Reserved on : 04.06.2024
Pronounced on : 28.06.2024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JUNE, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3578 OF 2022

BETWEEN:

1 . SRI. A.RAMESH BABU
S/O L.ANANTHAKRISHNAN
AGED ABOUT 68 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI – 638 301.

2 . SMT.R.SHASHIKALA
W/O A.RAMESH BABU
AGED ABOUT 66 YEARS
R/AT NO. 144, PLALANIPURAM
1ST STREET, BHAVANI – 638 301.

3 . MR. R.CHANDRASHEKAR
S/O RAMESH BABU
AGED ABOUT 43 YEARS
R/AT NO.303, 3RD FLOOR
MITHRA RAJI RESIDENCY
IDGAH ROAD, BEHIND GOVT. SCHOOL
VARTHUR VILLAGE, BENGALURU – 560 087

SHOWN IN THE PETITION AS:
NO. 144, PLALANIPURAM

1ST STREET, BHAVANI – 638 301.

... PETITIONERS

(BY SRI. AMAR CORREA, ADVOCATE)

AND:

SMT. DHARANI S.,
W/O VIJAY BABU WAGMARE
D/O SWAMI RAO SAMPATH
AGED ABOUT 30 YEARS
R/AT NO. G-3, PHASE-3
LAKE VIEW APARTMENTS
KAREGUDDAPDAHALLI
CHIKBANAWARA POST
L.MARK, GANGADHARAIH
KALYANA MANTAPA
BENGALURU – 560 090.

... RESPONDENT

(BY SRI. T. PRAKASH, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN CRL.MISC.NO.570/2021 PENDING ON THE FILE OF THE CJM RURAL COURT, BANGALORE AGAINST THESE PETITIONERS WHO ARE ARRAYED AS RESPONDENT NO.2 TO 4 IN PETITION FILED U/S 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005, BY RESPONDENT VIDE ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.06.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners who are the father-in-law, mother-in-law and brother-in-law of the respondent are before this Court calling in question proceedings initiated by the respondent in Criminal Miscellaneous No.570 of 2021 before the Chief Judicial Magistrate, Bengaluru Rural District invoking Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short).

2. Facts, in brief, germane are as follows:-

One R. Vijay Babu Waghmare and the respondent got married on 25-02-2021. Barely after 7 months of marriage, alleging that the husband and the in-laws or the family members have meted out torture upon the wife, the respondent/wife invoked the jurisdiction of the learned Magistrate under Section 12 of the Act seeking several reliefs, the protection order for residence and maintenance from the hands of the husband. These petitioners are arrayed as respondents 2, 3 an 4 therein alleging that they have also instigated the husband in meeting out such torture upon the wife, which would become the ingredients of what would the domestic

violence against the wife would mean. No order is passed by the concerned Court. The Petitioners who are respondents 2, 3 and 4 therein have called in question in this petition the very initiation and drawing up of these petitioners into the proceedings before the concerned Court. Therefore, the entire proceedings are sought to be quashed.

3. Heard Sri Amar Correa, learned counsel for the petitioners and Sri T.Prakash, learned counsel appearing for the respondent.

4. The learned counsel appearing for the petitioners would vehemently contend that the petitioners have nothing to do with the life of the husband and the wife. They are without any rhyme and reason driven into these proceedings. Though no order is passed, it is their submission that as to why the petitioners 2 and 3 who are now senior citizens should undergo the misery of appearing before the Court when they have not performed any overt act that would attract violence. It is his submission that the wife has various grievances against the husband. The proceedings should have stopped at that and not dragging every member of the family.

He would submit that the 3rd petitioner is the brother-in-law of the respondent who lives elsewhere and has no connection with the people who are now directed to face proceedings. He would seek quashment of entire proceedings.

