P.C. challenging a proceeding under Section 12 of the D.V. Act is not maintainable. A petition*

under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction, as indicated in paragraphs 40 and 41, supra.

b. Except on the limited ground indicated, supra, jurisdiction under Article 227 of the Constitution will not be exercised, as a measure of self-imposed restriction, by-passing the statutory remedies under the D.V. Act in the light of the decision of the Supreme Court in Virudhunagar Hindu Nadargal Dharma Paribalana Sabai, supra.

c. In the light of the aforesaid conclusions, we uphold the decision of N. Anand Venkatesh, J. in Pathmanathan, supra, including the directions set out, in paragraph 52 in their entirety, though, in our view, the reference to Section 483 Cr.P.C. therein, may not be appropriate. The decision of the Division Bench in P. Ganesan, supra, to the extent that it is contrary to this opinion, shall stand overruled. Ex consequenti, the decisions of learned single judges in S. Gowrishankar, supra, Sathiyaseelan, supra, G. Jayakumar, supra, Mohana Seshathri, supra, and other cases following or adopting the line of reasoning therein, shall stand overruled, to the extent that they are contrary to the view taken herein.

d. As a sequitur to the above, it must necessarily follow that the petitions in this batch are not maintainable. We, therefore, see no useful purpose in remitting the matter to the learned single judge to perform the obsequies. Accordingly, exercising power under Order I Rule 7 of the Appellate Side Rules, we hold that all the petitions filed under Section 482 Cr.P.C. shall stand dismissed at the SR stage itself, preserving all the rights and contentions of the parties and granting liberty to move the Magistrate to agitate their grievances, which shall be considered in consonance with the directions set out in paragraph 52 of the decision in Pathmanathan, supra.

87. Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single judge in Pathmanathan, supra, which shall now govern the disposal of applications under the D.V. Act:

"i. An application under Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C. as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot, therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

ii. An application under Section 12 of the Act shall be as set out in Form II of the D.V. Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.

iii. The Magistrate shall not issue a summon under Section 61, Cr.P.C. to a respondent(s) in a proceeding under Chapter IV of the D.V. Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V. Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13 of the Act and Rule 12(2) of the D.V. Rules, and shall be accompanied by a copy of the petition and affidavit, if any.

iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V. Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling

reasons being shown. (See Siladitya Basak v. State of West Bengal (2009 SCC OnLine Cal 1903).

v. If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex parte.

vi. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in Vijaya Baskar (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

vii. As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in Adalat Prasad v. Rooplal Jindal ((2004) 7 SCC 338) that a process, under Section 204, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress (See V.K. Vijayalekshmi Amma v. Bindu V., (2010) 87 AIC 367). This would stem the deluge of petitions challenging the maintainability of an application under Section 12

of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution.

viii. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.

ix. In Kunapareddy (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The Civil Procedure Code, 1908 (hereinafter referred to as "C.P.C."), to permit the amendment of an application under Section 12 of the D.V. Act. Taking a cue therefrom, it would be open to any of the respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10(2) of the C.P.C. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.

x. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in Vijaya Baskar (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.

xi. In Satish Chandra Ahuja (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions

under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. Act can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

xii. While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (See Lakshman v. Sangeetha, (2009) 3 MWN (Cri) 257. The Magistrate shall generally follow the procedure set out in Section 254, Cr.P.C. while recording evidence.

xiii. Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See Muhammad Sulaiman Khan v. Muhammad Yar Khan, ILR (1888) 11 All 267).

xiv. A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See Abdul Razak v. Mangesh Rajaram Wagle (2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.

xxxx xxxx xxxx"

11. Subject matter of complaints under Section 12 of the Act of 2005 are the civil rights. The same is also evident from the Statement of Objects and Reasons appended to the Act of 2005 and the nature of relief(s) provided under Chapter IV of the 2005 Act. However, the issue is not about the rights but about the remedy. Trite it is that the relation between rights and remedies is subtle and complex. It is not necessary that the nature of legal right is reflected in the type of remedy offered for its protection or vice-versa. Rather the hierarchical structure prescribed under the statute is more indicative of the remedy(s) provided.

