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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2022

Pronounced on : 12.07.2022

CORAM:

THE HONOURABLE Mr. JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE Mr. JUSTICE SUNDER MOHAN

C.R.P.PD (MD) Nos.909, 896 and 915 of 2021

and Tr.C.M.P.(MD).No. 121 of 2021 and Tr.C.M.P.Nos.478 and 632 of 2021,

C.M.P.(MD)Nos.5177, 5178, 5026, 5027, 5114, 5116, 2402 of 2021

and C.M.P.Nos.12676 and 15892 of 2021

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

P.Ganesan

...Petitioner

Vs

M.Revathy Prema Rubarani

...Respondent

Prayer: C.R.P.PD(MD) No.909 of 2021 : Civil Revision Petition filed Article 227 of Constitution of India, to call for the records pertaining to the petition in DVC



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No.26 of 2020 on the file of the against the Judicial Magistrate No.1, Tirunelveli and set aside the same and consequently allow this Revision.

For Petitioner in

C.R.P.PD (MD) No.909 of 2021 : Mr.I.Robert Chandrakumar

For Respondent in

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

C.R.P.PD(MD) No.896 of 2021

1.Muthulakshmi

2.Saminathan ...Petitioners

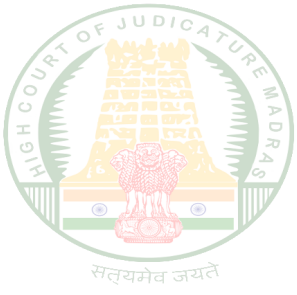
Vs

Vijitha ...Respondent

C.R.P.No.PD(MD) No.896 of 2021: Civil Revision Petition filed Article 227 of Constitution of India, to quash the proceedings in D.V.O.P.No.11 of 2021 on the file of the Judicial Magistrate Court No.I, Tirunelveli.

For Petitioners in C.R.P.PD(MD)No.896 of 2021 : Mr.P.M.Vishnuvarthan

For Respondent in C.R.P.PD(MD)No.896 of 2021 : No Appearance



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

K.Rajasekar

...Petitioner

Vs

R.Sathiya

...Respondent

C.R.P.No.PD(MD)No.915 of 2021: Civil Revision Petition filed Article 227 of Constitution of India, to set aside the Petition in DVC No.8 of 2021 on the file of the Learned Judicial Magistrate No.1, Kovilpatti.

For Petitioner in C.R.P.(MD)No.915 of 2021 : Mrs.A.Victoria

For Respondent in C.R.P.(MD)No.915 of 2021 : No Appearance

Tr.C.M.P.(MD)No.121 of 2021

A.Rubanathan

...Petitioner

Vs.

1.N.Vijaya Lakshmi

2.R.Vivekanandan

3.P.Porkodi

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5.Ram Kumar

...Respondents

Tr.C.M.P.(MD)No.121 of 2021: Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC, to withdraw the case in D.V.C.No.32 of 2020 on the file of the Judicial Magistrate Cum Additional Mahila Court, Thanjavur and transfer the same to the file of Family Court, Thanjavur.

For Petitioner in Tr.C.M.P.(MD) 121 of 2021 : Mr.G.Gokulraj

For Respondents in Tr.C.M.P.(MD) No. 121 of 2021 : Mr.M.Karunanithi

Tr.C.M.P.No.478 of 2021

R.Vivek @ Sudarshan

...Petitioner

Vs

V.Shakthi

...Respondent

Tr.C.M.P.No.478 of 2021: Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC, to withdraw D.V.C.No.2 of 2020 pending on the file of the Judicial Magistrate – I, Poonamallee and transfer the same to the Honourable III Additional Family Court, Chennai to be tried along with O.P.No.4430 of 2019.

For Petitioner in Tr.C.M.P. No. 478 of 2021 : Mrs.D.Veda,

For Respondent in Tr.C.M.P. No. 478 of 2021 : Mr.T.K.S.Gandhi



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Tr.C.M.P.No.632 of 2021

1.Vidhyasagar. S,

2.S.Brindha,

3.S.Lavanya

...Petitioners

VS

V.Sukanya

...Respondent

Tr.C.M.P.No.632 of 2021: Transfer Civil Miscellaneous Petition has been filed under Section 24 of CPC to withdraw Domestic Violence Case No.26 of 2020 which is pending on the file of 23rd Metropolitan Magistrate Court at Saidapet, Chennai and transfer the same to Ist Additional Family Court, Chennai to be tried along with H.M.O.P.No.3027 of 2020 and H.M.O.P.No.2597 of 2020.

For Petitioners in Tr.C.M.P.No. 632 of 2021 : Mrs.G.Selvi George

For Respondent in Tr.C.M.P.No. 632 of 2021 : Mr.M.Aravindan



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COMMON ORDER

SUNDER MOHAN,J.

The Civil Revision Petitions and the Tr. C.M.Ps were listed before us pursuant to the orders of the Hon'ble Chief Justice on a reference made by two of our Learned Brothers Hon'ble Mr. Justice R. Subramanian and Hon'ble Mr. Justice K. Murali Shankar.

2.Hon'ble Mr.Justice.K. Murali Shankar, by an order dated 27.09.2021 in C.R.P.PD (MD) Nos. 909 and 915 of 2021 has raised the following questions to be answered on reference.

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



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

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

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

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

2. Hon'ble Mr.Justice.R. Subramanian, in his reference made in Tr.C.M.P. No. 478 of 2021 and C.M.P. No. 12676 of 2021 dated 06.12.2021 has observed as follows:



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“In this Transfer Civil Miscellaneous Petition, the husband seeks transfer of proceedings under the Protection of Women from Domestic Violence Act pending before the Magistrate to the Family Court to be tried along with HMOP.

2. In Crl.O.P.No.17235 of 2016, the Hon'ble Justice A.D.Jagadish Chandira had after concluding that the power under Section 407 of the Code of Criminal Procedure cannot be used to transfer of proceeding pending before the Magistrate to the Family Court, invoked the power under Article 227 of the Constitution of India and transferred the proceedings before the Magistrate to the Family Court. However, subsequently in TR.CMP.SR.No.15785 of 2021, Hon'ble Justice S.M.Subramaniam has held that the power under Article 227 of the Constitution of India cannot be invoked for transfer of cases.

3. He further went on to conclude that Section 24 cannot be invoked for transfer of Criminal cases to the Family Court to



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*4. The learned counsel for the petitioner also relies upon a judgment of the Hon'ble Justice S.Vaidyanathan in **Mohana Seshathri vs. E.Anuja**, wherein Hon'ble Justice S.Vaidyanathan held that Section 24 could not be invoked, he however directed the petition to be renumbered as a petition under Article 227 of the Constitution of India.*

5. In view of the conflicting opinion expressed in the above three judgments, I am constrained to place the matter before My Lord the Hon'ble the Chief Justice for posting it before the Larger Bench for resolution of the conflict.”