5. Per-contra, the learned counsel for the respondent would project a threshold bar. It is his submission that the criminal petition is not maintainable. As appeal should be preferred as obtaining under Section 29 of the Act and that would be a statutory, efficacious and alternative remedy. Invoking jurisdiction of this Court is, on the face of it, erroneous is the submission of the learned counsel. He would submit, without prejudice to his contentions *qua* maintainability of the petition, that the 3rd petitioner has no role to play, but petitioners 1 and 2 being father-in-law and mother-in-law, have undoubtedly a role to play in what the husband has behaved with his wife. Therefore, the proceedings must be permitted to continue. He would seek dismissal of the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. In the light of the aforesaid submission of the learned counsel for the respondent, I would deem it appropriate to consider the threshold bar of entertainability of the subject petition in the teeth of existence of alternative statutory remedy of appeal provided under the Act. To answer the said issue, it would become necessary to notice certain provisions of the Act. An application under Section 12 of the Act can be preferred on various circumstances. Therefore, application is preferred by the aggrieved woman alleging domestic violence. Domestic violence is defined under Section 3 of the Act, reading:

> *"**3. Definition of domestic violence**.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –*
>
> *(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

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

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

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

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

(iii) "verbal and emotional abuse" includes—

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

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

(iv) "economic abuse" includes—

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

> *(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*
>
> *(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.*
>
> *Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."*

Section 29 which forms the fulcrum of the *lis* reads as follows:

> ***"29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."***
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> *(Emphasis supplied)*

Section 29 deals with the remedy of an appeal. It directs that an appeal to the Court of Sessions lie within 30 days from the date on which the order made by the learned Magistrate is served upon the aggrieved person or the respondent, as the case may be. Therefore, Section 29 permits an appeal against any order that is passed, on a bare reading of the provision. Setting aside the entire proceedings

is not the power that is vested in the Court of Sessions on an appeal under Section 29 of the Act. It is the inherent power that is conferred upon this Court under Section 482 of the Cr.P.C., to consider these grievances. The learned counsel for the petitioners has placed reliance on record certain judgments, so has the learned counsel for the respondent. I deem it appropriate to notice those judgments that deal with the issue.

8. The ***sheet anchor*** of the contention of the learned counsel for the respondent is on the judgment of the Apex Court in the case of ***KAMATCHI v. LAKSHMI NARAYANAN***[1]. The said judgment relied on by the learned counsel for the respondent does not consider about entertainability of a petition under Section 482 of the Cr.P.C.. The issue before the Apex Court was whether the period of limitation as obtaining under Sections 468, 469 and 470 of the Cr.P.C. would be applicable to the proceedings under the Act. The Apex Court answering the said issue holds as follows:

> ***"11.*** *Before we consider the rival submissions, the relevant provisions, namely, Sections 12, 28, 31 and 32 of the Act may be extracted:*

[1] *(2022) 15 SCC 50*

*"**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 Civil Procedure Code, 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.

***

***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 Criminal Procedure Code, 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.

***

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

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

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

32. Cognizance and proof.—(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the offence under sub-section (1) of Section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of Section 31 has been committed by the accused."

***12.** Similarly, Section 468 of the Code is also set out for facility:*

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

(2) The period of limitation shall be—

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

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

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

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

13. In terms of Section 468 of the Code, the cognizance of an offence of the categories specified in sub-section (2) can not to be taken after the expiry of the period specified therein.

14. In the following cases, the complaints alleging commission of an offence were filed well in time so that cognizance could have been taken within the prescribed period, but the matters were considered by the Magistrate after the expiry of the prescribed period, and as such the cognizance in each of the cases was taken after the expiry of the period prescribed:.....

... ...

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 [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] 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.

19. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the Magistrate concerned. After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

20. *We may now deal with the case on which reliance was placed by the High Court.*

21. Inderjit Singh Grewal v. State of Punjab [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was a case where the marriage between the parties was dissolved by judgment and decree dated 20-3-2008. Thereafter, the wife preferred an application under the provisions of the Act on 4-5-2009 alleging that the decree of divorce was sham and that even after the divorce the parties were living together as husband and wife; and that she was thereafter forced to leave the matrimonial home. It was, in these circumstances, that an application under Section 482 of the Code was filed by the husband seeking quashing of the proceedings under the Act. It was observed that a suit filed by the wife to declare the judgment and decree of divorce as a nullity was still pending consideration before the competent court.

