

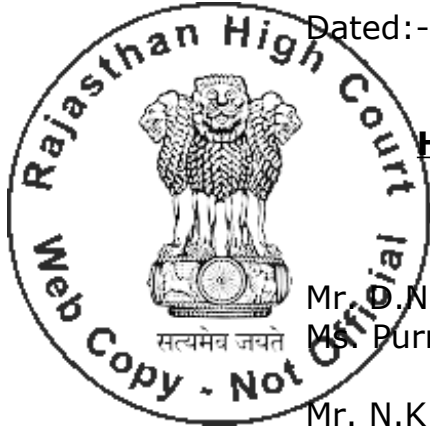


**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

ORDER

**SMT. SABANA @ CHAND BAI & ANR. VS. MOHD. TALIB ALI & ANR.
(S.B.CRIMINAL REVISION PETITION NO. 362/2011)**

Dated:- 30th October, 2013



HON'BLE THE CHIEF JUSTICE MR. AMITAVA ROY
HON'BLE MR.JUSTICE SANGEET LODHA

Mr. N.Yadav }
Ms. Purnima Yadav } for the petitioners.
Mr. N.K.Bohra } for the respondent.
Mr. S.D.Purohit }
Mr. Amit Sharma }
Mr. D.S.Beniwal }
Mr. M.K.Trivedi }
Mr. Anuj Kala }Counsel assisting the Court.

BY THE COURT:(PER HON'BLE MR. SANGEET LODHA,J.)

Reportable

1. The legal question that falls for our determination in this reference made by the learned Single Judge of this Court reads as follows:

“Whether the Protection of Women from Domestic Violence Act, 2005 can be applied retrospectively specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force on October 26, 2006 or not?”

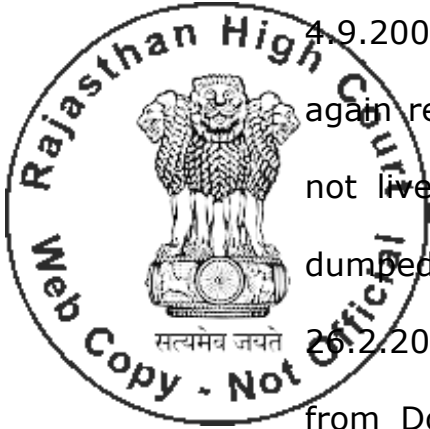


2. The Background facts giving rise to the legal issue may be summarized thus: Smt. Sabana @ Chand Bai, the petitioner, and Mr. Mohammed Talib Ali, the respondent, entered into marriage on 15.10.2001 according to the Muslim customs and rites. The petitioner alleges that from the very beginning of the marriage, she was treated with physical and mental cruelty by the respondent and the members of her in-laws family. Even during pregnancy and thereafter, the respondent and the members of his family did not take care of the petitioner. It is alleged that on 15.4.2002, despite her pregnancy, she was not only assaulted but was ousted from matrimonial home and thus, in the compelling circumstances, she left for her paternal home. Out of the wedlock, a son was born on 14.10.2002. On 6.2.2003, after a compromise had been reached between the parties, the petitioner returned to her matrimonial home. While she stayed at her matrimonial home, the respondent repudiated the paternity of the child. As a matter of fact, the petitioner had to undergo an operation for removal of uterus and therefore, the respondent and his family members started harassing her saying that she is no more fit for procreating children. On 13.2.2003, she was again beaten and sent back to her paternal home. On 2.5.2003, the respondent filed an application seeking divorce from the petitioner. On 12.7.2003, the petitioner lodged an FIR





with the police against the respondent, alleging commission of the offences under Sections 498A & 406 IPC. Subsequently, on 20.9.2003, she also filed an application seeking maintenance under Section 125 Cr.P.C. before the Family Court, Jodhpur. During the pendency of the litigation between the parties, on 4.9.2004, the parties entered into compromise and the petitioner again returned to the matrimonial home. But, the parties could not live together and on 13.5.2005, the petitioner was again dumped at her paternal place by the respondent. Thereafter, on 26.2.2007, after coming into force of the Protection of Women from Domestic Violence Act, 2005 ("the Act"), the petitioner-Sabana filed an application under Sections 12, 17 to 20 and 23 of the Act before the court of competent jurisdiction i.e. Additional Chief Judicial Magistrate (Economic Offences), Jodhpur. The application was contested by the respondent by filing a reply thereto. The parties led their evidence. After due consideration of the evidence on record and rival submissions, the trial court arrived at the finding that after coming into force of the Act i.e. with effect from 26.10.2006, the petitioner never resided with the respondent and therefore, the question of her being subjected to domestic violence by the respondent, does not arise. Relying upon a decision of this court dated 7.1.2009 rendered in the matter of "*Hema @ Hemlata (Smt.) & Anr. vs.*





Jitender & Anr." (S.B.Criminal Revision Petition No.804/08) [reported in 2009(1) Cr.L.R.(Raj.), 291], the court held that any act of violence committed prior to coming into force of the Act cannot be made basis for initiating proceedings under the Act and, therefore, the petitioner cannot be said to be an aggrieved person. Accordingly, the petition preferred by the petitioner under Section 12 r/w Sections 17, 18, 19 & 20 of the Act was dismissed by the trial court vide order dated 5.6.2010. Aggrieved thereby, the petitioner preferred an appeal before the Court of Session, which stands dismissed vide order dated 19.4.2011, which is impugned in this revision petition before this Court.