In effect, the reference of Hon'ble Mr.Justice R.Subramanian is the question No.5 referred by Hon'ble Mr.Justice K. Murali Shankar.



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3.Upon hearing the Learned Counsels for the parties and after considering the submissions made by the Learned Counsel on either side, we propose to answer the Reference question wise, though not in the same order.

4. Question No. 1 in the Reference is as follows:

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

(a) The Learned Single Judge has referred the above question having found two conflicting views expressed by two of our Learned Brother Judges. viz., (i) N.Anand Venkatesh.J, in the case of

Dr.P.Pathmanathan and others v. Tmt.V.Monica reported in 2021

(2) ***CTC 57*** held that the proceedings under Chapter IV of the Domestic Violence Act are civil in nature. (ii) S.M. Subramaniam.J,



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in the case of ***P. Arun Prakash and others v. S.Sudhamary*** reported in ***2021 SCC Online Mad 1954*** held that the proceedings are criminal proceedings.

(b) This question, in our view, does not require any deliberation as the Hon'ble Supreme Court in the case of ***Kunapareddy v. Kunapareddy Swarna Kumari*** reported in ***(2016) 11 SCC 774*** has laid down clearly that the proceedings under Chapter IV of the Domestic Violence Act are civil in nature. After noting the purpose of enacting the Domestic Violence Act and considering the Statement and Objects of the said Act, the Hon'ble Apex Court held as follows (Paragraph 13):

.....

“13. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29.



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Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides, etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act includes giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21



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of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.”

(c) N.Anand Venkatesh,J. while considering the nature of the proceedings under the Domestic Violence Act also took into consideration several other decisions besides the decision made in Kunapareddy (cited supra) and the Statement of Objects and Reasons



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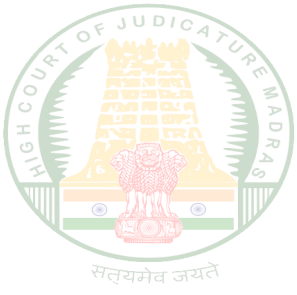
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of the Domestic Violence Act. The Learned Single Judge's reasons were primarily based on the following:

(i) The Statement of Objects of the Domestic Violence Act spells out that the Act has been enacted mainly to address the absence of civil law remedies to the victims of an offence under Section 498-A IPC and also to provide remedy under civil law to protect the women from being victim of Domestic Violence and to prevent the occurrence of Domestic Violence in the society.

(ii) The Learned Single Judge also relied upon the judgment of the Hon'ble Apex Court in *S.A.L. Narayan Row and another v. Ishwarlal Bhagwandas* reported in *AIR 1965 SC 1818* which lays down the test to be applied to determine the nature of the proceedings. The Learned Judge applying the test laid down by the Hon'ble Apex Court and having regard to the nature of reliefs that could be granted



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under the Domestic Violence Act held that the proceedings are civil in nature.

(d) We find that the judgment of the Hon'ble Supreme Court in Kunapareddy (cited supra) was not brought to the notice of S.M. Subramaniam,J. The learned Single Judge observed that the nature of the acts defined in Section 3 of the Domestic Violence Act are criminal in nature and the proceedings are regulated under the Code of Criminal Procedure as contemplated under Section 28 of the Domestic Violence Act and therefore held that the complaint registered under Section 12 of the Domestic Violence Act is a criminal proceeding on the criminal side of the judiciary and accordingly, the said proceedings have to be regulated under the Code of Criminal Procedure.



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(e) The Hon'ble Apex Court in ***S.A.L. Narayan Row v. Ishwarlal Bhagwandas and others*** reported in ***AIR 1965 SC 1818*** was pleased to lay down the test for determining the nature of the proceeding. The relevant portions of the judgment of the Hon'ble Apex Court is as follows (Paragraph 8):

“8.... The expression “civil proceeding” is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders



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to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal.

...

The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of



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his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.”

This Judgement was quoted with approval by the Full Bench of the Hon'ble Supreme Court in **(2017) 5 SCC 533** reported in ***Ram Kishan Fauji vs. State of Haryana:***

“30. Explicating the concept further, the Court opined that : (Ishwarlal Bhagwandas case¹², AIR p. 1821, para 8)

"8... The character of the proceeding, in our judgement, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed."

It further held that a civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil



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rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status, etc.

“31. The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.”

(f) Applying the above ratio to the nature of reliefs that can be granted under Chapter IV of the Domestic Violence Act, one can



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easily come to the conclusion that the proceedings under Chapter IV of Domestic Violence Act are civil in nature. The nature of relief provided under the Domestic Violence Act are prohibitory orders, right to get compensation, right to monetary reliefs, right of residence such as right from being dispossessed from shared household etc. The determination of rights under Chapter IV of the Domestic Violence Act does not result in penal consequences so as to term it as criminal proceedings.

(g) We also find an observation of a Full Bench of the Bombay High Court in *Nandkishor Pralhad Vyawahare v. Mangala* reported in *2018 SCC online Bom 923*. The relevant portions of which is extracted hereunder:



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“35. Applicability of provisions of the Criminal Procedure Code and providing of criminal consequences for breaches are only indicative of the intention of the the Parliament to make various civil remedies available under the D.V. Act more effective and meaningful. Parliament thought in its wisdom that mere giving of remedies of civil nature or an order of injunction or prohibition for that matter, may not be sufficient to enable the aggrieved person realise the benefits of civil remedies. It were the speed and fear of the criminal procedure generally and the penal consequences visiting the respondent for some of his indiscretions would what really make a disobedient respondent behave. So, as an effective tool in the hands of the Court and the aggrieved person, the procedure to be followed generally is criminal and breach of protection order and directions issued in such order constitute two separate and distinct offences. Obviously, they have no bearing upon and do not determine the basic character of the proceeding initiated under section 12(1) of



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the Act which is by and large of the civil nature. Making of breach of the protection order or failure to perform by the protection officer duty in terms of the direction given by the Magistrate in the protection order are only instances of efficacy and inherent punch of the remedy provided under section 18 of the Act which is at its core civil in nature. These provisions at best, are the effective instruments by which to make available speedily the remedies under the Act to the aggrieved person and enable her to enjoy the fruits of the remedies.

...

40. Following the law laid down by the Hon'ble Apex Court in Kunapareddy (supra) and what the discussion made thus far has led us to, we express our agreement with submissions made across the bar by all the learned Counsel and also with the view of the Division Bench of this Court in Sukumar Gandhi (supra) on the first question under reference and formulate our conclusion as under:



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Proceedings under the Protection of Women from Domestic Violence Act, 2005 are predominantly of civil nature and it is only when there is a breach of the protection order as is contemplated under section 31 and failure or refusal to discharge duty without any sufficient cause by the protection officer as contemplated under section 33, the proceedings assume the character of criminality.”