12. Chapter IV of the Act of 2005 is the heart and soul of the statute and the same provides for procedure for obtaining orders of reliefs. Chapter IV itself does not prescribe any offence. It is only in terms of Chapter V that breach of orders passed under Chapter IV of the Act of 2005 constitutes an offence. The Legislature prescribed offences as cognizable and non-bailable. The intent of the Legislature is to provide orders passed under the Act of 2005 with effective teeth and to make their compliance imperative. Section 36 of the Act of 2005 provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law in force. Section 2(i) defines Magistrate as the one exercising jurisdiction under the Code of Criminal Procedure, 1973 (now the one exercising jurisdiction under Bharatiya Nagarik Suraksha Sanhita, 2023). Section 12 of the Act of 2005 provides for application to Magistrate. Section 29 of the Act of 2005 provides for appeal before the Court of Session against orders passed by the Magistrate. The Court of Session is the

one established under Section 9 Cr.P.C./Section 8 of B.N.S.S., 2023. Section 26 of the Act of 2005 provides for relief in other suits and legal proceedings. Section 27 of the Act of 2005 provides for jurisdiction of Magistrate. Section 28(1) of the Act of 2005 provides that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23, which are part of Chapter IV, shall be governed by the provisions of the Code of Criminal Procedure, 1973. Section 37 of the Act of 2005 provides for power of Central Government to make rules. Exercising power, the Central Government has framed rules, known as Protection of Women from Domestic Violence Rules, 2006. Rule 6 thereof provides as under:-

> ***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).*

13. Rule 6 explicitly provides that the application under Section 12 of the Act of 2005 shall be dealt with and the orders enforced in the same

manner as laid down under Section 125 Cr.P.C. The enactment which is akin to the provisions contained in the Act of 2005 is Chapter IX of Cr.P.C. which includes Section 125. It deals with maintenance of wives, children and parents. It is this relationship between the two enactments that has been recognized by Rule 6. The Act of 2005 has a much wider sweep as compared to Chapter IX. The same protects the civil rights of every woman in a domestic relationship whereas provisions of Chapter IX Cr.P.C. are merely confined to protection of rights of legally wedded wives apart from children and parents. Trite it is that qua proceedings under Chapter IX of the Code of Criminal Procedure, provision as contained under Section 482 is not ousted. Ousting the inherent powers of High Court under Section 482 by implication would be taking a view too myopic of a provision, with a much wider import. The provision as contained under Section 482 provides for the power to be exercised by High Court not just to quash the proceedings, but for much broader purposes. The same is not only for quashing the proceedings, but to give effect to any order under the Code to prevent abuse of process of the Court and to secure the ends of justice. It is not only to be invoked by the respondents, it can, in certain circumstances be invoked by the victim-complainant as well.

14. Though in terms of Section 4 Cr.P.C. all offences under the Indian Penal Code are to be investigated, inquired into, tried and otherwise dealt with according to the same provisions as contained in Cr.P.C., 1973 as well as B.N.S.S., 2023. However, the Code is beyond that. Chapter IX of the Code deals with maintenance of wives, children and parents. Chapter X

deals with maintenance of public order and tranquillity. Section 142 Cr.P.C. provides for grant of injunction pending inquiry. Sections 145 to 148 deal with disputes as to immovable property. Section 482 Cr.P.C. deals with inherent power of High Court to make such orders as may be necessary to give effect to any other order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

15. Spelling out the jurisprudential origin of Section 482 Cr.P.C., the Supreme Court in the case of ***Dinesh Dutt Joshi vs. State of Rajasthan, (2001) 8 SCC 570*** observed that:-

> *"xxxx xxxx xxxx*
>
> *6. Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give 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. It is a well-established principle of law that every court has inherent power to act ex debito justitiae — to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court. The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred*

upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.

xxxx xxxx xxxx"

16. The Supreme Court in the case of ***Amit Kapoor vs. Ramesh Chander, (2012) 9 SCC 460*** further analysed the comparative import of the inherent power under Section 482 of the Code vis-a-vis the revisional power under Section 397 of the Code and held as under:-

"xxxx xxxx xxxx

21. It may be somewhat necessary to have a comparative examination of the powers exercisable by the court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor v. State [(1980) 1 SCC 43 : 1980 SCC (Cri) 72 : AIR 1980 SC 258] . In that very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the

process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In that very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

22. In Dinesh Dutt Joshi v. State of Rajasthan [(2001) 8 SCC 570 : 2002 SCC (Cri) 24] the Court held that :

> *"6. … [Section 482] does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."*

23. In Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] the Court, while referring to the inherent powers to make orders as may be necessary for the ends of justice, clarified that such power has to be exercised in appropriate cases ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice. Being an extraordinary power, it will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate court of its powers.