22. *The effect of the proceedings culminating in decree for divorce was considered by this Court as under : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC pp. 595-96, paras 16-18)*

> *"16. The question does arise as to whether the reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the civil court dated 20-3-2008 subsists. Respondent 2 has prayed as under:*
>
> *'It is therefore prayed that Respondent 1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that Respondent 1 be directed to pay to her a sum of Rs 15,000 per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the respondents be directed to restore to her all the dowry articles as detailed in Annexures A to C or in the alternative they be directed to pay to her a sum of Rs 22,95,000 as the price of the dowry articles. Affidavit attached.'*
>
> *Thus, the reliefs sought have been threefold : (a) custody of the minor son; (b) the right of residence; and (c) restoration of dowry articles.*

> *17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law." It is trite that "fraud and justice never dwell together" (fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine." An act of fraud on court is always viewed seriously. (Vide Meghmala v. G. Narasimha Reddy [Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383 : (2010) 3 SCC (Civ) 368 : (2010) 3 SCC (Cri) 878] .)*
>
> *18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth [State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, (1996) 1 SCC 435] and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd. [Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443]]"*

23. *The plea based on the issue of limitation was then considered in paras 32 and 33 and it was observed : (Inderjit Singh Grewal case [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] , SCC p. 599)*

> *"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the*

judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty [Japani Sahoo v. Chandra Sekhar Mohanty, (2007) 7 SCC 394 : (2007) 3 SCC (Cri) 388] and Noida Entrepreneurs Assn. v. Noida [Noida Entrepreneurs Assn. v. Noida, (2011) 6 SCC 508 : (2011) 2 SCC (Cri) 1015 : (2011) 2 SCC (L&S) 717] .

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

24. *Another case on which reliance was placed during the hearing was Krishna Bhattacharjee v. Sarathi Choudhury [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] . In that case, a decree for judicial separation was passed by a competent court. Thereafter, an application under Section 12 of the Act was preferred by the wife seeking return of stridhan articles and allied reliefs. A plea was taken by the husband that the proceedings under the Act were barred by time. The Magistrate held that as a result of decree for judicial separation, the parties ceased to be in domestic relationship and as such, no relief could be granted. The appeal arising therefrom was dismissed by the lower appellate court and finally revision preferred by the wife was also dismissed by the High Court.*

25. *In light of these facts, the issue of limitation was considered by this Court as under : (Krishna Bhattacharjee case [Krishna Bhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] , SCC pp. 723-24, paras 32-33)*

"32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing

offence or not. There can be no dispute that wife can file a suit for realisation of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act.

33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

26.*Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was decided before the decision of this Court in Sarah Mathew [Sarah Mathew v. Institute of Cardio Vascular Diseases, (2014) 2 SCC 62 : (2014) 1 SCC (Cri) 721] . Rather than the issue of limitation, what really weighed with this Court in Inderjit Singh Grewal [Inderjit Singh Grewal v. State of Punjab, (2011) 12 SCC 588 : (2012) 2 SCC (Civ) 742 : (2012) 2 SCC (Cri) 614] was the fact that the domestic violence was alleged after the decree for divorce, when any relationship between the parties had ceased to exist. It is true that the plea based on Section 468 of the Code was noted in para 32 of the said decision but the effect and interplay of Sections 12 and 31 of the Act was not noticed. In Krishna Bhattacharjee [KrishnaBhattacharjee v. Sarathi Choudhury, (2016) 2 SCC 705 : (2016) 2 SCC (Civ) 223 : (2016) 1 SCC (Cri) 810] as is evident from para 33 of the said decision,* ***the plea of limitation was rejected as the offence was found to be continuing one and as such there was no terminal point from which date the limitation could be reckoned. Thus, none of these decisions is material for the purposes of the instant matter.***

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 : (SCC OnLine Mad paras 19-20)*

> *"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."***
>
> *(Emphasis supplied)*

The Apex Court holds that the High Court had wrongly equated filing of an application to lodging of a complaint or initiation of proceedings to import Section 468 of the Cr.P.C., and obliterate the proceedings before the concerned Court under the Act. Therefore, the said judgment is distinguishable on its facts without much ado, as in the case at hand, there is nothing that could suggest of any

kind of order having been passed by the concerned Court *qua* under Section 468 Cr.P.C.