(h) The Hon’ble Supreme Court in ***Satish Chander Ahuja v. Sneha Ahuja*** reported in ***(2021) 1 SCC 414*** while deciding the question with regard to the effect of the order passed in the proceedings under Section 19 of the Domestic Violence Act, whether it is interim or final on the proceedings in a Civil Court, observed as follows:

“145. Now, we proceed to examine the effect of orders passed under criminal proceedings i.e. the 2005 Act on the civil



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proceedings and consequence of any conflict in proceedings under the DV Act as well as civil proceedings.”

This observation as rightly made by N.Anand Venkatesh.J in Paragraph 38 of P.Pathmanathan (supra) that the Hon’ble Apex Court while making those observations did not decide the question as to what is the nature of the proceedings under the Domestic Violence Act. It is trite that a case is an authority for what it decides and it cannot be quoted for a proposition that may seem to logically flow from it. The above observations, therefore, cannot be taken as a ratio to hold that the proceedings under the Domestic Violence Act are criminal in nature.

(i) Further, the statement of objects and reasons of the Domestic Violence Act makes it very clear that the proceedings are civil in nature. The relevant portions are extracted hereunder:



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“2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

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

(j) In two places, the legislature has said that the Act was to only provide for civil law remedies to victims of offences or civil wrongs or both committed by an adult male. The Statement of Objects and Reasons specifically says that since there is no civil law to address the



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phenomenon of domestic violence, which constitutes an offence under Section 498-A IPC and there was no civil law to protect the women from domestic violence and to prevent the occurrence of domestic violence, the Act was sought to be enacted. The Act therefore, in our view, creates a plethora of civil rights, breach of which provides various remedies which are civil in nature. It is true that most of the acts of domestic violence would also constitute offences punishable under various penal laws. The Domestic Violence Act was intended to provide additional remedies under civil law for such offences in the nature of prohibitory orders, right to get compensation, right from being dispossessed from shared household etc, which is alien to criminal law. The Parliament in its wisdom felt that these civil rights can be adjudicated by a Magistrate who normally tries an offence. In fact to make the civil remedies more effective, the Parliament also



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provided for penal consequences for violation of any order granting relief under the civil law without driving the woman to resort to other modes of enforcing the order passed by the Magistrate. There are other features of the Act about which we would be elaborating later in this judgment which has been provided to give teeth to the civil law remedies.

(k) We therefore, concur with the observations of N.Anand Venkatesh.J, on this aspect and the directions issued by the Learned Judge in (***Dr.P.Pathmanathan and others v. Tmt.V. Monica***) (*cited supra*) in Paragraph 52 (i) to (x), (xii) and (xiii) dealt with regard to the procedure to be followed while dealing with the applications filed under Section 12 of the Domestic Violence Act.

(l) Consequently, we answer the first question by holding that the proceedings under the Domestic Violence Act are civil in nature and it



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is only when there is a breach of the protection order passed, the proceedings become penal in nature. It would not assume the character of criminal proceeding merely because a Magistrate is conferred with the power to adjudicate the rights by adopting predominantly the procedure under the Criminal Procedure Code.

5.Before we answer Question No.2, we propose to answer Questions No. 3 and 4.

They are reproduced here once again for facility:

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



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

6. The third question also does not require much deliberation in view of the recent pronouncement of the Hon’ble Apex Court which was made subsequent to the Reference made by the Learned Single Judge. The Hon’ble Apex Court in ***Kamatchi v. Lakshmi Narayanan*** reported in **2022 SCC Online SC 446** held as follows:

“21. 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 concerned Magistrate. 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



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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.

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

23.Inderjit Singh Grewal v. State of Punjab reported in (2011) 12 SCC 588 was a case where the marriage between the parties was dissolved by judgment and decree dated 20.03.2008. 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



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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. The effect of the proceedings culminating in decree for divorce was considered by this Court as under:—

“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.”



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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)

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 moreres integraand 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 and Tayabbbhai M. Bagasarwalla v.Hind Rubber Industries (P) Ltd.]”



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24.The plea based on the issue of limitation was then considered in paragraphs 32 and 33 and it was observed:—

*“32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, 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 *Janani Sahoo v.Chandra Sekhar Mohanty_and NOIDA Entrepreneurs Assn.v. NOIDA.**

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,



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permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

*25. Another case on which reliance was placed during the hearing was **Krishna Bhattacharjee v. Sarathi Choudhury and another reported in (2016) SCC 705**. 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. In light of these facts, the issue of limitation was considered by this Court as under:—*



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“32.Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of “aggrieved person” clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. “Economic abuse” as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced herein before, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal 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.



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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_was decided before the decision of this Court in Sara Mathew._Rather than the issue of limitation, what really weighed with this Court in Inderjit Singh Grewal_was



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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 paragraph 32 of said decision but the effect and interplay of Sections 12 and 31 of the Act was not noticed. In Krishna Bhattarcharjee as is evident from paragraph 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.”

27. Thus, none of these decisions is material for the purposes of the instant matter.”

28. 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 Dr. P. Padmanathan² as under:

“19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding



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the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a “complaint” as contemplated under the D.V. Act and the D.V. Rules is not the same as a “complaint” under Cr.P.C. A complaint under Rule 2(b) of the D.V. 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) of the Cr.P.C. 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 D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. 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) of the Cr.P.C, 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 D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the



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subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C, given to a Magistrate and not to an application under Section 12 of the Act.”

29. 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.

30. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual



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7. Thus, it is clear from the above Judgment that Section 468 of Cr.P.C has no application in respect of proceedings initiated under Section 12 of the Domestic Violence Act. The application under Section 12 of the Domestic Violence Act cannot be equated with the complaint, which is defined in Section 2(d) of the Criminal Procedure Code. The Hon'ble Supreme Court while taking the above view also referred to its earlier judgments in ***Inderjit Singh Grewal v. State of Punjab*** reported in (2011) 12 SCC 588 and ***Krishna Bhattacharjee v. Sarathi Choudhury*** reported in (2016) 2 SCC 705, in paragraph 26 extracted above. The Hon'ble Supreme Court observed that the judgement in Inderjit Singh Grewal (cited supra) did not notice the interplay of Sections 31 and 12 of the Domestic Violence Act and that the Supreme Court in the case of Krishna Bhattacharjee



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WEB COPY (cited supra), rejected the plea of limitation as the offence was found to be a continuous one.

8. Therefore, our answer to the third question referred to us is that Section 468 Cr.P.C is not applicable to proceedings under Chapter IV of the Domestic Violence Act. However, we clarify that for an offence under Section 31 of the Domestic Violence Act, the law relating to a limitation under Chapter XXXVI of Cr.P.C would apply.

9. The next question referred by K.Murali Shankar.J, is that, if Section 468 Cr.P.C is not applicable, what is the period of limitation for the proceedings under Domestic Violence Act? The Act does not prescribe any limitation for the proceedings under Domestic Violence Act. Most of the Acts which are defined under Section 3 of the Domestic Violence Act are either offences or civil wrongs.