3. During the course of arguments before the learned Single Judge, learned counsel appearing for the petitioner while relying upon yet another decision of this court on the said legal issue in the matter of "*Khushi Mohd. & Ors. vs. Smt. Aneesha*", [2011(1) Cr.L.R.(Raj.), 593], contended that the Act does not distinguish between a wife and divorced wife and covers the acts of violence committed by the respondent-husband even prior to coming into force of the Act and thus, the Act can be applied retrospectively. However, as noticed above, in *Hema @ Hemlata's case (supra)*, another coordinate Bench of this court categorically held that if



the marriage has already been dissolved prior to coming into force of the Act, the person approaching the court under the provisions of the Act cannot be considered to be an 'aggrieved person' as defined by Section 2 (a) of the Act. The court observed that there is no provision in the Act having retrospective effect.



4. After due consideration of the two contradictory views expressed by Co-ordinate Benches of this Court as aforesaid, the learned Single Judge observed:

“It is to be noticed that in the case of Hema @ Hemlata (supra), the question with regard to the retrospective applicability of the Act was singularly raised. However, the said issue was not raised directly in the case of Khushi Mohd. & Ors.(supra). Through its reasoning, the learned Judge, in the case of Khushi Mohd. & Ors. (supra) implies that the Act is applicable retrospective. Hence, two contradictory views have been expressed by this Court on the issue of retrospective applicability of the Act.”

5. Accordingly, the aforementioned legal issue has been referred by the learned Single Judge for consideration by a Larger Bench. Hence, this matter is before us for determination of the reference made.

6. Learned counsel appearing for the petitioner Mr.D.N.Yadav and Ms. Purnima Yadav, submitted that the 'aggrieved person' as

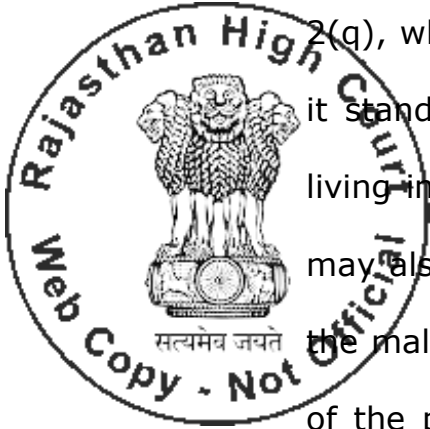


defined by Section 2(a) of the Act, includes within its ambit a woman who is or has been in a domestic relationship with the respondent and has allegedly been subjected to domestic violence by the respondent. Learned counsel would submit that use of the words 'is or has been in domestic relationship' by the legislature makes it abundantly clear that it is not necessary that the aggrieved person should be living with the respondent on the date of coming into force of the Act. Learned counsel urged that similarly, in Section 2(f) of the Act which defines 'domestic relationship' the words used are 'a relationship between two persons who live or have, at any point of time, lived together in a shared household', which also indicates that two persons shall be deemed to be in a domestic relationship if they had lived together at any point of time, even prior to coming into force of the Act and are not living together after coming into force of the Act. Learned counsel submitted that had the legislature intended to keep a person not living with the respondent at the time of coming into force of the Act out of the purview of the Act, there was no necessity to use the words as noticed above and it would have been sufficient to say that the aggrieved person means any woman who is in a domestic relationship with the respondent. Learned counsel submitted that even Section 2(i) which defines 'Magistrate' competent to exercise jurisdiction, makes reference





inter alia to the place where the domestic violence is alleged to have taken place and therefore, it cannot be said that the act of violence committed prior to coming into force of the Act is not within the purview of the remedial measures provided for under the Act. Drawing the attention of this court to *proviso* to Section 2(q), which defines 'respondent', learned counsel submitted that it stands specifically clarified that an aggrieved wife or female living in relations in the nature of marriage with the respondent may also file a complaint against any relative of the husband or the male partner and therefore, the question of non-applicability of the provisions to the act of violence *vis-a-vis* wife, who has been divorced prior to the coming into force of the Act, even otherwise does not arise. Learned counsel submitted that even Section 2(s) of the Act, refers to the person aggrieved to be a person who lives or at any stage has lived in a domestic relationship either singly or along with the respondent in the shared household. Accordingly, it is submitted that the conjoint reading of all these definition clauses makes it abundantly clear that a petition under the Act is maintainable even if the act of domestic violence has been committed prior to coming into force of the Act or the parties to the marriage stand separated by a decree of divorce before coming into force of the Act. Learned counsel submitted that Section 12 provides remedy to the