24. If one looks at the development of law in relation to exercise of inherent powers under the Code, it will be useful to refer to the following details : as far back as in 1926, a Division Bench of the Bombay High Court in Llewelyn Evans, In re [AIR 1926 Bom 551] , took the view that the provisions of Section 561-A (equivalent to present Section 482) extend to cases not only of a person accused of an offence in a criminal court, but to the cases of any person against whom proceedings are instituted under the Code in any court. Explaining the word "process", the Court said that it was a general word, meaning in effect anything done by the court. Explaining the limitations and scope of Section 561-A, the Court referred to "inherent jurisdiction", "to prevent abuse of process" and "to secure the ends of justice" which are terms incapable of having a precise definition or enumeration, and capable, at the most, of test, according to well-established principles of criminal jurisprudence. The ends of justice are to

be understood by ascertainment of the truth as to the facts on balance of evidence on each side. With reference to the facts of the case, the Court held that in the absence of any other method, it has no choice left in the application of the section except, such tests subject to the caution to be exercised in the use of inherent jurisdiction and the avoidance of interference in details and directed providing of a legal practitioner.

xxxx xxxx xxxx"

17. The seminal issue involved herein has drawn attention of other High Courts as well. High Court of Calcutta while dealing with a similar issue in ***Chaitanya Singhania and Another vs. Khushboo Singhania, 2021 SCC OnLine Cal 2602*** held as under:-

"The question that requires an answer in the instant revision is whether an order passed by the learned magistrate in a proceeding under Section 12 read with Section 23 of the Protection of Women from Domestic Violence act, 2005 (hereinafter described as the said Act) on the point of maintainability of the said proceeding can be quashed under the provisions of Section 482 of the Code of Criminal Procedure (hereafter described as the Code).

xxxx xxxx xxxx

43. It is needless to say that the Protection of Women from Domestic Violence Act, 2005 is a special law. At the risk of repetition, it is recorded that Section 28 of the said Act clearly states that all proceedings under Section 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provision of the Criminal Procedure Code, 1973. Thus, when the Special Act clearly lays down the procedure of trial of the proceedings under the said Act, there is absolutely no reason to apply any other procedure. The only exception being in Section 26 of the said Act is where a civil suit is pending between the

parties, the aggrieved person can pray for relief under Section 18-23 in the said suit.

44. It will not be out of place to mention at this stage that the Hon'ble Supreme Court in Savitri v. Govind Singh Rawat, (1985) 4 SCC 337 and Vijay Kumar Prasad v. State of Bihar, (2004) 5 SCC 196 held that proceedings under Section 125 of the Code are quasi civil in nature. In Sanjeev Kapoor v. Chandana Kapoor reported in (2020) 13 SCC 172 : AIR 2020 SC 1064, the Apex Court held that a petition under Section 482 is maintainable against any order given under Section 125.

45. In Rafiq Ahmedbhai Paniwala v. State of Gujrat, (2019) 5 SCC 464, it is held by the Hon'ble Supreme Court that an order passed by the Executive Magistrate under Section 131 can be quashed by the High Court under Section 482 of the Code. The orders of Executive Magistrate in cases of Public Nuisance under Section 132-143 of the Code, though being quasi criminal, can be quashed by the High Court under Section 482 of the Code. Decision of the Allahabad High Court in L.J. Bhatthi v. The State of U.P., (2014) 1 All LJ 527 may be relied on in this regard.

46. In Kanak Deka and R.M. Deka v. State of Assam, (2012) 5 Gau LR 415, an order under Section 145-148 can be assailed under the provision of Section 482 of the Code.

47. Similarly, there is no bar in invoking Section 482 in the cases under Protection of Women against Domestic Violence Act, 2005. In Suresh Ahirwar v. Priya Ahirwar [M. Cr. C No. 22777/2017], vide order dated 11th November, 2018, the Madhya Pradesh High Court quashed a proceeding under Section 482 of the Code where aggrieved person impleaded some persons as respondents in a proceeding under Section 12 of the said Act with whom she had no domestic relationship.

48. This being the interpretation of the statute, a court of the Judicial Magistrate or the Metropolitan Magistrate cannot pass any order in a proceeding under Section 125 of the Code or

under the provision of Protection of Women against Domestic Violence where there is no relation or domestic relation exists between the parties. For example, an order of maintenance cannot be passed against a stranger. Similarly, an order of residence under Section 19 of the said Act cannot be passed against a landlord under the instance of an aggrieved person. Even a residence order cannot be passed against the father-in-law of the aggrieved person if the residence is not a shared household of the respondent along with his father (See Satish Chander Ahuja v. Sneha Ahuja reported in (2021) 1 SCC 414). If such application is filed by an aggrieved person, will it be a logical proposition that the respondent will not be able to nip the proceedings in bud without waiting for a prolonged trial or otherwise wait for a considerable period till the disposal of trial? My considered reply is - such questions affecting the maintainability of the procedure itself can be decided by this Court under Section 482 of the Code of Criminal Procedure.