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WEB COPY The Act provides civil remedies for an aggrieved person, who has either been a victim of an offence or a civil wrong.

10. Further, we find that most of the acts defined under Section 3 of Domestic Violence Act can either be continuing offences or continuing civil wrongs. In fact, Section 22 of the Limitation Act makes it clear that in the case of the continuing torts, a fresh period of limitation begins to run at every moment of the time during which the tort continues. Section 22 is set out hereunder:

“22.Continuing breaches and torts. --- In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues”.

Similar provision is found in Section 472 of the Criminal Procedure Code which is extracted hereunder:



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“Continuing offence – In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues”

11. The civil law remedies available under Chapter IV of the Domestic Violence Act are to give redressal to the victim for either the offence or civil wrong committed against her. Most of the acts defined under Section 3 of the Domestic Violence Act can be continuing wrongs or offences. Therefore, in such cases, limitation would be inapplicable as long as the wrongs or offences continue.

12. The next question would be what should be reckoned as the period of limitation if the date of the offence or the civil wrong that is complained of or if the date of termination of the offence/ civil wrong can be fixed. As observed by us earlier, the Act does not provide for any limitation. In fact, the Hon’ble Supreme



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Court in Kamatchi's case (cited supra), after holding that Section 468 is not applicable did not go into the question as to whether any limitation should be made applicable to proceedings under Chapter 12 of Domestic Violence Act. The Hon'ble Supreme Court directed the Magistrate to take the aspect of delay also into consideration while appreciating the facts including whether the allegations constitute a continuing wrong.

13. As we have already elaborated, the Acts complained of in an application under Domestic Violence Act can be offences or civil wrongs or both. In such circumstances, we cannot by way of a judicial exercise determine any particular period of limitation in the absence of provisions prescribing limitation under the Act. It is also not possible for us to invoke Article 137 of the Limitation Act, even though, we find that the application is for civil remedies. The reason is that an allegation can either be that the applicant suffered an offence or a civil wrong. For



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instance, an applicant can make an allegation that she has suffered grievous hurt punishable under Section 326 IPC and claim compensation. There is no limitation under the Criminal Procedure to prosecute the offender under Section 326 IPC. We cannot restrict the civil law remedy available to the victim to claim compensation for the said offence suffered by her to three years that is provided under Article 137. However, this observation is restricted only to an application under Section 12 of Domestic Violence Act. That apart, most of the Acts defined as Domestic Violence Acts are continuing in nature. This also deters us from prescribing any period of limitation. Therefore, we are of the view that we cannot step into the shoes of the Legislature and prescribe any period of limitation.

14. However, we may add that where the definite date of commission of offence or civil wrong can be fixed or where the continuing offence or the continuing civil wrong has terminated on a particular date, the Magistrate will take



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into consideration the delay/laches while appreciating the facts. Therefore, our answer to the reference, is that, in the absence of law prescribing limitation for filing an Application under Section 12 of the Domestic Violence Act, we cannot, by a judicial exercise, fix the period of limitation in view of the unique nature of the Act.

15.The fifth question in the reference reads as follows:-

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

(a) K.Murali Shankar.J, observed that the view of S.M.Subramaniam.J, in ***Arun Prakash and others Vs. Sudhamary*** reported ***2021 SCC Madras online 1954***, that the proceedings under Domestic Violence Act are Criminal Proceedings and therefore Article 227 of the Constitution cannot be invoked to transfer the



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Criminal Proceedings from Criminal Court to Civil Court or Family Court, was contrary to the view taken earlier by this Court. The learned Judge observed as follows:-

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

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



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(b) R.Subramanian.J, noted the conflicting views expressed by the learned Single Judges with regard to invoking the power under Article 227 of Constitution of India to transfer the cases from Magistrate Court to the Family Court or to any other Civil Court. We have already extracted the observation of the learned Judges in the beginning of our Judgement and observed that R.Subramanian.J's reference is the same as Question No.5 referred by Murali Shankar,J.

(c) We find that several learned Single Judges have consistently invoked the power under Article 227 of the Constitution of India to transfer the Domestic Violence Proceedings from the Magistrate Court to either Civil Court or to the Family Court.

(d) N.Anand Venkatesh,J. had transferred the Domestic Violence proceedings from Magistrate Court to Civil Court where the Matrimonial dispute was pending between the parties. The learned Judge held that under Section 26, the reliefs



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Court or Civil Court, which is extracted below:-

“5.It is clear from the above that any relief that is available under Sections 18, 19, 20, 21 and 22 may also be sought for in any legal proceedings, before the Civil Court. The whole purpose being that the parties should not be facing multiple proceedings before different Courts and it will be in the interest of the parties to consolidate all the proceedings to be tried before a Single Court. Therefore, this Court is convinced that the Domestic Violence Petition, which is pending before the Judicial Magistrate Court Neyveli, can be transferred to the file of the learned I Additional Subordinate Court, Villupuram and the said Court will have jurisdiction to try the petition by virtue of Section 26(1) of the Act.



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WEB COPY (e) S.Vaidyanathan.J, in Transfer C.M.P.No.54 of 2020 (***Mohana Seshathri***

vs E.Anuja reported 2020 (3) MWN Civil 767) by order dated 11.02.2020 held as

follows:-

“12.In view of the decisions cited supra, this Court is of the view that, Section 24 C.P.C may not as such be applicable to transfer a case from a Criminal Court to a Civil Court, even though the dispute is of civil in nature. The word “proceeding” appearing in Section 24 C.P.C can be construed as one pending before Civil forum and not before Criminal Court, even if the proceeding before the Criminal Court is of civil in nature. However, by invoking Article 227 of Constitution of India, the matter may be transferred from a Criminal Court to a Family Court or any other Court mentioned under 26 of Domestic Violence Act.”

(f) A.D.Jagadish Chandira.J, in CrI.O.P.No.17235 of 2016 (***G.Jayakumar vs Jayanthi***) by order dated 12.02.2021 which was a petition filed under Section 407 Cr.P.C to withdraw maintenance case (M.C.No.8 of 2020) on the file of



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Magistrate Court to the Family Court, Puducherry held that power under Section 407 Cr.P.C cannot be invoked to transfer the case from Criminal Court to the Civil Court. The learned Judge however held that the petition can be converted to one under Article 226 & 227 and transfer can be ordered in exercise of inherent powers in the interest of Justice.

(g) We also note that there are decisions of the other High Courts as well on this point. A learned single Judge of the Bombay High Court in Criminal Writ Petition No.4649 of 2015 in the case of ***Dr.Sandip Mrinmoy Chakrabarty vs. Mrs. Reshita Chakrabarty*** reported in ***2021 (4) MhLj 404*** held that proceedings under Domestic Violence Act could be transferred to the Family Court. Similarly, the Division Bench of the Bombay High Court in ***Dr.Sandip Mrinmoy Chakrabarty vs. Mrs. Reshita Chakrabarty*** by order dated 26.02.2021 held that where the orders were passed by the Family Court in cases which have been transferred from the Magistrate Court before whom Domestic Violence Act



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(1) of the Family Courts Act. The Bombay High Court held that the Appeal before the High Court was maintainable notwithstanding the fact that the Appeal is provided under Section 29 from the orders of the Magistrate to the Sessions Court.

