



2024:DHC:7375



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON -10.07.2024.**

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**PRONOUNCED ON -18.09. 2024.**

+ TR.P.(CRL.) 23/2024, CRL.M.A. 7872/2024

[REDACTED]

.....Petitioner

Through: Mr. Raghavendra Mohan Bajaj, Ms. Garima Bajaj, Mr. Kumar Karan, Mr. Kanav Agarwal, Mr. Shagun Agarwal, Mr. Shivansh Dwivedi, Mr. Sajag Awasthi, Advs.

versus

[REDACTED]

.....Respondent

Through: Mr. Sumit Ahuja, Adv. (VC).

**CORAM:****HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

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## JUDGMENT

### DINESH KUMAR SHARMA,J:

#### (A) FACTS

1. The present petition has been filed under Section 407 Cr.P.C. seeking transfer of CT Cases 578/2021 titled “*AKANKSHA DUA VS. ASEEM KHANNA ETC.*” pending before the court of Ld. MM, East District, Karkardooma Courts, Delhi to the court of Ld. Judge, Family Court-02, South-East, Saket, Delhi and club with HMA No. 35/2023 titled “*AKANSHA DUA V. ASEEM KHANNA*” pending in the court of Ld. Judge, Family Court-02, South-East, Saket, Delhi.
2. The respondent has filed a petition for divorce under Section 13(1)(ia) of the Hindu Marriage Act bearing HMA No. 35/2023 titled “*AKANSHA DUA V. ASEEM KHANNA*” before the Family Court, South-East, Saket Court, Delhi. Subsequently, the respondent also filed a complaint under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005(hereinafter referred to as the ‘DV Act’) seeking reliefs under Sections 17/18/19/20/22/23 of the DV Act bearing complaint case No. 578/2023 before Ld. MM, East District, Karkardooma Courts, Delhi.
3. Vide the present petition, the petitioner has sought transfer of the DV case to the family court and club the same under Section 24 of the CPC. The petitioner has stated that the Family Court, South-East, Saket, Delhi has power to grant the relief as has been sought by the respondent in the DV Act case. The petitioner has also submitted that Section 26 of the DV Act provides that the reliefs available under



Section 18 to 22 of the DV Act can be sought in any legal proceeding before a Civil Court, Family Court or Criminal Court.

4. The petitioner has further submitted that Section 7 & 8 of the Family Court Act, 1984 confers jurisdiction on the Family Court which are analogous to that exercisable by a Magistrate of the first class under Chapter IX of the C.P.C. (in relation to order for maintenance of wife, children and parents). The petitioner has submitted that the transfer of the case would be convenient to the parties and would also be in the interest of the justice. It has been submitted that both the cases are at the initial stage and no prejudice shall be caused to either of the parties.

**(B) SUBMISSIONS ON BEHALF OF THE PETITIONER**

5. Learned counsel for the petitioner submitted that the allegations made in the Divorce petition and the DV complaint are similar and the cases have been filed only to harass the petitioner. Learned counsel submitted that the legislative intention behind Section 26 is to provide multiple options to the aggrieved women litigants to redress their grievances in a speedy manner and therefore the Family Court, civil court or Criminal Court has been clothed with the power to grant relief under Sections 18 to 22 of the DV Act. Learned counsel further submitted that the Family Court, functions as a Civil Court and is conferred with the powers of a Civil Court and is competent to decide an Application filed under Section 12 of the DV Act in view of the power granted by Section 26 of the DV Act.
6. Learned counsel submits that this court in *Garima Khara v. Anmol Kera*, 2022 SCC OnLine Del 4117, has inter alia directed that the Maintenance petition and Domestic Violence (DV) petition be tried by the same Court and transferred the Domestic Violence (DV) petition No. 1038/2021,



titled as “*Garima Khera v. Anmol Khera*” from the court of Ld. MM, Patiala House Court, New Delhi to Ld. Principal Judge, Family Court, North District, Rohini Courts for assigning it to Ld. Judge, Family Court, North District, Rohini Courts, Delhi.