aggrieved person, a woman, who is or has been in a domestic relationship with the respondent to seek one or more reliefs by making an application before the Magistrate under the Act and therefore, the question of restricting the applicability of the provisions of the Act, only to cases of subsisting domestic relationship does not arise. Learned counsel while drawing the attention of this court to the provisions of Section 26 of the Act, submitted that the relief available to the aggrieved person under Section 18, 19, 20, 21 & 22, may also be sought in any legal proceedings before a civil court, family court or a criminal court affecting the aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of the Act and therefore, undoubtedly the relief in terms of the said provisions can always be sought by way of fresh proceedings for an act of violence committed prior to the coming into force of the Act. Learned counsel would submit that as a matter of fact, the legal issue referred for consideration by a Larger Bench is no more *res integra* inasmuch as, the same stands covered by a decision of the Hon'ble Supreme Court in the matter of "*V.D.Bhanot vs. Smt. Savita Bhanot*", (2012) 3 SCC 183 whereby a decision rendered by the learned Single Judge of the Delhi High Court on the said issue in the matter of "*Mrs. Savita Bhanot vs. Lt. Col. V.D. Bhanot*", 2011 Cr.L.J. 2963,





has been upheld. Learned counsel submitted that the definition of 'domestic relationship' as set out under Section 2(f) of the Act, includes 'a relationship in the nature of marriage' which is held to be relationship akin to common law marriage by the Hon'ble Supreme Court in the matter of "*D.Velusamy v. D. Patchaiammal*", AIR 2011 SC 479 and therefore, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act does not arise. Accordingly, learned counsel submitted that the view taken by the learned Single Judge of this court in *Khushi Mohd.'s case (supra)* is the correct view on the issue involved and the decision rendered by the coordinate Bench in *Hema @ Hemlata (Smt.)'s case (supra)*, without due consideration of the relevant provisions of the Act, laying down that the provisions of the Act are not retrospective and therefore, the person whose marriage already stands dissolved by a decree of divorce prior to coming into force of the Act, cannot be said to be an aggrieved person, deserves to be overruled. In support of the contentions raised as aforesaid, besides the decision of the Hon'ble Supreme Court and Delhi High Court in *Savita Bhanot's case (supra)* learned counsel has also relied upon the decisions of the Hon'ble Supreme Court in the matters of "*Deoki Panjhiyara v. Shashi Bhushan Narayan*





Azad & Anr.", 2013 Cr.L.J. 684 (SC), "*Chanmuniya vs. Virendra Kumar Singh Kushwaha*", 2011 Cr.L.J. 96 (SC), "*Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*", 2011 Cr.L.J. 1687 (SC), "*D.Velusamy v. D.Patchaiammal*", AIR 2011 SC 479, "*Jovita Olga Ighesia Mascarenhas e v. Rajan Maria Coutinho*", 2011 Cr.L.J. 745 (Bom.) and "*Bharati Naik v. Ravi Ramnath Halankar*", 2011 Cr.L.J. 3572 (Bom.).



7. Mr. Dipesh Beniwal, learned counsel submitted that the Act is a remedial statute enacted with an object to cure some immediate mischief and to bring into effect social reforms by ameliorating the conditions of women and to provide for redress and compensation to the persons aggrieved and therefore, it has to be construed liberally. Learned counsel submitted that in a remedial statute, if any doubt exists then it has to be resolved in favour of the class of persons for whose benefit the statute is enacted.

8. Mr. S.D.Purohit, learned counsel submitted that under the provisions of the Act, the violation of the protection order passed in favour of the aggrieved person is made punishable under Section 31 of the Act and it does not provide for penal consequences for the act of domestic violence as such and

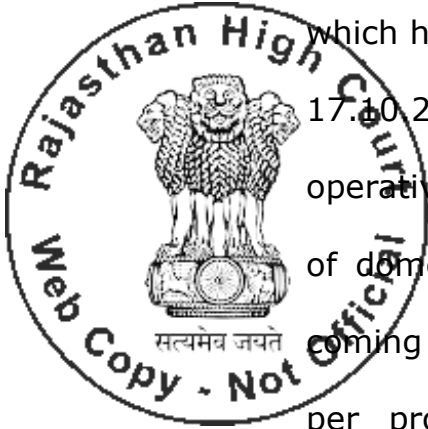


therefore, the provisions incorporated in the Act providing for remedy to the persons subjected to the domestic violence, in no manner could be construed as penal provisions, sought to be given retrospective effect contravening the provisions of Article 20(1) of the Constitution. Relying upon a decision of the Madras High Court in the matter of "*Dennison Paulraj & Ors. vs. Mrs. Mayawinola*", MANU/TN/0525/2008 : II(2009) DMC 252, learned counsel submitted that under the provisions of the Act, the court is competent to take cognizance of the act of domestic violence committed even prior to coming into force of the Act and pass necessary protection orders. Learned counsel submitted that as per provisions of Section 28, the proceedings under Sections 12, 18, 19, 20, 21, 22 & 23 shall be governed by the provisions of the Code of Criminal Procedure, 1973 but merely on account of the procedure laid down under the Cr.P.C. being made applicable, the proceedings under the said provisions of the Act, which are remedial in the nature, cannot be considered to be criminal proceedings. That apart, learned counsel submitted that the protection of women against domestic violence is a human right issue, which is always a subsisting right and enforcement thereof, cannot be restricted only in respect of the act of violence committed after coming into force of the Act.