49. A similar view was taken by the Delhi High Court in Bijoy Verma v. State (NCT Delhi) reported in ILR 2011 Del 36, by Rajasthan High Court in Nisanth Hussain v. Sima Saddique, 2012 SCC OnLine Raj 2873, by Karnataka High Court in Smt. Nagarthama v. M.S. Valithasharee, 2016 SCC OnLine Kar 1437, Avinash Madhav Deshpande v. Madhuri Satish Deshpande, 2018 SCC OnLine Bom 17170.

xxxx xxxx xxxx

18. High Court of Andhra Pradesh in the case of ***Muvva Bhargav v. State of A.P., 2023 SCC OnLine AP 636***, while rejecting the contention against the maintainability of Section 482 Cr.P.C. observed as under:-

"xxxx xxxx xxxx

13. 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 482CrPC 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.

xxxx xxxx xxxx

16. When the Supreme 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 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 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 482CrPC, 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.

17. 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 482CrPC with certain self-imposed restrictions. In view of the principle laid down in Nandkishor Pralhad Vyawahare v. Mangala [Nandkishor Pralhad Vyawahare v. Mangala, 2018 SCC OnLine Bom 923] , 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.

18. 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.*
>
> *xxxx xxxx xxxx"*

19. The High Court of Calcutta in ***Narayan Biswas and Others Versus State of West Bengal and Another, 2024 SCC OnLine Cal 1926***, again dealt with the same issue and held that petition filed under Section 482 Cr.P.C. was maintainable against the complaint filed under Section 12 of the Act of 2005 observing that:-

> *"xxxx xxxx xxxx*
>
> *28. So far as the applicability of Section 482 of Cr. P.C. is concerned this Court finds that though there is a divergence of opinion amongst the Hon'ble Courts in our country but a Co-ordinate Bench of this court has very succinctly passed the judgment in Chaitanya Singhania v. Khusboo Singhania, 2021 SCC OnLine Cal 2602 wherein the Hon'ble Judge has been pleased to record that the DV Act is pre-dominantly a criminal Act. Further be it mentioned that Section 28 of the DV Act speaks of:—*
>
> > *"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 Criminal Procedure Code, 1973 (2 of 1974)."*
>
> *29. Therefore from the above it is transpired that Section 28 of the Act, 2005 has clearly stated that the provisions of Criminal Procedure Code, 1973 shall govern all proceedings under*

Section 12, 18, 19, 20, 21, 22 and 23 and also under Section 31 of the Act, 2005. If that be so, the Hon'ble High Court can be approached under Section 482 Cr. P.C. if there is any abuse of process of court or for securing ends of justice etc. in dealing with proceedings under the above sections of the D.V. Act. It is needless to mention that not a Civil Judge but a Judicial Magistrate, First Class has been entrusted to deal with the relevant applications under the Protection of Women from Domestic Violence Act, 2005. Though any of the reliefs under Section 18, 19, 20, 21, 22 of the Act, 2005 can be sought for in any legal proceedings before a Civil Court, Family Court or a Criminal Court under Section 26 of the Act, 2005 but it has been very rightly and pertinently observed in the case of Chaitanya Singhania (supra) that the Protection of Women from Domestic Violence Act, 2005 is a pre-dominantly a criminal Act and therefore the concerned persons again prayed for quashing of proceedings initiated under the section mentioned above of the DV Act, under Section 482 of Cr. P.C.

xxxx xxxx xxxx

31. Another aspect which should not be lost sight off us is the bare provision of Section 482 Cr. P.C. It goes to say as hereunder:—

> *"482. Saving of inherent powers of High Court.-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

32. The term 'court' referred to in this section invariably means those courts to which the Criminal Procedure Code applies, or the Courts which are governed by the Criminal Procedure Code. Therefore, a combined reading of Section 482 Cr. P.C. and Section 28 of the DV Act, 2005, would be in favour of the interpretation that in cases where there is palpable

jurisdictional error, abuse of process of courts, or manifest injustices being caused to the parties, the prayer for quashing the proceedings under DV Act, 2005 can be considered by the High Courts under Section 482 Cr. P.C. as an exceptional measure.