9. The issue is whether a criminal petition or a writ petition invoking the jurisdiction under Section 482 of the Cr.P.C., gets controlled by Section 29, statutory appellate remedy, before the Court of Sessions. The judgment of ***KAMATCHI*** *supra* has been pressed into service by every respondent therein contending that the petition under Section 482 of the Cr.P.C., cannot be entertained in the light of existence of alternative remedy. The Apex Court in the case of ***SHYAMLAL DEVDA v. PARIMALA***[2] has held as follows:

"…. …. ….

> ***8. Section 18 of the Domestic Violence Act relates to protection order. In terms of Section 18 of the Act, intention of the legislature is to provide more protection to woman. Section 20 of the Act empowers the court to order for monetary relief to the "aggrieved party". When acts of domestic violence are alleged, before issuing notice, the court has to be prima facie satisfied that there have been instances of domestic violence.***
>
> ***9.*** *In the present case, the respondent has made allegations of domestic violence against fourteen appellants. Appellant 14 is the husband and Appellants 1 and 2 are the*

[2] *(2020) 3 SCC 14*

parents-in-law of the respondent. All other appellants are relatives of parents-in-law of the respondent. Appellants 3, 5, 9, 11 and 12 are the brothers of father-in-law of the respondent. Appellants 4, 6 and 10 are the wives of Appellants 3, 5 and 9 respectively. Appellants 7 and 8 are the parents of Appellant 1. Appellants 1 to 6 and 14 are residents of Chennai. Appellants 7 to 10 are the residents of the State of Rajasthan and Appellants 11 to 13 are the residents of the State of Gujarat. Admittedly, the matrimonial house of the respondent and Appellant 1 has been at Chennai. Insofar as Appellant 14 husband of the respondent and Appellants 1 and 2 parents-in-law, there are averments of alleged domestic violence alleging that they have taken away the jewellery of the respondent gifted to her by her father during marriage and the alleged acts of harassment to the respondent. There are no specific allegations as to how other relatives of Appellant 14 have caused the acts of domestic violence. It is also not known as to how other relatives who are residents of Gujarat and Rajasthan can be held responsible for award of monetary relief to the respondent. The High Court was not right in saying that there was prima facie case against the other Appellants 3 to 13. Since there are no specific allegations against Appellants 3 to 13, the criminal case of domestic violence against them cannot be continued and is liable to be quashed.

10. *Insofar as the jurisdiction of the Bengaluru Court, as pointed out by the High Court, Section 27 of the Protection of Women from Domestic Violence Act, 2005 covers the situation. Section 27 of the Act reads as under:*

> *"**27. Jurisdiction**.—(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—*
>
> *(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or*
>
> *(b) the respondent resides or carries on business or is employed; or*
>
> *(c) the cause of action has arisen,*

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act

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

11. A plain reading of the above provision makes it clear that the petition under the Domestic Violence Act can be filed in a court where the "person aggrieved" permanently or temporarily resides or carries on business or is employed. In the present case, the respondent is residing with her parents within the territorial limits of Metropolitan Magistrate Court, Bengaluru. In view of Section 27(1)(a) of the Act, the Metropolitan Magistrate Court, Bengaluru has the jurisdiction to entertain the complaint and take cognizance of the offence. There is no merit in the contention raising objection as to the jurisdiction of the Metropolitan Magistrate Court at Bengaluru.

12. *In the result, Crl. Misc. No. 53 of 2015 filed against Appellants 3 to 13 is quashed and this appeal is partly allowed. The learned VIth Additional Metropolitan Magistrate at Bengaluru shall proceed with Crl. Misc. No. 53 of 2015 against Appellants 1, 2 and 14 and dispose of the same in accordance with law. We make it clear that we have not expressed any opinion on the merits of the matter."*

(Emphasis supplied)

The Apex Court was considering who would be the person aggrieved. The Apex Court sets aside or quashed the proceedings against the appellants therein, as the High Court had rejected the petition under Section 482 of the Cr.P.C., though the issue of maintainability was not expressly considered in that case.