9. On the other hand, counsel appearing for the respondent Mr. Neel Kamal Bohra submitted that as per the provisions of Section 1(3), the Act enacted by the Parliament was to come into force on such date as Central Government may by notification in the Official Gazette appoint and therefore, the Act which has come into force on 26.10.2006, vide notification dated 17.10.2006, issued by the Central Government, cannot be made operative retrospectively so as to provide the remedy for the act of domestic violence alleged to have been committed prior to coming into force of the Act. Learned counsel submitted that as per provisions of Section 28, the proceedings before the Magistrate under the Act are to be governed by the procedure laid down under the Criminal Procedure Code and therefore, for all intent and purposes, such proceedings have to be treated to be criminal proceedings and therefore, no action can be initiated under the said provisions for the grant of relief in respect of the acts of domestic violence committed prior to coming into force of the Act. Learned counsel submitted that if the act of domestic violence alleged to have been committed prior to coming into force of the Act are taken cognizance of for grant of the relief to the aggrieved person, then, the provisions incorporated shall be in violation of the provisions of Article 20(1) of the Constitution. Learned counsel submitted that all statutes are treated to be





prospective unless specifically provided for or by necessary implication, the same are made operative with retrospective effect. Accordingly, learned counsel submitted that the view taken by this court in *Hema @ Hemlata's case (supra)* deserves to be upheld.



10. Mr. M.K.Trivedi, learned counsel submitted that though the provisions of Section 2(f) which defines 'domestic relationship' includes the relationship between two persons who have lived together in a shared household at any point of time but since no period is specified, the same has to be considered to be prospective in nature. Learned counsel submitted that the provisions of Cr.P.C. are made applicable to the proceedings under the Act and, therefore, by virtue of the provisions of Section 468 Cr.P.C., the complaint could be filed only within a period of one year from the date of incident. Relying upon the decision of the Hon'ble Supreme Court in the matter of "*Inderjit Singh Grewal vs. State of Punjab & Anr.*", 2012 Cr.L.J. 309 learned counsel submitted that the provisions of the Act are not applicable where the marriage between the parties stood dissolved by a decree of divorce passed by the court of competent jurisdiction.



11. Mr. Anuj Kala, learned counsel submitted that a bare perusal of Section 31 makes it abundantly clear that the violation of the protection order passed by the Magistrate is punishable and it is well settled that the the penalty and punishment for an offence can never be awarded in circumstances when such punishment and penalty for that offence are not already available at the time of commission of the offence. Therefore, the act of violence committed prior to the coming into force of the Act cannot be the subject matter of proceedings to be initiated under the Act. Learned counsel submitted that the Act does not create any conclusive right in favour of a woman and it being a penal statute has to be made operative prospectively. Learned counsel submitted that it is cardinal principle of interpretation of statutes that all statutes are prospective unless the language of the statutes makes them retrospective either expressly or by necessary implication but the penal statute which create new offences are always prospective. Learned counsel submitted that any other view of the matter would render the provisions incorporated in the Act violative of Article 20 (1) of the Constitution of India. In support of the contentions raised as aforesaid, learned counsel has relied upon the decision of the Hon'ble Supreme Court in the matters of "*Keshavan Madhava Menon Vs. The State of Bombay*", AIR





1951 SC 128, "*Income Tax Officer Tuticorin Vs. T.S. Devinatha Nadar*", AIR 1968 SC 623 and "*Darshan Singh Vs. Ram Pal Singh & Anr.*" AIR 1991 SC 1654.

12. We have given our thoughtful consideration to the arguments advanced by the counsel for the parties and the counsel appearing to assist the court, the statutory provisions and the decisions cited at the bar.



13. Before we proceed to examine the legal questions arising in the matter, it would be appropriate to refer to the background leading to the enactment of the Act by the Parliament.

14. The status of women in India has undergone many changes over the course of past few millennia. The development and advent of modern day women emancipation in India can be traced to the pre-independence period when many reformers such as Raja Ram Mohan Rai, Ishwar Chand Vidhyasagar, Jyotirba Phule fought for the upliftment of the women. Raja Ram Mohan Rai's efforts led to abolition of the 'sati' practice in 1829. Ishwar Chand Vidhyasagar's crusade for improvement in condition of widows led to the Widow Remarriage Act of 1856. In 1929, the Child Marriage Restraint Act was passed stipulating



fourteen as the minimum age of marriage for girls. The Constitutional Reforms of 1929 allowed the provincial legislature to decide on the issue of right to vote for women, as a result of which the Madras Province became the first province to allow women to vote. In 1926, women were also given right to represent in the legislature.