33. Several judicial decisions cited by the Learned State Counsel also point out that in certain exceptional cases, the High Court can exercise power under Section 482 Cr. P.C. for quashing the proceedings under DV Act, 2005.

xxxx xxxx xxxx"

20. Full Bench of Bombay High Court in the case of ***Nandkishor Pralhad Vyawahare v. Mangala, 2018 SCC OnLine Bom 923***, while answering the similar question regarding maintainability of petition filed under Section 482 Cr.P.C. observed as under:-

"xxxx xxxx xxxx

41. Now, we take up for answer the second question which is reproduced again, for convenience, thus:

(ii) Whether or not the High Court can exercise its power under section 482 of the Code of Criminal Procedure, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005?

42. We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Criminal Procedure Code to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under section 482 of Criminal Procedure Code is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Criminal Procedure Code by the Parliament as

provided under section 28 of the D.V. Act? In other words - Would the nature of the proceedings decide the fate of section 28 or the intention of the Parliament as expressed in section 28 of the D.V. Act would? To find out an answer, as a first step, we must look into the express language of the provision of section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

xxxx xxxx xxxx

47. A plain reading of the section impels us to say and say only that the language used therein is plain and unambiguous and that it does not leave any scope to doubt that what it connotes expressly is what the Parliament means to convey. It would then follow that there is no need to resort to any external aids or other rules of construction to interpret section 28 of the D.V. Act. This can be seen from a bare reading of section 28.

48. Sub-section (1) of section 28 clearly lays down that all proceedings taken under sections from 12 to 23 and in respect of offence under section 31 shall be governed by the provisions of Criminal Procedure Code except as otherwise provided in the D.V. Act. It means that only such of the provisions of the Act as would lay down a particular procedure to be followed by the Magistrate, which would have prevalence over the provisions of the Criminal Procedure Code to the extent of their inconsistency with the specific provisions of the D.V. Act. To give examples, these specific provisions are seen embedded in section 12(3) of the D.V. Act requiring filing of the application in the prescribed form; Rules 6(1) and 6(5) of the Rules, 2006, prescribing form of application under section 12 and following of procedure governing proceedings filed under section 125, Criminal Procedure Code, while dealing with an application under section 12 and enforcing the orders passed on it; section

12(4) mandating fixing of the first date of hearing ordinarily not beyond three days from the date of receipt of the application; section 13(1) directing the service of notice through the Protection Officer and so on and so forth. Barring such specific procedural requirements, however, the provisions of the Criminal Procedure Code have been made applicable under section 28(1) of the D.V. Act. This applicability, it is seen from the plain and clear language of this provision, is general and omnibus. It unequivocally speaks of the intention of the Parliament to generally apply provisions of the Criminal Procedure Code to the proceedings under or arising from the D.V. Act, subject to exceptions specifically indicated in section 28. It appears that such criminal procedure is generally applied with the avowed purpose of giving teeth to the remedies provided under the civil law.

49. We have seen earlier that Parliament's intention was to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring especially within the family and for matters connected therewith or incidental thereto. The Parliament, in order to realize this object, has provided a remedy under the civil law on the one hand and has applied generally the criminal procedure subject to few exceptions on the other. These exceptions are created only to ensure that the disadvantages of some of the provisions of Criminal Procedure Code especially those applicable at the initial stage of issuance of notice and also at the time of recording of evidence, do not bog down the proceeding leading to delay in its conclusion. In any case, these provisions stand only as exceptions to the generality of the provision of sub-section (1) of section 28 of the D.V. Act and we may say, if we could say, proverbially exceptions prove the general rule.

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 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.

52. If the concept of limited applicability of the provisions of the Criminal Procedure Code, as propounded by Shri C.A. Joshi, learned Counsel for the respondent is accepted; in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best

performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise its own procedure in a particular case so as to suit the exigencies of that case. We may add here that language used in section 28(2) is significant and needs to be taken into account. The freedom to lay down "own procedure" is confined to only a particular proceeding either under section 12 or section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words "for disposal of an application under section 12, sub-section (2) of section 23" after the words "nothing in sub-section (1) shall prevent the Court from laying down its own procedure".