10. A Full Bench of the High Court of Bombay, in the case of ***NANDKISHOR PRALHAD VYAWAHARE v. MANGALA***[3] in which the issue was whether the High Court can exercise the power under Section 482 of the Cr.P.C. in respect of proceedings under the Act, answers it after considering the entire spectrum of the Act and the precedents then obtaining as follows:

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

[3] *2018 SCC OnLine Bom.923*

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. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under section 18 and monetary relief under section 20 would be governed by the provisions of Criminal Procedure Code in terms of section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding. If these observations apply to a proceeding taken for obtaining reliefs under sections 18 and 20 of the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56. In the case of Sukumar Gandhi (supra), the Division Bench of this Court, however, held that because the proceedings under section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to section 482 of Criminal Procedure Code could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it

would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under section 482 of Criminal Procedure Code could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite to what has been thought of by it. That apart, making section 482 of Criminal Procedure Code as not applicable may also amount to doing harm to plain and clear language of section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

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."

(Emphasis supplied)

The Full Bench considers at what point in time or at what stage the Cr.P.C. would become applicable and holds that it is only where an order is passed.

11. In a later judgment, noticing the judgment of the Full Bench, the High Court of Bombay in ***DHANANJAY MOHAN ZOMBADE v. PRACHI***[4] has held as follows:

> "…. …. ….
>
> ***13. Full Bench of this Court in the case of Nandkishor Pralhad Vyawahare v. Mangala w/o Pratap Bansar, (2018) 3 Mah LJ 913, has framed issue for consideration i.e. "whether or not High Court can exercise its powers under Section 482 of the Criminal Procedure Code, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005?" While answering the said question, it is clearly held that the provision of Section 482 of the Code of Criminal Procedure has application to DV Act. Considering the law on the point of binding precedents, the Full Bench judgment of this Court binds this Court. The judgment of Full Bench of Madras High Court in the case of Arun Daniel (supra) has persuasive value but it does not bind this Court. For the reasons recorded hereinabove, with utomost respect to the Full Bench of Madras High Court, this Court does not concur with the said judgment.***
>
> ***14. As far as judgments cited by learned counsel for the respondent are concerned, in case of Kunapareddy v. Kunapareddy Swarna Kumari, (2016) 11 SCC 774, the Hon'ble Apex Court was dealing with the issue as to whether amendment could be allowed in the proceedings under DV Act. In case of State of West Bengal v. Sujit Kumar Rana, (2004) 4 SCC 129, the issue before the Hon'ble Apex Court was as to whether the provisions of Section 482 of the Code of Criminal Procedure would apply to the confiscation proceeding under Section 59-G of Forest Act. In this case, it was held that Section 59-G of Forest Act confers specific power in officer appointed under Section 59(C) and District Judge to whom the appeal can be preferred under Section 59-C and 59-D. In***

[4] *2023 SCC OnLine Bom. 1607*

> ***view of such specific power created by the Statute, it was held that application under Section 482 of the Code of Criminal Procedure is not tenable. In the instant case, no specific power is vested in other authority by DV Act in order to apply the said judgment to the present case.*** *In case of Oliver Menezes v. Serita Therese Mathias, 2021 DGLS (Kar.) 304, the Karnataka High Court has no doubt held that Section 482 of the Code of Criminal Procedure is not applicable to the DV Act.* ***However, this Court respectfully disagrees with the said view. Delhi High Court in the case of Sirisha Dinavahi Bansal v. Rajiv Bansal, 2020 SCC OnLine Del 764, was dealing with the situation when remedy of appeal under Section 29 of the DV Act was available and in such circumstances, it is held that the petition under Section 482 of the Code of Criminal Procedure is not maintainable. There is no such efficacious remedy is available under DV Act for quashment of proceeding which amounts to abuse of process of Court and hence invocation of Section 482 of the Code of Criminal Procedure is fully justified."***
>
> *(Emphasis supplied)*

Exercising its jurisdiction under Section 482 of the Cr.P.C., the complaint was quashed by the learned Judge of the High Court of Bombay. While doing so, the learned Judge considers the Full Bench judgment and all other judgments obtaining on the issue. The learned Judge holds that there is no efficacious remedy available under the Act for quashment of proceeding on account of it becoming an abuse of the process of law. I am in respectful agreement with the order passed in ***DHANANJAY MOHAN ZOMBADE***'s case *supra*.