(h) In another case, the learned single Judge of the Bombay High Court in ***Mrs.Pramodini Vijay Fernandes vs Mr.Vijay Fernandes*** reported in **2010 (4) Bom CR 360** dated 17.02.2010 passed in Writ Petition No.5252 of 2009 held that the proceedings of the Domestic Violence Act can be transferred to Family Court and observed as follows:

“13.The Family Court would, therefore, have the jurisdiction under Section 31(2) of the DV Act as the Magistrate which had passed the order of interim protection to frame charges under Section 32(3) of the DV Act and to levy the penalty under Section 32(1) of the DV Act for breach of its interim protection order.”



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WEB COPY (i) As already observed S.M.Subramaniam.J, held that Article 227 of

Constitution of India cannot be invoked to transfer the proceedings under Domestic Violence Act to the Family Court or the Civil Court. The learned Judge held that the proceedings before the Domestic Violence Act are Criminal in nature and hence, it cannot be transferred to Civil Court. We are in respectful disagreement with this view as we have already held that the proceedings under Chapter IV of the Domestic Violence Act are Civil in nature.

(j) Now, the question that has to be answered is whether this Court by invoking its inherent powers either under Article 227 or Section 482 can transfer the proceedings under Domestic Violence Act to the Family Court. The Proceedings under the Domestic Violence Act being Civil in nature, can also be tried before the Family Court. There cannot be any dispute over that proposition of Law. However, we will have to examine the object of the Act and as to why the Parliament thought it fit to confer Jurisdiction on the Magistrate and to follow the



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procedure under Cr.P.C for granting reliefs which are civil in nature. The Act is unique in as much as it provides for procedure, which are normally adopted in Criminal Cases, to adjudicate Civil Rights. The Provisions of the Act will make it clear that it was the intention of the Legislature to provide special procedure, probably to give teeth to the Civil Law remedies available to a victim. In this background, if we examine the procedure prescribed under the Domestic Violence Act, we find that the procedure is very different from the procedure that is adopted in civil cases. Section 5 of the Act provides for duties of Police Officers, Service providers and learned Magistrates. Since the Victims of Domestic Violence Act can prosecute the offenders both in the Criminal Law and for claiming the reliefs under the Domestic Violence Act, the Act provides that the Police Officers, Service providers and Magistrate must inform about their rights provided under Act. The Magistrates have Jurisdictional control over the Police Station and therefore, the Legislature thought the Magistrate would be in a better position to



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deal with the issues relating to the Domestic Violence and for executing the orders passed by them.

(k) Section 9(h) of the Domestic Violence Act reads as follows:

“9.....(h) to ensure that the order for monetary relief under Section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);”

Similarly, Section 19 (3) (4) (5) & (7) provide for unique procedure for implementing the Residence orders passed by the Magistrate. They are extracted hereunder:-

“19.....(3) The Magistrate may require from the respondent to execute a bond with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.



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(5) While passing an order under sub-section (1), sub-section (2) or sub – section (3), the Court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.”

Likewise, the section 20(4) of Domestic Violence Act is also an unique procedure which is extracted hereunder:

“20. (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

There is another unique feature in the Rule 15 of the Protection of Women from Domestic Violence Rules, 2006. Rule 15 is extracted hereunder:



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WEB COPY **“15.Breach of Protection Orders:-**

“(1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.



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(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.



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WEB COPY (9) *While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include—*

- (a) an order restraining the accused from threatening to commit or committing an act of domestic violence;*
- (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;*
- (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;*
- (d) an order prohibiting the possession or use of firearm or any other dangerous weapon;*
- (e) an order prohibiting the consumption of alcohol or other drugs;*
- (f) any other order required for protection, safety and adequate relief to the aggrieved person.”*

The above provisions will clearly demonstrate that the manner of enforcing the order passed by the Magistrate are more effective under the Domestic Violence Act. The order for Monetary reliefs under Section 20 can be executed in



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accordance with the procedure under Cr.P.C which is more effective. The Magistrate can direct the respondent to execute a bond for preventing commission of Domestic Violence which is unknown to Civil Procedure. Similarly, an order which requires the respondent to execute a bond is deemed to be an order under chapter VIII of Cr.P.C. the breach of which can be dealt with as provided in that Chapter. That apart, Rule 15 provides for procedure in the events of breach of protection of order. This procedure would also suggest that the procedure prescribed under Domestic Violence Act for enforcing the civil rights is meant to be different from the Civil Procedure followed by the Civil Courts for the same relief. The above procedures are unknown to the procedure applicable to Civil Courts. We are of the view that the victim has a clear advantage if her application under Section 12 is decided by the Magistrate by adopting the Criminal procedure. This was the intention of the legislature. This advantage cannot be taken away by a judicial order transferring the case to a civil Court.



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WEB COPY (1) It is needless to state that the Family Court cannot exercise such a power

that can be exercised by the Magistrate in this regard. The Family Court cannot adopt any of the procedures while deciding cases before it. Section 10 of the Family Court Act provides for Procedure to be adopted by the Family Court in dealing with the proceedings before it which reads as under:

“10.Procedure generally- (1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil Court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or



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WEB COPY *the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.*

(3) Nothing in sub-section (1) or sub-section (2) shall prevent Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

(m) We cannot also confer Jurisdiction of a Magistrate on the Family Court
Section 7 of the Family Courts Act provides for the Jurisdiction of the Family Court. Section 7 of the Family Court is extracted hereunder.

“7.Jurisdiction --- (1) Subject to the other provisions of this Act, a Family Court shall -----



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(a) have and exercise all the jurisdiction exercisable by an District Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation, and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate Civil Court for the area to which the jurisdiction of the Family Court extends.

Explanation ---- The suits and proceedings referred to in this sub – section are suits and proceedings of the following nature, namely:---

(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;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;



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(d) a suit or proceeding for an order or injunction in circumstances 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.”

It is therefore clear that the Family Court can exercise all powers of any District Court or any Subordinate Civil Court to deal with the proceedings which are found in clauses (a) to (g) to the explanation. However, the Family Court can exercise the jurisdiction of a Magistrate only while dealing with the proceedings under Chapter IX of Cr.P.C. The Family Court can exercise any other Jurisdiction only if the same is conferred on it by any other enactment. Thus, we find that unless the enactment confers the Jurisdiction on the Family Court to exercise the Powers of the Magistrate, the Family Court cannot exercise the powers of the Magistrate while deciding the Domestic Violence Act proceedings. In the absence



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of such powers, we are of the view that if the Domestic Violence Act proceedings are transferred from the Magistrate to the Family Court or any other Civil Court, the intention of the Legislature would be defeated.