53. This would mean that generally the provisions of Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code, 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 Criminal Procedure Code 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 Criminal Procedure Code to the proceedings under the Act (Paragraph 16). It also held that the remedy under section 482 of Criminal Procedure Code 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."*

55. At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunapareddy (supra) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are

predominantly of civil nature, the proceedings were to be governed by Criminal Procedure Code as provided under section 28 of the D.V. Act……..

xxxx xxxx xxxx

57. While there is no difference of opinion about what the intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of section 482 to the proceedings under section 12(1) of the D.V. Act and it is achieved by removing its applicability. The issue can be examined from a different angle as well.

58. A plain reading of section 482 of Criminal Procedure Code, 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.

59. Now, one incidental question would arise as to from what stage the provisions of the Criminal Procedure Code would become applicable and in our view, the answer could be found out from the provisions of sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under section 28 of the D.V. Act, subject to the exceptions provided in the Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of section 28, the provisions of the Criminal Procedure Code shall govern the proceedings under sections 12 to 23 and also those relating to an offence under section 31 of the D.V. Act on their commencement.

xxxx xxxx xxxx"

21. The scheme of the Act of 2005 provides that all proceedings under Section 12 of the Act of 2005 are to be governed by the provisions of the Code of Criminal Procedure, 1973 and thus it is not possible to hold that Section 482 Cr.P.C. would not be applicable to the proceedings arising out of complaints filed under the Act of 2005. Sections 26 & 28 of the Act of 2005 need to be read together. Recognizing the rights of Women in domestic relationship, Legislature intended to provide ease to the victim in pursuing remedy. Statute clothes her with right under Section 26 of the Act to claim relief under Chapter IV even in the pending proceedings. Be it

before Civil Court or Family Court or Criminal Court. Though Section 28(2) has overriding effect over Section 28(1), yet it cannot be read to render Section 28(1) otiose. For harmonious construction of the statute Section 28(2) of the Act needs to be read along with Section 28(1) and Section 26 of the Act. The conjoint reading of Sections 26, 28(1) and 28(2) of the Act makes it evident that where the victim invokes provisions of the Act during the pending proceedings before the Civil Court or Family Court, the rules of procedure can not act as an impediment in entertaining and granting relief to her. Notwithstanding Section 28(1) of the Act of 2005, the Court is not bound to be governed by Cr.P.C. but can switch on to Section 28(2) of the Act and go by its own procedure. Meaning thereby, the provisions as contained in Cr.P.C. will not necessarily govern the proceedings, where application has been filed seeking relief under Chapter IV of the Act of 2005 in proceedings pending before the Civil Court or Family Court.

22. The other factor that needs to be considered is the import of Section 29 and Section 36 of the Act of 2005. Section 29 provides for an appeal to the Court of Session against the orders made by Magistrate. It does not provide for finality to orders passed by Appellate Court. In other words, Section 29 of the Act of 2005 does not provide that the order made by the Appellate Court shall be final. Apart therefrom, Section 36 explicitly provides that the provisions of the Act of 2005 are in addition to and not in derogation of the provisions of any other law.

23. It is too broad a proposition to hold that merely for the reason that the complaint under Section 12 of the Act of 2005 seeking relief as

provided under Chapter IV deals with civil right, applicability of Section 482 Cr.P.C. is ousted. If we stretch it further, the natural corollary will be to hold that inherent powers of High Court under the Code of Civil Procedure, 1908 can be invoked and shall govern the complaint filed under Section 12 of the Act of 2005 as it deals with civil rights. Holding so will militate against the mandate of Section 28(1) of the Act of 2005.

24. There is yet another facet that craves for ratiocination. While interpreting a statute, there is a presumption against creating or removing judicial jurisdiction. The general rule is that the jurisdiction of the Superior Courts is not taken away except by express words. In **'Craies on Legislation' 12th Edition**, the principle of presumption against removing judicial jurisdiction has been elucidated quoting **Lord Irvine in Boddington v British Transport Police, (1999) 2 A.C. 143** as under:-

> *"However, in approaching the issue of statutory construction the courts proceed from a strong appreciation that ours is a country subject to the rule of law. This means that it is well recognised to be important for the maintenance of the rule of law and the preservation of liberty that individuals affected by legal measures promulgated by executive public bodies should have a fair opportunity to challenge these measures and to vindicate their rights in court proceedings. There is a strong presumption that Parliament will not legislate to prevent individuals from doing so:*
>
> > *'It is a principle not by any means to be whittled down that the subject's recourse to Her Majesty's courts for the determination of his rights is not to be excluded except by clear words' Pyx Granite Co. Ltd v Ministry of Housing and Local Government; cited by Lord Fraser of*

> *Tullybelton in Wandsworth London Borough Council v Winder.*
>
> *As Lord Diplock put it in F. Hoffmann-La Roche & Co Ltd v Secretary of State for Trade and Industry.*
>
> *'the courts lean very heavily against a construction of an Act which would have this effect (cf. Anisminic Ltd v Foreign Compensation Commission)."*

25. Indian Courts have also followed the said legal canon. The jurisdiction of Superior Courts is not taken as excluded simply because the Lower Court exercises jurisdiction under special law.