15. Post independence, India has embibed within its Constitution several Articles to further the cause of women empowerment and ensure gender equality. Article 14 of the Constitution guarantees equality before the law and equal protection of law to any person within the territory of India. Article 15 (1) of the Constitution mandates that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. However, Article 15 (3) makes an exception to the Rule against discrimination as provided *inter alia* under Article 15 (1) and confers a discretionary power on the State to make special provisions for women and children. Obviously, Article 15 (3) recognizes the fact that the women in India have been socially and economically handicapped for centuries and therefore, so as to bring effective equality between the men and women, the special laws for the protection and upliftment of the women will be necessary.



16. After coming into force of the Constitution of India, the first movements for women's rights revolved around pressing problems such as infant marriages, reinforced widowhood and property rights for women. Several women activists focused attention on the gender based oppression of women. The Hindu Succession Act, 1956, The Dowry Prohibition Act, 1961, the Maternity Benefit Act, 1961, The Medical Termination of Pregnancy Act, 1971, Equal Remuneration Act, 1976, Criminal Law (Second Amendment)Act, 1983 , Commission of Sati (Prevention) Act, 1989, The Immoral Traffic (Prevention)Act, 1956, the Indecent Representation of Women (Prohibition) Act, 1986, are few legislation enacted with a view to uplift the status of women in the society.



17. Undoubtedly, various issues relating to women emancipation had received the attention of the Legislature, but the vital issue of violence towards women within the family, which was widely prevalent and all pervasive, remained invisible in public domain. The Vienna Accord of 1994 and Beijing Declaration and the Platform for Action, 1995 acknowledged that the domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General



Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. Taking into consideration the fact that the domestic violence in India is widely prevalent and the existing civil law does not address this phenomenon in its entirety, in order to provide a remedy in the civil law for protection of women from being victims of domestic violence and to prevent the occurrence of the domestic violence in the society, the Act was enacted by the Parliament.



18. Precisely, the object of the Act is to provide for various reliefs to those women who are or have been in domestic relationships with the abuser, where both the parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or through adoption. Besides, relationships with family members living together as a joint family are also included within the ambit of the Act. The definition of domestic violence as set out in the Act is very wide and includes any act of physical, sexual, verbal, emotional or economic abuse or threat of such abuse. The Act provides for various remedies including right of a woman to reside in the matrimonial home or shared household whether or not she has any title or rights in such



home or household; protection orders to prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering the work place frequented by the aggrieved person attempting to communicate with her etc. That apart, it also provides for monetary reliefs to meet the expenses incurred or losses suffered by the aggrieved person as a result of such domestic violence. Besides the aforesaid remedies in civil law, the breach of the protection order by the abuser and failure on the part of protection officer in discharging the duties assigned are made punishable offences under the Act.



19. In this backdrop, the first question that comes for our consideration is whether the proceedings under the Act are criminal in nature and therefore, the various provisions incorporated in the Act providing for reliefs to an aggrieved person shall fall foul of Article 20 (1) of the Constitution of India, if the acts of violence committed prior to the commencement of the Act are made basis for grant of reliefs enumerated therein?

20. In order to appreciate the question raised in correct perspective, it will be apposite to glance over various provisions of the Act providing for remedial measures to a woman victim of domestic violence.



21. Section 12 of the Act entitles an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to present an application to the Magistrate seeking one or other reliefs specified under the Act. Section 18 of the Act empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified acts entering the place of employment, or school in case of child of aggrieved person, attempting to communicate the aggrieved person, alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties or singly by the respondent, causing violence to the dependents or other relatives of the aggrieved person. The list of prohibition orders which the Magistrate is empowered to pass as enumerated under Clauses (a) to (f) of Section 18 is not exhaustive, rather by virtue of Clause (g) of Section 18, the Magistrate is empowered to prohibit the respondent from committing any other act to be specified in the protection order. Section 19 of the Act provides for rights of women to secure housing. The said section empowers the Magistrate to pass the Residence order on being satisfied that domestic violence has taken place. The Magistrate is empowered to restrain the respondent from dispossessing or in any other manner disturbing the possession



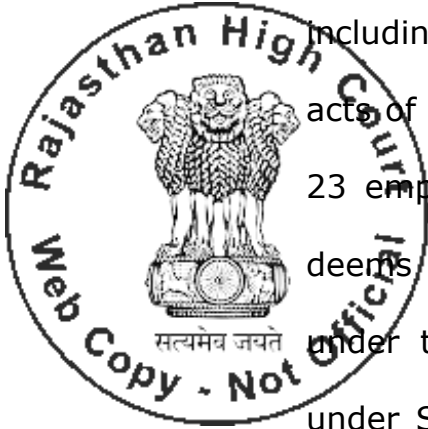


of the aggrieved person from shared household, whether or not the respondent has legal or equitable interest in the shared household. The Magistrate may also direct the respondent to remove himself from the shared household and the respondent and any of his relatives may be restrained from entering any portion of the shared household in which the aggrieved person resides. The Magistrate is empowered to pass an order restraining the respondent from alienating or disposing off the shared household or encumbering the same and further to restrain the respondent from renouncing his rights in the shared household except with the leave of the Magistrate and may also direct the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay the rent of the same if the circumstances so require. As per Section 20 of the Act, while disposing of an application preferred under Section 12 of the Act, the Magistrate may direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control. The order may also provide for maintenance for the aggrieved person as well as for her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal





Procedure or any other law for the time being in force. Section 21 provides for grant of temporary custody of any child or children to the aggrieved person or the person making an application on her behalf. Under Section 22, the Magistrate has power to award compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent. Section 23 empowers the Magistrate to pass such interim order as he deems just and proper during pendency of the proceedings under the Act. Section 26 mandates that any relief available under Section 18, 19, 20, 21 & 22 may also be sought in any legal proceedings before a Civil Court, Family Court or Criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of the Act and any relief referred to in subsection (1) of Section 26 may also be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a Civil or Criminal Court.



22. Undoubtedly, the various reliefs that may be extended by the Magistrate to a woman victim of domestic violence within the ambit of the Act are remedial in nature and squarely fall within



the arena of civil law and by no stretch of imagination the proceedings under the Act could be construed to be criminal proceedings inasmuch as on occurrence of the domestic violence, the reliefs to be extended in terms of Sections 18 to 23 of the Act in no manner penalise the respondent for any act of violence committed by him or her. Rather it provides for remedial measures to protect the victim of domestic violence and to prevent the occurrence of domestic violence. In other words, the reliefs for which an aggrieved person is entitled against the respondent in terms of the said provisions are provided for as remedial measures and the said provisions, in no manner, could be construed to as providing for penalties for commission of the offences.



23. As a matter of fact, the penal provisions incorporated in the Act are Sections 31 and 33 which provide for penalty for breach of protection order by the respondent and for not discharging duty by the Protection Officer respectively. Obviously, the punishment provided as aforesaid under Sections 31 and 33 are the penalties for an offence committed under the Act and it has no nexus with the act of domestic violence as such which was the subject matter of proceedings before the Magistrate wherein the protection orders were passed. Suffice it



to say that neither the reliefs to be extended to the aggrieved person in terms of provisions of Sections 18 to 23, nor the proceedings under Sections 31 and 33 make an act of domestic violence committed prior to commencement of the Act punishable and therefore, the provisions of Article 20(1) are not attracted in the matter. In this view of the matter, the contention raised by the counsel for the respondent that if the petition under the Act in respect of the act of domestic violence committed prior to coming into force of the Act are held to be maintainable and the respondent is convicted for the same, it will contravene Article 20 (1) of the Constitution of India is absolutely devoid of any merit.



24. Coming to the core question placed for determination by this Court i.e whether the Act can be applied retrospectively in respect of the act of domestic violence committed prior to coming into force of the Act specially where the aggrieved party (wife) was divorced by the respondent (husband) prior to the Act coming into force?

25. For determination of the issue raised, it is quint essential to have a look at various provisions incorporated in the Act indicating towards the ambit and scope of the remedies provided



under Sections 12, 18 to 23 of the Act, as also the objects sought to be achieved.

26. As noticed above, as per Section 12 of the Act, an aggrieved person or any other person on behalf of the aggrieved person is entitled to seek one or more reliefs under various provisions of the Act.

27. "Aggrieved person" has been defined under Section 2 (a) of the Act which reads as under:

"2 (a)"aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;"

A plain reading of the definition of "aggrieved person" spells out that the intended beneficiary of the protection as provided for under the Act, is not only a woman who "is" in domestic relationship with the respondent but also the woman who "has been" in a domestic relationship with the respondent. Thus, the complainant/ applicant invoking the provisions of Section 12 of the Act must be a woman who is at the moment or has been at a prior point in time in a domestic relationship with the respondent and alleges to have been subjected to domestic violence by the respondent.





28. The words "domestic relationship" used in the definition of "aggrieved person" and other provisions of the Act, also stands defined by Section 2 (f) of the Act which may also be beneficially quoted:

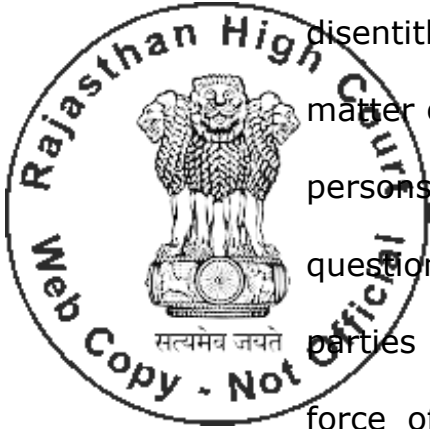
"2 (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;"