(n) Similar question arose before the Orissa High Court in the Judgement reported in **1994 SCC online Ori 310** in **[Sk.Allauddin vs.Shamima Akhtari and another]** wherein it had an occasion to consider whether the powers of Magistrate before whom the application of maintenance has to be filed under Section 3 of Muslim Women (protection of rights on Divorce) Act 1986 can be conferred on the Family court. The relevant paragraph is reads as follows:

“8.It is submitted by the learned counsel for the opposite parties that the jurisdiction can be deemed to have been conferred by Section 3 of the Divorce Act. The plea is unsound. The expression 'conferred on it' used in clause (b) of Section 2 of the



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Act has to be read along with the expression 'by any other enactment'. The Jurisdiction has to be specifically conferred and cannot be deemed to have been conferred. There is no provision in the Divorce Act which lends support to the plea. On the other hand, the Divorce Act enacted subsequent to the Act has by sub – section (2) of Section 3 provides for an application to be made to a Magistrate. The Family Court therefore, has no jurisdiction to deal with the matter, and the proceeding before it is misconceived. The orders passed in the proceeding are without jurisdiction. The matter shall be dealt with by the learned SDJM, Panposh. The application is allowed.”

The Bombay High Court in **Noor Jamaal vs Haseena** reported in **(1992) SCC Online BOM 149**, while considering the question as to whether the power to decide maintenance application under Section 3 of Muslim Women (Protection of rights on Divorce Act) 1986 conferred on the Magistrate can be conferred on the Family Court held as follows:



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5. Section 3 of the MW Act creates certain rights in favour of the divorced Muslim wife and also provides for complete machinery to get the reliefs conferred under the Act. First Class Magistrate under the Cri. P.C. is the adjudicating as well as the executing authority. The short MW Act containing only 7 Sections, is a complete code into itself in respect of rights of divorced Muslim wife conferred u/s 3. Rule 4 of the Muslim Women (Protection of Rights on Divorce) Rules, 1986 made u/s 6 of the MW Act, provides for recording of evidence in a manner specified for summary trials under Cri.P.C. The content and width of Jurisdiction of the First Class Magistrate under Chapter IX of Cri.P.C. Relating to the order for maintenance of wife, children and parents is quite distinct from the jurisdiction of the First Class Magistrate under the MW Act. Even the procedure is different.

6. Proceedings under the MW Act, therefore, do not fall either u/s 7 (1) or section 7(2) (a) of the FC Act. Sub-section (2) (b) of Section 7 provides for conferral of other jurisdiction by any other enactment upon the Family Court. Despite existence of such



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provision, the MW Act (Which is a latter enactment by the very legislative body which made the FC Act) has not conferred jurisdiction to adjudicate rights under the said Act upon the Family Court. The jurisdiction is conferred on the First Class Magistrate. There is, therefore, no scope whatsoever to infer any legislative intention to confer upon the Family Court jurisdiction to entertain and try applications under the MW Act. It is, therefore, apparent that the impugned order is without jurisdiction.

Thus, we can see that it is only the Code of Civil Procedure that governs the Proceedings under the Family Court, except when the Family Court is dealing with the proceedings under Chapter IX of the Criminal Procedure Code. The Family Court cannot exercise any of the Powers that the Magistrate exercises while disposing of the applications under Section 12 of Domestic Violence Act. Although, Section 26 (2) of the Domestic Violence Act provides that the reliefs provided under the Act can also be sought in Civil Suit or Legal Proceedings before Civil or Criminal Court, it no way declares that when the reliefs are sought



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before the Civil Court or Family Court, the Procedure under Domestic Violence Act can be followed. It does not also say that the Civil Court or Family Court would be deemed to be a Magistrate for the purpose of deciding the applications under Section 12. Further, we also find that section 29 which provides for right of appeal to the Court of Sessions also confers the appellate power only to a Criminal Court namely the Court of Sessions. If the Proceedings are transferred to Family Court, there would also be difficulty in fixing the forum for filing an appeal as the Family Court is equal in rank to that of the Court of Session.

The intention of the Legislature clearly appears to provide for a host of Civil rights and all the Civil rights are to be dealt with by applying the provisions of Criminal Procedure. The reason being obvious that the Parliament wanted to enforce these Civil rights in a more effective and forceful manner. The fear of Criminal Procedure and that of the Magistrate may be an effective tool to enforce the provisions of Domestic Violence Act. Further the parliament also thought it fit



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to provide for Penal consequences wherever there is a breach of protection order.

Section 26 (2) also clearly stipulates that the proceedings under Domestic Violence Act can be in addition to any other proceedings before any Civil Court, Family Court or Criminal Court. Therefore, the choice of the forum is with the complainant and it is not proper for this Court to force him to give up his rights to have his application determined by applying the procedure under Domestic Violence Act.

(o) To sum up

(i) As we have already held that the proceedings under the Domestic Violence Act are civil in nature, we disagree with the view of S.M.Subramaniam,J. who held that the proceedings under Chapter IV of the Domestic Violence Act are criminal in nature.



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(ii) We disagree with the views of the learned Judges holding that

since the proceedings under Chapter IV are civil in nature, the proceedings can be transferred to Family Court or any other Civil Court by invoking the Article 227 of the Constitution of India. The object of the legislature is very clear from the fact that when they conferred jurisdiction on the Magistrate and provided predominantly Criminal Procedure for deciding applications under Section 12, the Legislature wanted to provide for an effective and quick remedy in terms of adjudication and in terms of enforcement of the orders. In our view that cannot be diluted by transferring the application to a civil forum. Hence, the proceedings cannot be transferred at the instances of Respondents (Respondent is defined in Section 2(q) of the Domestic Violence Act). Section 2(q) of the Domestic Violence Act is extracted hereunder:

“2.....(q) respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved



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person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner; ”

(iii)We however hold that the proceedings can be transferred to the Family Court at the instance of the applicant/ victim or with her consent as she has an option to waive her rights to have her case decided as per the procedure prescribed under Domestic Violence Act. Sec 26 (2) stipulates that relief under sub-section (1) may also be sought in any Civil or Criminal Court.

(iv)The other apprehension that if the aggrieved person prosecutes her claim in different forums, there is likely to be conflict of verdicts is also unfounded. The



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Legislature has taken care of that situation also in Section 26 (3) which provides that the aggrieved person is bound to inform the Magistrate, in case she has obtained any relief in any other proceedings. Likewise, we may add that any decision or relief granted by the Magistrate has to be informed to the Civil Court or a Family Court where similar proceedings are pending so as to avoid conflicting verdicts.

For the above reasons, we are of view that the proceedings under Domestic Violence Act cannot be transferred from the Magistrate Court to the Family Court or any other Civil Court, at the instance of the Respondent as the aggrieved person has a right which is conferred on her under Domestic Violence Act to have her claims adjudicated by the procedure prescribed under the Domestic Violence Act which is distinct and more effective. We answer the reference accordingly.