7. Learned counsel further submitted that the Bombay High Court also in *Rohan Shah v. Nishigandha Shah*, 2023 SCC OnLine Bom 2719 has inter alia held that the Family Court is competent to try DV proceedings considering the objective of the Family Court. Learned counsel has further relied upon *Sandip Mrinmoy Chakraboarty v. Reshita Sandip Chakrabarty*, 2018 SCC OnLine Bom 2709. Reliance has also been placed upon *Santosh Machindra Mulik v. Mohini Mithu Choudhari*, 2019 SCC OnLine Bom 13101.
8. Learned counsel submitted that if the DV Act case is transferred it will eliminate the possibility of conflicting verdict as the plea taken in both the cases are identical. Reliance has been placed upon *Prem Lala Nahata v. Chandi Prasad Sikaria*, (2007) 2 SCC 551 and *SBI v. Ranjan Chemicals Ltd.*, (2007) 1 SCC 97.

**(C) SUBMISSIONS ON BEHALF OF THE RESPONDENT**

9. Per contra, learned counsel for the respondent submits that the present petition is frivolous and is liable to be dismissed. It has been submitted that the relief sought in the DV Act can only be decided by the Ld. MM and cannot be adjudicated by the Family Court. Learned counsel submits that there is no power conferred on the Family Court or the Civil Court to deal with an application under Section 12 of DV Act. It has been submitted that the right of the respondent to get her claim adjudicated before the Ld. MM under the DV Act cannot be taken



away.

10. Learned counsel further submitted that Section 26 of the DV Act has wrongly been interpreted by the learned counsel for the petitioner. It has been submitted that Section 26 of the DV Act merely provides that the reliefs under Sections 18 to 22 can be granted by other Civil Courts. Learned counsel submits that therefore, the DV Act matter cannot be transferred to the Family Court. It has been submitted that it would be contrary to the intention and the object of the legislature behind DV Act, which aims at the expeditious disposal. Learned counsel submits that the legislature in its own wisdom has provided the remedy under the DV Act which was enacted in 2005 that is much after the Family Courts Act, 1984.
11. Learned counsel for the respondent has further submitted that the Kerala High Court in *Anish Antony Timothy* [2011 (3) KHC 46] has inter alia held that Section 26 of the DV Act is not intended to equate the Magistrate exercising power under DV Act with a Family Court or Civil Court and power to grant relief as provided in the Act. The Kerala High Court further inter alia held that the proceeding before the Magistrate cannot be transferred to the Family Court. It was also inter alia held that if the matter is transferred to the Family Court, there could be no appeal to the Court of Session as provided under Section 29 of the DV Act.
12. Learned counsel has further submitted that the Kerala High Court in *M.A. Mony vs M.P. Leelamma and Anr.* [2007 (2) KLJ 209] inter alia held that the Family Court is not invested with any power to deal with an application under Section 12 of the DV Act. It was further inter alia



held that even the transfer jurisdiction cannot be exercised to transfer the petition under Section 12 pending before the Magistrate to such Civil or Family Court. Learned counsel submitted that the Civil Court or Family Court is not competent to deal with an application under Section 12 of the DV Act when it is originally filed before them.