12. The High Court of Andhra Pradesh, following the judgment of the Apex Court in ***SHYAMLAL DEVDA'S*** case *supra,* in the case of ***MORA v. STATE OF AP***[5] holds that the judgment in ***SHYAMLAL DEVADA'S*** case did not specifically decide maintainability, but there is no bar of exercise of power of a Court under Section 482 of the Cr.P.C. in a proceeding under the Act. The High Court has held as follows:

> ***"9. On the other hand, in case of Shyamlal Devda v. Parimala, (2020) 3 SCC 14, Hon'ble Apex Court has set aside the order passed by the High Court wherein the proceedings under DV Act were not quashed under Section 482 of the Code of Criminal Procedure. Though this judgment also does not specifically decide applicability of Section 482 of the Code of Criminal Procedure to DV Act, however, the said judgment more than sufficiently indicates that there is no bar to exercise powers under Section 482 of the Code of Criminal Procedure to the proceeding under DV Act."***
>
> *(Emphasis supplied)*

13. A coordinate Bench of this Court has in ***MRS. ARADHANA SHARDA v. MRS. GEETHA RASTOGI***[6] after considering the judgment of the Apex Court in ***KAMATCHI*** *supra* has held as follows:

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[5] *2024 SCC OnLine AP 1769*
[6] *Criminal Petition No.7483 of 2020 & connected cases decided on 23-09-2023*

"…. …. ….

11. Now coming to the pivotal question whether this court can exercise jurisdiction under Section 482 of Code of Criminal Procedure, to set at naught the proceedings initiated by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, it is apposite to refer the judgment of Hon'ble Apex Court in the case of State Of Haryana referred supra, where it was held that the Court exercising jurisdiction is not shorn of the power under Articles 226 and 227 of the Constitution of India and whenever Court is confronted with a situation where the provision of any penal law is abused, it would unhesitatingly exercise jurisdiction to set at naught such proceeding.

12. In the case on hand, though it is contended that the Hon'ble Apex Court in the case of ***Kamatchi supra*** *held that under Section 482 of Code of Criminal Procedure, the High Court cannot exercise jurisdiction to quash the proceedings under Section 12 of Protection of Women from Domestic Violence Act 2005, in the instant case, the proceedings before the Trial Court has moved on from the stage of issuing notice. The consequence of non-compliance of an order under Sections 21 and 22 is provided in Section 31 of the Act of 2005, which reads as follows :*

> *"31. Penalty for breach of protection order by respondent.—*
>
> *(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.*
>
> *(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.*

> *(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."*
>
> ***13. Therefore, it cannot be held that the provisions under the PWDV Act 2005 are civil in nature. Therefore, when the Court is confronted with a false case or a case which does not constitute domestic violence as defined under the Protection of Women from Domestic Violence act 2005, the same cannot continue, as that would result in nuisance and harassment of the petitioner. Therefore, the proceedings against the petitioner cannot continue."***
>
> *(Emphasis supplied)*

14. Yet another coordinate Bench of this Court, answering an identical contention in ***MR. SHRIKANTH RAVINDRA v. SMT. PADARATHY S.SOWMYA***[7] has held as follows:

> *"…. …. ….*
>
> ***11. The proceedings under the Act, 2005 are the proceedings which are to governed by the Cr.P.C. as held by the Hon'ble Supreme Court in the case of Satish Chander supra, the submission of the learned counsel for the respondent that the relief sought under Sections 12 and 19 are predominantly civil in nature and as such the writ petition is not maintainable under Section 482 of Cr.P.C. is not acceptable. Even otherwise, the present petition is filed under Article 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C. Hence, the present petition is maintainable even accepting that***

[7] *W.P.No.5915 of 2017 decided on 29-06-2022*

the proceedings under D.V. Act, 2005 are predominantly civil in nature.