26. In view of above, there being no exclusionary clause in the statute, the proceedings including those under Section 12 of the Act of 2005 being governed by the Code of Criminal Procedure, 1973 (now known as B.N.S.S., 2023) and there being no clause bestowing finality to the orders passed by the Appellate Court, the exclusion of jurisdiction of High Court exercising inherent power under Section 482 Cr.P.C. cannot be read into. First question is thus answered accordingly.

27. Having held that an application under Section 482 Cr.P.C., 1973/528 B.N.S.S., 2023 is not ousted, there is no need to answer question No.(ii). Still it needs to be noticed that there is difference between inherent powers of High Court and its superintendence powers. The same is evident from comparative reading of Sections 528 and 529 B.N.S.S., 2023, which read as under:-

> ***528. Saving of inherent powers of High Court.***—*Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to*

prevent abuse of the process of any Court or otherwise to secure the ends of justice.

529. Duty of High Court to exercise continuous superintendence over Courts.*—Every High Court shall so exercise its superintendence over the Courts of Session and Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by the Judges and Magistrates.*

28. Coming on to question No.(iii), scope of Article 227 of the Constitution of India has been held to be unfettered. Interpreting the scope of Article 227, the Larger Bench in the case of ***Waryam Singh vs. Amarnath, AIR 1954 Supreme Court 215*** held as under:-

"xxxx xxxx xxxx

14. This power of superintendence conferred by Article 227 is, as pointed out by Harries C. J., in Dalmia Jain Airways Ltd. v. Sukumar Mukherjee', AIR 1951 Calcutta 193(SB) to be exercised most sparingly and only in appropriate cases in order to keep the Subordinate Courts within the bounds of their authority and not for correcting mere errors. As rightly pointed out by the Judicial Commissioner in the case before us the lower courts in refusing to make an order for ejectment acted arbitrarily. The lower courts realised the legal position but in effect declined to do what was by section 13(2)(i) incumbent on them to do and thereby refused to exercise jurisdiction vested in them by law. It was, therefore, a case which called for an interference by the court of the Judicial Commissioner and it acted quite properly in doing so.

xxxx xxxx xxxx"

29. While explaining the scope of Article 227, Supreme Court in the case of ***Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675*** further held as under:-

> *"31. The principles deducible, well-settled as they are, have been well summed up and stated by a two judges Bench of this Court recently in State, through Special Cell, New Delhi Vs. Navjot Sandhu @ Afshan Guru and Ors., JT 2003 (4) SC 605, para 28. This Court held :*
>
> *(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the state Legislature;*
>
> *(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with interlocutory order;*
>
> *(iii) the power must be exercised sparingly, only to move subordinate courts and Tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise".*
>
> *32. In Shiv Shakti Coop. Housing Society, Nagpur Vs. M/s. Swaraj Developers & Ors., (2003) 4 Scale 241 : 2003(2) RCR (Civil) 676 (SC), another two-Judges bench of this Court dealt with Section 115 of the C.P.C. The Court at the end of its judgment noted the submission of the learned counsel for a party that even if the revisional applications are held to be not maintainable, there should not be a bar on a challenge being made under Article 227 of the Constitution for which an opportunity was prayed to be allowed. The Court observed – "If any remedy is available to a party, no liberty is necessary to be granted for availing the same."*

33. We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away – and could not have taken away - the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self discipline and practice which are well settled.

34. We have carefully perused the Full Bench decision of the Allahabad High Court in Ganga Saran's case relied on by the learned counsel for respondent and referred to in the impugned order of the High Court. We do not think that the decision of the Full Bench has been correctly read. Rather, vide para 11, the Full Bench has itself held that where the order of the Civil Court suffers from patent error of law and further causes manifest injustice to the party aggrieved then the same can be subjected to writ of certiorari. The Full Bench added that every interlocutory order passed in a civil suit is not subject to review under Article 226 of the Constitution but if it is found from the order impugned that fundamental principle of law has been violated and further such an order causes substantial injustice to the party aggrieved the jurisdiction of the High Court to issue a writ of certiorari is not precluded. However, the following sentence occurs in the judgment of the Full Bench:-

> *"where an aggrieved party approaches the High Court under Article 226 of the Constitution against an order passed in civil suit refusing to issue injunction to a private individual who is not under statutory duty to perform public duty or vacating an order of injunction,*

the main relief is for issue of a writ of mandamus to a private individual and such a writ petition under Article 226 of the Constitution would not be maintainable."