13. The Kerala High Court further in ***Rajeev Thomas vs Sheeja Antony*** [2018 (4) KHC 8] inter alia held that the correct interpretation of Section 26 of the DV Act is that, though an application under Section 12 can be considered only by a magistrate and cannot be considered by a Family Court or Civil Court or any other Court, the reliefs that can be granted under Sections 18 to 22 can also be granted by other courts while dealing with the pending disputes. It was further inter alia held that there is a sea of difference between holding that both courts have concurrent jurisdiction and that, one Court can grant the reliefs, which can be granted by another court. It was further inter alia held that Section 26 has merely clarified that the reliefs under sections 18 to 22 can be granted by other civil courts. Thus the transfer of the case pending before the magistrate court under section 12 of the DV Act to a Family Court was declined.
14. Learned counsel submits that the Kerala High Court in ***Vineet Ganesh Vs Priyanka Vasan***; TR. APPEAL (C) No.1 of 2023 has inter alia held that the DV Act has been enacted to provide for more effective protection of the rights of women guaranteed under the Constitution of India. Learned counsel submits that in this case the Kerala High Court discussed in detail the scheme and object of the act and inter alia held that an application pending under Section 12 before a magistrate cannot



be transferred to a Family Court.

15. Learned counsel submits that the High Court of Madras in *Arun Daniel &Ors. Vs. Suganya* (2022) SCC Online Mad 5435 inter alia held that no power has been vested with the Family Court, either under the DV Act or the Family Courts Act, 1984 to entertain an application under Section 12 of the DV Act. Further it was inter alia held that an application under Section 12 of the DV Act cannot be transferred from the Court of the Magistrate to the Family Court. Learned counsel submits that therefore the present petition is liable to be dismissed.

#### **(D) FINDINGS AND ANALYSIS**

16. The present petition has been moved for transfer of the proceedings instituted under the DV Act by the respondent against the petitioner to the Court of learned Family Judge where the respondent has also filed a divorce petition against the petitioner. The pre-dominant reason for seeking transfer is, that the averments in both the petitions are similar and therefore, in order to avoid conflict in judgment, it is desirable that the matter may be transferred and clubbed together.
17. The Family Court Act, 1984 was brought in for speedy trial and quick disposal of matrimonial disputes. The Act provided for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therein. Section 7 of the Family Court, 1984 provides the jurisdiction of the Family Court. The Family Court has jurisdiction exercisable by any District Court or Subordinate Civil Court under any law in respect of suits and proceedings of the nature as referred to in explanation of the provision



which are as under;

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*
  - (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person; 4*
  - (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*
  - (d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;*
  - (e) a suit or proceeding for a declaration as to the legitimacy of any person;*
  - (f) a suit or proceeding for maintenance;*
  - (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*
18. The Family Court has also been conferred with the jurisdiction exercisable by magistrate of first class under Chapter IX of the Cr. PC i.e. section 125 Cr. PC. Section 8 of the Family Court Act, 1984 has excluded the jurisdiction of other Courts in respect of the suits and proceedings as prescribed in Section 7 of the Act.
19. The Appeal against any order of a Family Court, not being an interlocutory order shall lie to the High Court as provided under Section 19 of the Family Court Act, 1984 which is as follows;
- (1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or*





*order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.*

*(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties 2[or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974): Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]*

*(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court. 2[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.] 3[(5)] Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.*

20. The Protection of Women from Domestic Violence Act, 2005 referred to as Domestic Violence Act was enacted in 2005, primarily to provide for a remedy under the civil law which is intended to protect the women from being victims of Domestic Violence and to prevent the occurrence of Domestic Violence in the society. It is pertinent to mention here that the Bill moved in the parliament for enacting the law seeks to provide for the following :

*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.*

*2The Protection of Women from Domestic Violence Act, 2005 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.*



21. The bare perusal of the aforementioned makes it clear that the intention of the legislature was to enact a wide and comprehensive law so as to redress the grievances of any women who are or have been in a relationship with an abuser. The definitions as given in Section 2, of “aggrieved person”, “domestic relationship” and “shared household” are also quite wide and in sync with the object and intention of the legislature. Similarly, Section 3 of the DV Act defines “domestic violence” and gives a wide definition of the Domestic Violence Act.
22. Chapter IV of the Domestic Violence Act provides procedure for obtaining orders of reliefs. Section 17 provides right to reside in a shared household. Similarly, Section 18 and 19 provides for the protection orders and residence orders. Section 20 relates to monetary reliefs. Similarly, Section 21 pertains custody orders. Further, Section 23 also confers the power on the Magistrate to grant interim and *ex parte* orders.
23. Section 26 of the Domestic Violence Act provides that any relief available under Sections 18/19/20/21 and 22 may also be sought in any legal proceedings before a Civil Court, Family Court or a Criminal Court affecting the aggrieved person and the respondent. Such relief can even be claimed in any proceedings initiated before or after the commencement of the act. Section 26 (2) also provides that 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 proceedings before a civil or criminal Court. Section 27 of the Act confers the jurisdiction on the Judicial Magistrate of first class or the Metropolitan Magistrate to grant protection order and other