The contours of a domestic relationship, which is a sine-qua-non for definition of "aggrieved person" as laid down in Section 2 (f) make it abundantly clear that the legislature in its wisdom has given a wide definition to domestic relationship to include any relationship between two persons who either live at the present moment or have at any point of time in the past lived together in a shared household. The relationship between the two persons can be by consanguinity, marriage, a relationship in the nature of marriage, adoption or as family members living together as a joint family. It is pertinent to note that the domestic relationship as envisaged by Section 2 (f) of the Act is not confined to the relationship as husband and wife or a relationship in the nature of marriage, but it includes other relationship as well such as sisters, mother etc. Thus, merely



because the husband and wife or a person living in a relationship in the nature of marriage or the two persons living together in any other domestic relationship as envisaged under Section 2 (f) subjected to domestic violence, such a victim of domestic violence shall not cease to be the "aggrieved person" so as to disentitle her from invoking the provisions of the Act. As a matter of fact, since there cannot be a legal divorce between the persons living in the relationship in the nature of marriage, the question of restricting the applicability of the provisions to the parties to the marriage subsisting as on the date of coming into force of the Act and not to apply the said provisions to the aggrieved person whose marriage stands dissolved by a decree of divorce prior to coming into force of the Act will run contrary to the objects sought to be achieved by the Act. *A fortiori*, if it was intended by the legislature to provide for the remedy only in respect of the act of domestic violence committed prior to the coming into force of the Act during the subsisting domestic relationship, the expression "have, at any point of time, lived together" was not required to be used in the definition of "domestic relationship" as incorporated under Section 2 (f) of the Act.



30. Section 2 (q) of the Act defines "respondent" as under:



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



The definition of “respondent” incorporated in the Act as aforesaid makes it manifestly clear that a woman victim of domestic violence, an aggrieved person, is entitled to lodge proceedings for various reliefs provided for against the person who is or has been in a domestic relationship with her. That apart, the proviso to Section 2 (q) clarifies that the aggrieved wife or a female living in relationship in the nature of marriage may also file a complaint against the relatives of the husband or the male partner which obviously includes the female members of the husband or male partner's family. But from the definition in no manner can it be inferred that the existence of subsisting domestic relationship between the aggrieved person and the respondent is condition precedent for invoking the various remedial measures provided under the Act.

31. “Shared household” stands defined under Section 2 (s) of the Act as:

“2 (s)“shared household” means a household where



the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.



32. Once again, the definition of "shared household" like that of "aggrieved person" and "domestic relationship" is wide in its scope and includes not just the household where person aggrieved lives at present but also the household where the person aggrieved has at any stage lived in domestic relationship either singly or along with respondent.

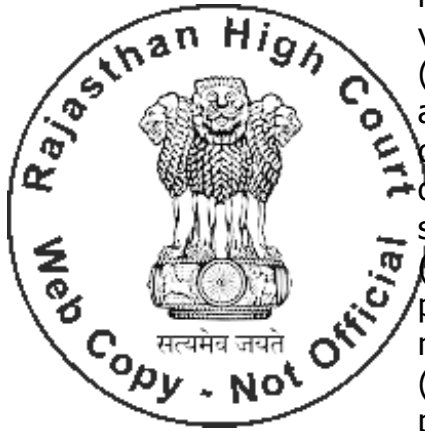
33. Coming to the definition of "domestic violence" as set out under Section 3 of the Act which is vital and germane to issue raised herein, it is to be noticed that "domestic violence" includes within its ambit all kind of violence occurring within the family and the Explanation-I attached thereto enumerates the various kinds of domestic abuse widely prevalent in our country and explains the scope and ambit thereof. The definition of the "domestic violence" as set out in Section 3 of the Act may be



beneficially quoted:

"3. Definition of domestic violence.-For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.



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

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) "verbal and emotional abuse" includes-
 - (a) Insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) "economic abuse" includes-
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person,



payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.



Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

34. Even a fleeting glimpse at Section 3 as reproduced above reflects that "domestic violence" has been widely defined and it covers within its ambit any act, omission or commission or conduct of the respondent resulting in physical, sexual, psychological and economic abuse or threat of such abuse being inflicted upon a woman who is or has been in domestic relationship with him. Undoubtedly, while the physical or sexual abuse caused by the respondent may be time specific, the emotional abuse caused cannot be time specific and its effects may persist even after the actual occurrence of the act of



violence. Rather, the physical or sexual abuse may be the cause of subsequent psychological and emotional effects. Similarly, the "economic abuse" caused by depriving the aggrieved person from all or any economic and financial resources at any point of time or prohibiting or restricting the aggrieved person continued access to resources or facilities for which she is entitled will be in lot many cases a persisting domestic violence which cannot be restricted to a specific point in time and on that account the aggrieved person may be entitled to claim the reliefs under various provisions incorporated in the Act, pleading recurring cause of action. It is pertinent to note that as per Explanation I (iv), the deprivation of maintenance payable to the aggrieved person also falls within the definition of "economic abuse" for which the subsisting domestic relationship cannot be considered to be condition precedent for initiating the action inasmuch as even the divorced wife or the woman not in subsisting domestic relationship are also entitled for the maintenance under the law.