35. It seems that the High Court in its decision impugned herein formed an impression from the above-quoted passage that a prayer for issuance of injunction having been refused by trial court as well as the appellate court, both being subordinate to High Court and the dispute being between two private parties, issuance of injunction by High Court amounts to issuance of a mandamus against a private party which is not permissible in law.

36. The above quoted sentence from Ganga Saran's case cannot be read torn out of the context. All that the Full Bench has said is that while exercising certiorari jurisdiction over a decision of the court below refusing to issue an order of injunction, the High Court would not, while issuing a writ of certiorari, also issue a mandamus against a private party. Article 227 of the Constitution has not been referred to by the Full Bench. Earlier in this judgment we have already pointed out the distinction between Article 226 and Article 227 of the Constitution and we need not reiterate the same. In this context, we may quote the Constitution Bench decision in T.C. Basappa v. T. Nagappa and Anr., (1955) 1 SCR 250 and Province of Bombay v. Khushaldas S. Advani (dead) by Lrs., 1950 SCR 621, as also a three-Judge Bench decision in Dwarka Nath v. Income-tax Officer, Special Circle, D. Ward, Kanpur and Anr., (1965) 3 SCR 536, which have held in no uncertain terms, as the law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially. We are therefore of the opinion that

the writ of certiorari is directed against the act, order of proceedings of the subordinate Court, it can issue even if the lis is between two private parties.

37. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:-

(1) Amendment by Act No.46 of 1999 with effect from 01.07.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by the Civil Procedure Code Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction – by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court

in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (iii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e., which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage

and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case."

30. Powers of High Court under Article 227 have been further explained and elaborated by Supreme Court in the case of ***Shalini Shyam Shetty and another vs. Rajendra Shankar Patil, 2010 AIR (SCW) 6387*** observing as under:-

"62. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in Waryam Singh (supra) and the principles in Waryam Singh (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in Waryam Singh (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and Courts subordinate to it, 'within the bounds of their authority'.

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India & others, reported in 1997(2) S.C.T. 423 : (1997) 3 SCC 261 and therefore abridgement by a Constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High

Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 227 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

31. In view of the aforesaid reasons, this Court finds that expanse of Article 227 of the Constitution of India cannot be restricted. Though the power has to be exercised sparingly and in appropriate cases, but the same is governed by the ratio of law laid down by Supreme Court in the ***Surya Dev Rai's case (supra)***. High Court's power of superintendence under Article 227 of the Constitution of India can neither be curtailed by statute nor by judicial order. The same being part of the basic structure of the Constitution of India as held in ***L. Chandra Kumar vs. Union of India and others, (1997) 3 SCC 261*** and ***Surya Dev Rai's case (supra)*** is even beyond Constitutional amendment.

32. As a sequel of discussions held hereinabove, the questions referred by the Single Bench are answered as under:-

i) Section 482 Cr.P.C./528 B.N.S.S. is applicable *qua* proceedings arising out of complaint under Section 12 of the Act of 2005. The only exception is the cases where provisions of the Act of 2005 have been invoked in proceedings pending before Civil Court or Family Court.

ii) In view of answer to question No.(i), there is no need to answer question No.(ii).

iii) The power of High Court under Article 227 of the Constitution of India are subject to self-restraint. The same can neither be curtailed by statute nor by judicial order. In terms of dictum of law laid down by Supreme Court in the case of ***L. Chandra Kumar's case (supra)*** and ***Surya Dev Rai's case (supra),*** Article 227 is part of basic structure of the Constitution of India and is even beyond Constitutional amendment.

33. The reference having been answered, petitions be set down for hearing as per roster.

34. Pending application(s), if any, shall also stand disposed off.

35. Photocopy of this order be placed on files of the connected cases.

(SHEEL NAGU)
CHIEF JUSTICE

(PANKAJ JAIN)
JUDGE

October 25, 2024
ashish

Whether speaking/reasoned: ***Yes/No***

Whether reportable : ***Yes/No***