orders under this Act.

24. The bare glance of the Family Court and the DV Act makes it clear that both the act though operate in different spheres, but are piece of welfare and beneficial legislatures enacted with an intention and object of redressing the grievances of the women in matrimonial relation or domestic relationship. Predominantly, the reliefs under the Family Court Act can be sought between the parties to a marriage as prescribed in the explanation to Section 7 of the Act. However, the relief under the Domestic Violence Act are wide ranging from right to share household, protection orders, residence orders, custody orders, monetary reliefs and compensation orders.
25. The plea of the petitioner is that the in view of Section 26 of the Domestic Violence Act, the relief as provided under the Domestic Violence Act can also be granted by the Family Court Act and therefore no prejudice would be caused to the respondent, if the matter under DV Act is transferred to the Family Court.
26. *Per contra*, the plea of the respondent is that proceedings under the DV Act cannot be transferred to the Family Court Act as both the Acts operate entirely in a different sphere and transferring of such matter would prejudice the respondent gravely.
27. Both the parties have relied upon two diametrically opposite view as taken by the Bombay High Courts and Kerala High Court. At the outset, this Court in **Garima Khera** (*surpa*) has transferred the maintenance petition and DV Act petition from the Court of learned MM to the learned Principal Judge, Family Court. However, the perusal of this order indicates that the pleas as taken in the present case



were not taken in that case and the order was passed only in the interest of the justice. Therefore, this Court considers that the question of law as agitated by both the parties in the present case needs to be adjudicated. This Court also considers that the question gains importance in view of the fact that it may have huge ramifications as many more litigants facing proceedings under DV Act may come forward for transfer of their cases to the family Courts. It can also be noted that generally the pleas taken by the parties in the DV Act and Divorce petitions are similar.

28. The Bombay High Court in ***Rohan Shah v. Nishigandha Shah***, 2023 SCC OnLine Bom 2719 while dealing with the question that whether the proceedings under the DV Act can be transferred to the Family Court, after taking into account the various cases and the provisions of the law *inter alia* held in paras 105, 112, 116, and 117 as under;

*105. In my view, there is no specific bar on the Family Court to try PWDV proceedings, considering the objective of the Family Court. In fact, Section 26 of the PWDV Act empowers any Civil Court including Family Court to grant reliefs u/s 18 to 22 of the PWDV Act.*

*112. An analysis of Rule 15 of the PWDV Rules more particularly sub-rules (1) to (6) evinces that an aggrieved woman would have to report a breach of an order by a separate application in writing and the Court may separate the proceedings for such offences and try them in the manner prescribed under the CrPC summarily u/s 31 in accordance with the provisions of Chapter XXI of the CrPC 113. To broadly summarise, my conclusions are as follows:*

*(a) An Application filed u/s 12 of the PWDV Act can be transferred to the Family Court;*



(b) *The Judgments in the case of Sandip Chakrabarty (supra) and those following it are not per incuriam;*

(c) *There are no conflicting views that require reference to a larger bench.*

*116. It can be seen that all the reliefs sought are in regard to Sections 18 to 23 of the PWDV Act. Thus, no prejudice would be caused to the Respondent - wife if the proceedings are transferred to the Family Court. In fact, the parties would save time, effort and money if the proceedings are permitted to be transferred to the Family Court.*