12. The petitioner cannot be relegated to file an application for deleting his name by invoking Order I Rule 10(2) of the Code of Civil Procedure, 1908, since the provisions of the C.P.C. are not applicable to the proceedings under the D.V. Act, 2005. The present petition is maintainable to secure the ends of justice when prima facie it is established that the impugned proceedings are initiated with an ulterior motive for wreaking vengeance against the petitioner and with revengeful intent.

13. In view of the preceding analysis, continuation of the impugned proceedings against the petitioner will be an abuse of process of law."

(Emphasis supplied)

These are the Authorities that the learned counsel for the petitioners would place reliance upon to buttress his submission that the petition under Section 482 of the Cr.P.C., would be maintainable.

15. The other line of judgments on which the learned counsel for the respondent has placed reliance upon are (i) ***KAMATCHI*** s*upra* and (ii) ***OLIVER MENEZES v. SERITA THERESE MATHIAS***[8]. The coordinate Bench in the judgment of ***OLIVER MENEZES*** holds that the orders passed under Sections 18 to 22 do

[8] *Criminal Petition No.356 0f 2019 decided on 20-05-2021*

not attach any criminal liability. They are civil in nature. Therefore, a petition under Section 482 of the Cr.P.C., would not be maintainable. So goes the judgment of the learned single Judge of the High Court of Himachal Pradesh in the case of ***SANJEEV KUMAR v. SUSHMA DEVI***[9] which holds, a petition under Section 482 of the Cr.P.C. would not be maintainable challenging the proceedings under Section 12 of the Act and recourse has to be taken to Article 227 of the Constitution of India. I respectfully disagree with the view taken by the learned single Judge of the High Court of Himachal Pradesh, in the light of the judgments of the Apex Court and that of the coordinate Benches of this Court.

16. On a coalesce of all the judgments quoted *supra* and their consideration, the following would emerge. A petition under Section 482 of the Cr.P.C., be it invoking the writ jurisdiction or inherent jurisdiction under the Cr.P.C., would be maintainable and entertainable, if the entire proceedings are sought to be quashed, as the Court of Sessions is no where conferred with such power under the Act to obliterate entire proceedings, on account of it

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[9] *Criminal Revision Petition No.132 of 2021 decided on 01-06-2023*

being abuse of the process of law. If any particular order is passed on any application filed by the aggrieved person under Sections 18, 19, 20 or 22 of the Act, those specific orders are to be agitated by the said aggrieved person before the Court of Sessions invoking Section 29 of the Act. For interlocutory orders passed by the concerned Court under the aforesaid provisions of the Act, a petition under Section 482 of the Cr.P.C., would not become entertainable. Therefore, the contention of the learned counsel for the respondent that the petition is not maintainable or entertainable is to be rejected in the light of the preceding analysis and is accordingly rejected. What is called in question, in the case at hand, is not any specific order passed by the concerned Court under Sections 18, 19, 20 or 22 of the Act. It is the entire proceeding, on the ground that it is an abuse of the process of law. Therefore, the subject petition becomes entertainable and the petition is thus entertained. Therefore, I deem it appropriate to delve into the facts of the case.

17. The complaint is registered venting out grievances against the husband. What is found in the complaint against these

petitioners is instigation on the demand of dowry. In the lengthy application so filed, it is the grievance/allegation that torture and abuses are meted out by the husband against the wife. Inferences of the allegations against these petitioners are found at paragraph 10 of the application. It reads as follows:

> *"… … …*
>
> *10. It is pertinent hereto state that the respondent is a puppet at the hands of his parents Sri.A.Ramesh Babu Waghmare, Smt.R.Sasikala Bai and his elder brother Sri. C.R.Chandrashekar, who is working at Baxter International, Bangalore, who are poisoning the mind of the respondent to demand dowry and to cause ill treatment, harassment and to inflict cruelty on the petitioner."*

It is alleged that the husband is a puppet in the hands of his father, mother and his elder brother who are poisoning the mind of the husband to cause ill-treatment. This in no manner would bring about any ingredients of what would mean 'domestic violence' as found in Section 3 of the Act. Section 3 of the Act reads as follows:

> *"**3. Definition of domestic violence**.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—*
>
> *(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