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16.The next and the last question that arises for our consideration is

Question No.2 that is set out here under:

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

(b) K.Murali Shankar,J. has referred the above question in view of the conflicting views expressed by the learned Judges. N.Anand Venkatesh.J held that since the proceedings are civil in nature, the Magistrate exercising Civil Jurisdiction cannot be called as a “Criminal Court” and hence Section 482 Cr.P.C is inapplicable for quashing an application under Section 12 of the Domestic Violence Act. S.M.Subramaniam,J. held that since the proceedings are criminal in



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WEB COPY nature, Article 227 cannot be invoked to transfer the case from the Magistrate Court to either Civil Court or Family Court.

(c) We have already held that the proceedings under Chapter IV of the Domestic Violence Act are Civil in nature. We have also held that an application under Section 12 of the Domestic violence Act cannot be transferred to a Civil Court or a Family Court at the instance of the respondent, since the applicant/victim has been conferred a special advantage by providing predominantly Criminal procedure for adjudication of Civil rights.

(d) N.Anand Venkatesh,J. mainly proceeded on the basis that the Magistrate exercising jurisdiction to grant reliefs which are civil in nature cannot be called as a Criminal Court. The learned Judge relied on the Judgement of Hon'ble Supreme Court in the *State of West Bengal and others vs Sujith Kumar Rana* reported in



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WEB COPY (2004) 4 SCC 129. We are extracting the relevant portions of the Supreme Court

Judgement once again here for easy reference:

“33.....It is therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a Court; which in the context of the Code of Criminal Procedure would mean “a Criminal Court’ or whence a power is exercised by the Court under the Code of Criminal Procedure.”

(e) Therefore, in order to exercise the power under Section 482 the case has to be either pending before the Court which would mean a Criminal Court or whence a power is exercised by the Court under the Code of Criminal Procedure. Thus, even assuming that the Magistrate while exercising the power under Section 12 of the Domestic Violence Act is not a Criminal Court, the Magistrate is exercising the power under the Cr.P.C. in view of the Section 28 (1) of the Domestic Violence Act. We have already held that it was the intention of the



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Legislature that the Civil Law remedies have to be adjudicated and enforced by adopting the criminal procedure in order to provide teeth to the remedies. Section 28 (1) is nothing but a reflection of the statement of Objects and Reasons of the Act. That is why this Act is unique and by a judicial pronouncement we cannot dilute the intention of the Parliament. There was no necessity, other wise for the parliament to confer the jurisdiction on the Magistrate to provide Civil Law remedies and to make the methods of enforcing the orders different from the conventional procedure like execution of bonds, sending the orders to the Police Station etc. as we have elaborated earlier. We are mindful of the fact that Section 12 Application cannot be equated with a complaint under Section 2 (d) of Cr.P.C and the respondent cannot be treated as accused. However, at the risk of repetition we say that we have to bear in mind the intention of the legislature, as well, is to confer jurisdiction on the Criminal Court to adjudicate the Civil rights.



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(f) N.Anand Venkatesh,J. held that the Magistrate while adjudicating Civil rights cannot be called Criminal Court. We do not agree with this view of the learned Judge, firstly because the Parliament intended to deliberately confer Jurisdiction on the Criminal Court. An appeal is also provided to the Court of Sessions and not to the District Judge. Secondly, the learned Judge relied upon a number of cases to hold that where the Magistrate is conferred power to grant reliefs of Civil nature he cannot be called to a 'Criminal Court'. We find that in all the Judgements referred by the learned Judge, the Courts have held that the Magistrate was not a Court when he was exercising Ministerial/Administrative functions and not a criminal Court when he was following the procedure stipulated under the Special Act which gave his power and not under Cr.P.C. Therefore, in our view those Judgements cannot be relied upon to hold that the Magistrate is not a criminal Court while dealing with an Application under 12 of the Domestic Violence Act. Just as we found that the nature of reliefs would determine the



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character of the proceedings we find that the nature of the procedure adopted would determine the character of the Tribunal. There is no doubt that the Magistrate dealing with proceedings under Domestic Violence Act is a Criminal Court who has to follow the procedure under Cr.P.C, exception being provided under Section 28 (2) of the Act.

(g) We may now examine the Judgements relied upon by the learned Judge to hold that the Magistrate cannot be termed as “Criminal Court”.

They are reported in: ***1.AIR 1964 Madras 185 R.Subramaniam vs Comissioner of Police, Madras. 2.AIR 1950 Bombay 397 V.B.D'Monte vs. Bandra Borough Municipality. 3.AIR 1980 Ker 18 (FB) Mammoo vs State of Kerala. 4.AIR 1962 SC 574 Dargah committee, Ajmer vs State of Rajasthan and another. 5. AIR 1919 PC 31 Mrs.Annie Besant vs The Advocate General of the Government of Madras and another.***



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(i) In *AIR 1964 Madras 185 R.Subramaniam vs Comissioner of Police*, this Court held, while dealing with the question as to whether the Magistrate acts as a Court while taking steps to recover the fine imposed on the accused, as follows:

*“23.Section 435 of the Cr PC provides that the High Court may call for and examine the record of any proceeding before any inter criminal court for examining the correctness, legality or propriety of any finding, sentence or order passed and as to the regularity of any proceedings of such criminal Court. Though the order specifying the arrears of tax as recoverable as fine is nob a finding or sentence, it is an order made by a criminal court. **It is not necessary that every order of a criminal Court should be criminal in nature, for, in which case, the order passed by a Magistrate under Sections 145, 488 and 517 of the Cr PC will not be revisable.** (Emphasis supplied) Section 435 clause (3) as it stood before the amendment of 1923 specifically excluded from the High Courts the*



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of revision of orders under Section 145, thus implying that but for that specific exclusion all orders passed by another Criminal Court which would affect the rights of parties are revisable by ??? High Court. The Magistrate was acting under the Code of Criminal Procedure and was passing an order which had the effect of adjudicating judicially the liability of the assessee to pay the tax.

A revision under Section 435 of the 1898 Code of Civil Procedure equivalent to Section 397 of the 1973 Code was held to be maintainable against any order of Criminal Court, even if it is not an order which is Criminal in nature.

(ii) Likewise, M.C.Chagla,C.J. in ***V.B.D'monte vs. Bandra Borough Municipality*** reported in ***AIR 1950 BOM 397*** was dealing with the Revisional powers of the High court conferred on it under Section 110 of the Bombay Municipal Boroughs Act. The relevant observations of the learned Judge is extracted hereunder.



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“If a criminal Court exercises that jurisdiction, then it is not necessarily an inferior criminal Court within the meaning of the Criminal Procedure Code; and if a right of revision is given from a decision of such a Court, then that revisional application is civil in its character and not criminal. That is the only limited question that we have to consider in this case. As I stated before, we are not considering whether a revisional application lies under s. 435 of the Criminal Procedure Code or under s. 115 of the Civil Procedure Code. All that we are considering is whether a special jurisdiction conferred upon us is of a civil or of a criminal character; and on that question there can be no dispute that it is of a civil nature.”