*117. In the light of the law laid down in the case of Sandip Chakraborty (supra) upheld by the Division Bench and followed by the Judgments Santosh Mulik v. Mohini Choudhari (supra), Hitesh Mehta v. Aashika Mehta (supra) Sanket Khanolkar v. Surabhi Sanket Khanolkar (supra), Ronit Gundesha v. Gayatri Shah (supra), Dr. Sandeep Shetty v. Dr. Sarika Shetty (supra), Anirudh Garg v. State (supra) and Vijay Kakade v. Anushka Kakade (supra), the pleadings and materials on record and the totality of the facts and circumstances of this case, and particularly that the Applicant will suffer undue hardship and expense, I am inclined to exercise the discretionary powers of this Court under Section 24 of the Code of Civil Procedure and allow the application for transfer.*

29. *Per contra*, the Kerala High Court in **Rajeev Thomas v. Sheeja Antony** 2018 SCC OnLine Ker 23674, was also confronted with the question of transfer of the Domestic Violence Act case from the court of Judicial Magistrate first class to the Family Court. The Kerala High Court *inter alia* held as under;

*10. The specific contention of the learned counsel for the petitioners was that, S. 26 of the D.V. Act conferred concurrent jurisdiction on the Family Court as well as on the Magistrate Court while adjudicating the reliefs under Ss. 18 to 22 of the D.V.*



*Act. S. 26 clearly clarifies that, petitioner is under an option to seek reliefs under Ss. 18 to 22 along with other reliefs in any pending proceeding instituted before or after introduction of the D.V. Act. The correct interpretation and the scope of S. 26 of the D.V. Act was the subject matter of decisions of various courts. In Smt. Kumari Behera v. State of Orissa; ((2010) 1 KLT OnLine 1102 (Ori.) : AIR 2010 Ori 68), it was held that, Family Court can grant any relief available under Ss. 18 to 22, if such reliefs are sought in a pending proceeding. However, for an independent proceeding seeking relief under Ss. 18 to 22, only concerned Magistrate has jurisdiction as per provisions of Ss. 26 and 27 of the D.V. Act. This view was affirmed by the Division Bench of Orissa High Court in Brundaban Patra v. Rajalaxmi Patra; ((2011) 4 KHC 740). This was further explained in Ambreen Akhoun v. Aditya Aum Paudwal, ((2016) 1 KLT OnLine 2583 (Bom.) : 2016 Cri LJ 141). In that, Bombay High Court held that, S. 26 of the D.V. Act enables a party to seek relief available under Ss. 18 to 22 of the D.V. Act in any legal proceeding before the civil court or Family Court or criminal court affecting the aggrieved person, whether such proceeding was initiated before or after the commencement of the D.V. Act. It was held that sub-ss.(1) and (2) of S. 26 presupposes that, there should be a suit or legal proceeding pending before the Civil or criminal Court wherein the relief under the D.V. Act also can be sought in addition to relief. It was held that the scope of S. 26 of the D.V. Act was that, same relief under Ss. 18 to 22 can be the subject matter of any other proceeding pending before the Family Court along with other reliefs sought. This was explained by a learned Single Judge of this Court in Raju Narayana Swamy v. Beena M.D; ((2017) 1 KLT 661 : (2017) 1 KHC 607). It was clarified that the Family Court will have jurisdiction under the D.V. Act to grant relief to the victim of domestic violence, only if, there is an existing legal proceeding and the application under Section 26 of the Act seeking relief under sections 18 to 22 is filed in that proceeding.*

*11. In Neethu Singh v. Sunil Singh; ((2007) 4 KLT OnLine 1202 (Chhatt.) : AIR 2008 Chhatt 1), reliefs under the D.V. Act was sought by the wife in a proceeding before the Family Court. The*