> *(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*
>
> *(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or*
>
> *(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person."*

Section 3 has several forms and hues of domestic violence. None of these are attributable to these petitioners. It has become a norm in today's proceedings be it invoking Section 498A of the IPC or Section 12 of the Act to rope in other members of the family, while the entire grievance would be against the husband. Such proceedings under Section 482 of the Cr.P.C. are held to be an abuse of the process of law, by the Apex Court in plethora of cases. The Apex Court in the case of ***KAHKASHAN KAUSAR v. STATE OF BIHAR***[10] **has** held as follows:

> ***"Issue involved***
>
> ***10. Having perused the relevant facts and contentions made by the appellants and respondents, in our considered opinion, the foremost issue which requires determination in the instant case is whether allegations made against the appellant in-laws are in the nature of general omnibus allegations and therefore liable to be quashed?***

[10] *(2022)6 SCC 599*

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-AIPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

12. *This Court in its judgment in Rajesh Sharma v. State of U.P. [Rajesh Sharma v. State of U.P., (2018) 10 SCC 472: (2019) 1 SCC (Cri) 301] , has observed : (SCC pp. 478-79, para 14)*

> *"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression "cruelty" in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."*

13. *Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of*

Bihar, (2014) 8 SCC 273: (2014) 3 SCC (Cri) 449] , it was also observed : (SCC p. 276, para 4)

> *"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested."*

14. *Further in Preeti Gupta v. State of Jharkhand [Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667 : (2010) 3 SCC (Cri) 473] , it has also been observed : (SCC pp. 676-77, paras 32-36)*

> *"32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.*
>
> *33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity*

of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful."

15. *In Geeta Mehrotra v. State of U.P. [Geeta Mehrotra v. State of U.P., (2012) 10 SCC 741: (2013) 1 SCC (Civ) 212 : (2013) 1 SCC (Cri) 120] it was observed : (SCC p. 749, para 21)*

"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a

> *matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12)*
>
> > *'12. … There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts.'*
>
> *The view taken by the Judges in this matter was that the courts would not encourage such disputes."*

16. *Recently, in K. Subba Rao v. State of Telangana [K. Subba Rao v. State of Telangana, (2018) 14 SCC 452 : (2019) 1 SCC (Cri) 605] , it was also observed that : (SCC p. 454, para 6)*

> > *"6. … The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."*

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of

the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. *Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that "all accused harassed her mentally and threatened her of terminating her pregnancy". Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.*

19. *Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR Respondent 1 i.e. the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the learned Principal Judge, Purnea, to not harass the respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 1-4-2019, is distinct and independent,*

and cannot be termed as a repetition of an earlier FIR dated 11-12-2017.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged."

(Emphasis supplied)

In the light of the proceedings being an abuse of the process of law, I deem it appropriate to exercise the jurisdiction under Section 482 of the Cr.P.C. and obliterate the proceedings.

SUMMARY OF THE FINDINGS:

(i) A petition under Section 482 of the Cr.P.C. calling in question the entire proceedings before the concerned

Court initiated under the Protection of Women from Domestic Violence Act, 2005 would be maintainable, only if the proceedings are challenged on the ground of abuse of the process of the law, as the Court of Session is not empowered to obliterate the proceedings holding it to be an abuse of the process of the law.

(ii) *Any specific order passed by the concerned Court answering applications filed under Sections 18, 19, 20 or 22 of the Act or any other interlocutory order would not be entertainable before this Court in its jurisdiction under Section 482 of the Cr.P.C. The aggrieved, by any order, has to prefer an appeal under Section 29 of the Act, as it is an alternative and statutory remedy available.*

(iii) *Finding the entire process initiated by the respondent against the present petitioners, the father-in-law and mother-in-law, to be an abuse of the process of the law, those proceedings are to be obliterated.*

18. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is allowed.

(ii) The proceedings in Criminal Miscellaneous No.570 of 2021 pending before the Chief Judicial Magistrate, Bangalore Rural District stand quashed *qua* the petitioners.

(iii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against the other accused.

Sd/-
JUDGE

bkp
CT:SS