The above observations would make it clear that M.C.Chagla.C.J was only dealing with the specific power conferred on the High Court under Section 110 of the Municipal Borough Act and not the power of the Court either under Section



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435 of the old code equivalent to Section 397 Cr.P.C and as under Section 115 of CPC.

(iii) In ***AIR 1962 SC 574***, the Hon'ble Supreme Court held that the Magistrate's Proceedings for initiating recovery under Section 234 of ***Ajmer-Merwara Municipalities Regulation, 1925*** partook the character the ministerial enquiry and was not a Judicial enquiry. In that context the Hon'ble Supreme Court held that it is not a criminal Court.

(iv) Similarly the Full Bench of the Kerala High Court in ***AIR 1980 Kerala 18*** has dealt with the powers of District Magistrate under 16(1) of Indian Telegraphic Act. In that context, the Full Bench held that the Magistrate was only doing Ministerial work and not doing any Judicial work.



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WEB COPY (v) Even in **AIR 1919 PC 31**, the privy council held that the Magistrate was

only performing an administrative work and therefore it was not a criminal work.

Thus, we find that only in cases where Magistrate was doing Ministerial work or when they were exercising powers under a statute and acting in accordance with procedure under that statute the Courts held that they cannot be called criminal Courts. In none of the above cases; it was held that a Magistrate performing judicial function and following the Criminal Procedure code is not a Criminal Court.

(vi) We also find that the Kerala High Court in **Baiju vs Latha** reported in **2011 SCC Online Ker 4156** held that the Magistrate was acting as a Criminal Court while exercising powers under the Domestic Violence Act.



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(vii) We find that in an Application under 12 of the Domestic Violence Act the Magistrate not only conducts Judicial enquiry but is specifically conferred with the powers under Cr.P.C to deal with the application. We however are conscious of the fact that it cannot be tried like an offence. Thus, we hold that the Magistrate is a “Criminal Court” acting under the code of Criminal Procedure while dealing with an application under Section 12 of the Domestic Violence Act even if reliefs granted by him is Civil in nature. As stated earlier, that was the intention of the Parliament and that is exactly why a Magistrate was conferred the power to grant civil law remedies and to follow the procedure under Cr.P.C. It further provided for an appeal to the Sessions Court. These are clear indicators to show that Parliament intended Criminal Courts to deal with the matter.

(h) N.Anand Venkatesh.J also referred to a Judgement of this Court in ***M.Muruganandam vs M.Megala*** reported in (2011) 1 CTC 841(MAD) to hold



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that this Court can exercise powers under Article 227 Constitution of India. There is no dispute about that proposition of law. This Court in M.Muruganatham case (cited supra) did not hold that a petition under Section 482 of Cr.P.C is barred.

(i) It is needless to mention that Section 482 Cr.P.C does not confer any new power to the High Court. It only reiterates the existence of the inherent powers of the High Court. The nomenclature of the petition makes no difference. The roster system/portfolio allocation is an Administrative act for the purpose of convenience and to bring about regularity in distribution of cases. It does not take away the powers inherent in every Judge of this Court. Every Judge irrespective of the portfolio can exercise inherent powers in criminal Cases or powers of superintendence under Article 227 Constitution of India or power to issue Writs under Article 226. When it was the Parliament's intention to confer powers on a Magistrate/ criminal Court to adjudicate Civil rights and confer appellate power to



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the Court of Sessions, we cannot rule out the Criminal jurisdiction of this Court alone by saying Section 482 of Cr.P.C is inapplicable. It is therefore, the procedure which is more relevant rather than the reliefs sought for the purpose of invoking Section 482 Cr.P.C. We are also of the view that any person aggrieved by an order passed under Section 29 by the Sessions Court can approach this Court under Section 397 Cr.P.C, provided he is able to bring his case within the limited scope of revision under Section 397 of Cr.P.C.

(j) In this regard, we may also refer to the Judgement of the Full Bench of the Bombay High Court reported in **2018 SCC online Bom 923** wherein it has been held that Section 482 Cr.P.C is applicable. The relevant paragraphs are extracted hereunder:

“53. This would mean that generally the provisions of Cr.P.C. would be applicable, to all proceedings taken under



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WEB COPY *Sections 12 to 23 and also in respect of the offence under Section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of Section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Cr.P.C. to the proceedings referred to in Section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the Section, which would have it's last word. We have already held that Section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under Section 482 of Cr.P.C., subject to the self-imposed restrictions including the factor of availability of equally efficacious alternate remedy under Section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in*



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WEB COPY *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*

.....

58. A plain reading of Section 482 of Cr.P.C., which saves inherent power of the High Court, indicates that the power is to be exercised by the High Court not just to quash the proceedings, rather it has to be exercised for specific as well as broader purposes. The exercise of the inherent power has been delimited to such purposes as giving effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This would show that the inherent power of the High Court can be invoked not only to seek quashing of a proceeding, but also to give effect to any order under the Code or to challenge any order of the Court, which amounts to abuse of the process of the Court or generally to secure the ends of justice. This would mean that not only the respondent-man but also the aggrieved person-woman may feel like approaching the High Court to give effect to any order or to



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WEB COPY *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.”*

The Bombay High Court also considered the fact that the victim can approach the High Court under Section 482 Cr.P.C for giving effect to any order ought to prevent the abuse the process of law. We are in respectful agreement with the full bench of the Bombay High Court.

(k) Therefore, we are of the view that the Section 482 Cr.P.C petition is maintainable in Domestic Violence Act proceedings and answer the reference accordingly.



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17. To sum up, our answer to the Questions referred are as follows:

(a) The proceedings under chapter IV of the Domestic Violence Act are civil in nature.

(b) This Court can exercise power under section 482 Cr.P.C in respect of Domestic Violence Act proceedings.

(c) Section 468 Cr.P.C is not applicable for proceedings under Domestic Violence Act.

(d) We cannot by a Judicial exercise determine the period of limitation in the absence of any provision under the Act prescribing limitation.

(e) Proceedings under Domestic Violence Act cannot be transferred from a Magistrate to a Civil or Family Court at the instance of the Respondent defined under 2 (q) of the Domestic Violence Act. However, the proceedings can be transferred at the instance of the applicants/ victim or with her consent.



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18.As we have answered the reference as above, the Registry is directed to place the above matters before the learned Single Judges for hearing on merits, as per roster.

[M.D.J] [S.M.J]

12.07.2022

dk

Internet : Yes/No

Web: Yes/No

Speaking/Non-Speaking orders

Note: *Office to issue order copy on 12.07.2022*



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M.DURAI SWAMY,J.

AND

SUNDER MOHAN,J.

dk

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and C.M.P.Nos.12676 and 15892 of 2021

12.07.2022