*application was ordered to be returned for filing before the competent court having jurisdiction. This was under challenge before the Chattisgarh High Court. Referring to the various provisions of the Statute, it was held that, under S. 26 of the D.V. Act, an option has been given to the aggrieved person to avail reliefs available to her under Ss. 18 to 22 in a legal proceeding pending in a civil court, criminal court or family court in addition to filing of the application under S. 12. An application under S. 12 cannot be filed before the Family Court because, as per the scheme of the Act application under S. 12 of the Act, 2005 has to be filed before the Magistrate competent to entertain the application.*

*12. Division Bench of this Court in Sudhannya v. Umasanker Valsan; ((2013) 1 KLT 135) had considered the question whether S. 26 of D.V. Act gives an option to the aggrieved person to approach either Magistrate under S. 12 of the Act or Family Court, if person needs the reliefs contemplated under Ss. 18 to 22 of the D.V. Act. It was held that, though S. 12 of the D.V. Act specifically confers power on the Magistrate Court and S. 26 of the Act explains that, identical reliefs can be sought before the Family Court, the distinction is so clear that the application under S. 12 can be filed only before the Magistrate court and such a power is not conferred on the Family Court.*

*13. The distinction has been explained by a learned Single Judge of this Court in M.A. Mony v. M.P. Leelamma; ((2007) 2 KLT 432 : (2007) 2 KLJ 209). It was held that, though under S. 7(2)(b) of the Family Court is clothed with authority to deal with matters, which, under any other law, the Family Court can consider, it is significant that the Family Court is not invested with any power to deal with an application under S. 12 of the D.V. Act. That reliefs undress Ss. 18 to 22 can be claimed before the Family Court in any other proceeding is a world different from the contention that a petition under S. 12 can be considered and disposed of by the Family Court. There is nothing in the language, scheme or purport of the D.V. Act, which can even remotely suggest that a Civil Court or Family Court is competent of deal with an*





*application under S. 12 and grant reliefs under S. 18 to 22 of the D.V. Act.*

*14. The above view was followed by a learned Single Judge in Anish Antony v. Neetha; ((2011) 3 KLT 409) wherein, it was held that by virtue of S. 26 of the Act, apart from 'Magistrate', a Civil Court or Family Court or criminal court is also empowered to grant relief under Ss. 18 to 22 of the D.V. Act. It is not intended to equate the Magistrate exercising power under the Act with a Family Court or civil court empowered to grant certain reliefs as provided under the Act. The mere fact that, power to grant certain reliefs is conferred on other courts also does not mean that the proceeding pending before the Magistrate could be transferred to those courts. It was held that, Magistrate exercising power under the Act is a criminal court. This is clear from S. 29 of the Act, which states that, appeal from the order passed by the Magistrate will lie to a Court of Session.*

*15. The principle involved in M.A. Mony's case (supra) and Anish Antony's case (supra) was followed by a learned Single Judge of Madras High Court in Capt. C.V.S. Ravi v. Ratna Sailaja; ((2008) 3 KLT OnLine 1102 (Mad.). :Crl. O.P. No. 17122 of 2008). Relying on the precedents, learned Single Judge held that, under S. 7(2)(b) of the Act, though the Family Court is clothed with authority to deal with matters, which, under any other law the Family Court can consider, it is significant that the Family Court is not invested with any power to deal with an application under S. 12 of the D.V. Act. There is nothing in the language, scheme or purport of the D.V. Act, which can even remotely suggest that a civil court or Family Court is competent to deal with an application under S. 12 and grant reliefs under Ss. 18 to 22 in such application under S. 12. Of course, the Family Court and Civil Court have the jurisdiction in a proceeding pending before it to grant the reliefs under Ss. 18 to 22 of the D.V. Act also. Certainly, there is no power for the Family Court or Civil Court to deal with an application under S. 12.*

*16. These decisions clearly show that the correct interpretation of S. 26 of the D.V. Act is that, though an application under S. 12*



*can be considered only by a magistrate and cannot be considered by a Family Court or Civil Court or any other Court, the reliefs that can be granted under Ss. 18 to 22 can also be granted by other courts while dealing with the pending disputes. There is a sea of difference between holding that both courts have concurrent jurisdiction and that, one Court can grant the reliefs, which can be granted by another court. What is clarified by S. 26 is that, the reliefs under Ss. 18 to 22 can be granted by other civil courts. S. 26(3) of the D.V. Act clarifies that, if a relief under Ss. 18 to 22 is granted by other court, it shall be reported to the jurisdictional magistrate, which clearly and categorically clarifies that, both the jurisdictions conferred thereon on other courts are not concurrent.*

*17. In the light of the clear distinction of jurisdictions, there cannot be a transfer of the case pending before the magistrate court under S. 12 of the D.V. Act to a Family Court. Further, the procedures to be followed in adjudication, the enforcement of orders and the provisions for appeal are different in both courts. Hence, reliefs sought by the petitioners herein cannot be granted.*

30. The Kerala High Court in ***Vineet Ganesh Vs Priyanka Vasan***; TR. APPEAL (C) No.1 of 2023 after discussing the entire law inter alia held that proceedings initiated under the D.V. Act before a Judicial Magistrate of the First Class cannot be transferred to a Family Court. It follows that the plea of the appellant in unnumbered Transfer Petition (C) No.25 of 2023 fails. Therefore, this appeal is liable to be dismissed.
31. It is pertinent to mention that the Domestic Violence Act has been enacted for providing more effective protection of rights of women guaranteed under the Constitution of India. This is a piece of beneficial legislation for the benefit of the victim of violence of any kind having taken place within the family and for any matter connected therewith or incidental thereto. The D.V. Act was enacted much after the Family



Court Act, 1984 came into force. The legislation in its wisdom has provided the mechanism through the forum of a Criminal Court under the Scheme of DV Act. The DV Act conferred the power on the judicial Magistrate to deal with the application under Section 12. The appeal was also provided under Section 29 to the Court of the Session. The Scheme of the Act also makes it clear that the Family Court or other Civil Court do not have original jurisdiction to entertain an application under Section 12 of the Domestic Violence Act. It is also relevant to note that the women alone can claim relief provided under Section 12 to 18 by filing an application under Section 12 or by applying any pending proceedings by virtue of Section 26 of the DV Act. Therefore, if the prayer of the petitioner is allowed for transfer of the proceedings in DV Act to a Family Court or other Civil Court, it may amount to denial of the special right conferred upon the aggrieved women. Further, it may also amount to asking the aggrieved women to go to a forum which may be inconvenient to her.

32. The Scheme of the Family Court Act and DV Act and in particular Section 26 (3) of the DV Act makes it clear that though the relief under Section 18 to 22 can be granted by the Family Court or Civil Court, however, the original jurisdiction to file the application under Section 12 is only with the jurisdictional magistrate. Thus, it cannot be said that the jurisdiction of the Family Court and the DV Act Court are concurrent. It is also relevant to note that the Family Court can entertain an application only from the parties to a marriage, whereas the proceedings under the DV Act can be instituted by any female living in a relationship in the nature of marriage or to say living in a



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relationship. It has to be understood that there is material difference between the legal proposition that family Court can also grant the relief as provided under Section 18 to 22, in the pending dispute and that Family Court has original jurisdiction to entertain the application under Section 12 of the DV Act. The application under Section 12 can only be filed before the jurisdictional Magistrate. The transfer of such proceedings to the Family Court would also take away the right of the aggrieved women to avail the right to appeal.

33. I consider that the view taken by the Kerala High Court is in sync with the object and intention of the legislature. Thus, in view of the discussions made hereinabove, the transfer application filed by the petitioner is dismissed.

**DINESH KUMAR SHARMA, J**

**SEPTEMBER 18, 2024**

*AR/Pallavi/KR*