35. Further, the Explanation II attached to Section 3 of the Act which provides that for the purpose of determining whether any act, omission or conduct of the respondent constitutes "domestic violence" under the said Section, the overall facts and circumstances of the case shall be taken into consideration. In



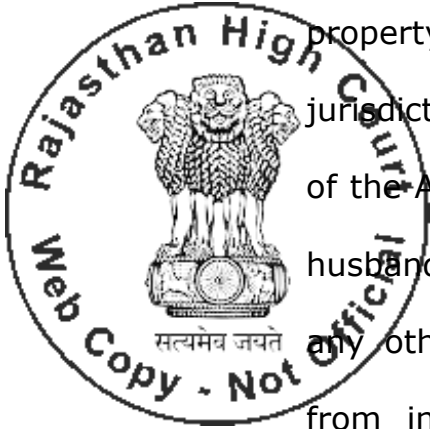
this view of the matter, in the considered opinion of this Court, where the act of domestic violence on the part of the respondent is specifically pleaded by the aggrieved person, the petition seeking the relief under the Act cannot be dismissed at the initial stage and the matter needs to be examined and determined by the Magistrate as mandated under the provisions of the Act.



36. The matter needs to be viewed from yet another angle. Indisputably, so as to make a woman entitled to invoke the jurisdiction of the court under Section 12 of the Act for the reliefs specified under Section 18 to 23 she must fall within the definition of 'aggrieved person' in terms of provisions of Section 2(a) of the Act but then, the particular act of domestic violence pleaded may not have any direct bearing on or nexus with the reliefs which could be granted by the court under the provisions of the Act. Similarly, the absence of subsisting domestic relationship in no manner prevents the court from granting certain reliefs specified under the Act. For example, even after dissolution of marriage between the parties, a divorcee husband may attempt to commit the act of violence such as entering the place of employment of the aggrieved person, attempting to communicate in any form with the aggrieved person, cause violence to dependents or other relatives or any person etc. and



in that case, the aggrieved person is not precluded from seeking protection orders from the Magistrate as provided for under Section 18 of the Act. Likewise, if the divorcee husband attempts to dispossess the divorcee wife from the shared household or attempt to dispossess the divorcee wife from the property jointly owned, she is not precluded from invoking the jurisdiction of the court seeking restrain order under Section 19 of the Act. Besides, even after the dissolution of marriage, if the husband refuses to return the aggrieved person her 'Stridhan' or any other property or valuable security, she is not precluded from invoking the jurisdiction of the Magistrate under subsection (8) of Section 19 seeking direction to the respondent-husband to return the same. That apart, Section 20 empowers the Magistrate to pass appropriate orders extending monetary relief to the aggrieved person or any child of the aggrieved person to meet the expenses incurred or any losses suffered as a result of domestic violence. Needless to say that even if the domestic violence was committed prior to the coming into force of the Act, the cause of action accrued to the aggrieved person to seek the relief under Section 20 of the Act, may persist. Coming to Section 21 which deals with custody orders of the child or children to the aggrieved person or the person making application on her behalf, obviously presupposes non-existence





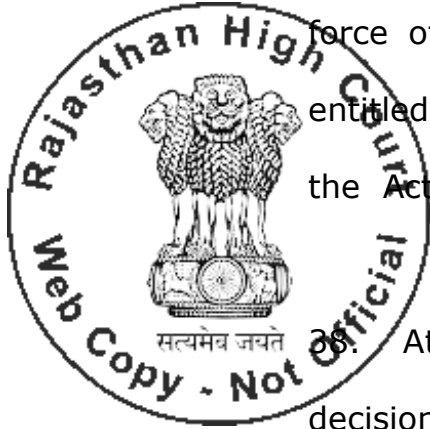
of the domestic relationship between the parties and therefore, if the interpretation of the provisions sought to be given by the respondent is accepted, the very purpose of incorporating the provisions regarding the custody of the child or children shall render otiose. It is pertinent to note that Section 22 makes the provision for grant of compensation and damages to the aggrieved person for injuries including torture and emotional distress caused by the act of domestic violence by the respondent. As observed hereinabove, any physical or sexual abuse may be the cause of torture and emotional distress and that apart, the emotional abuse may give rise to a recurring cause of action to the aggrieved person, for the reliefs specified and therefore, the actual act of domestic violence being committed before or after the coming into force of the Act and the subsisting domestic relationship between the parties, are hardly of any relevance so far as grant of the relief as specified under Section 22 of the Act is concerned.



37. In view of the discussion above, in our considered opinion, a combined reading of Sections 2 (a), 2 (f), 2(q), 2 (s) 3, 12 & 18 to 23 of the Act leads to an irresistible and definite conclusion that the remedy as provided for under Section 12 covers the act of violence committed even prior to coming into force of the Act



and the subsistence of marriage or domestic relationship is not a condition precedent for an aggrieved person to invoke the protection orders and other reliefs under the provisions of the Act. If the aggrieved person had been in domestic relationship at any point of time even prior to coming into the force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.



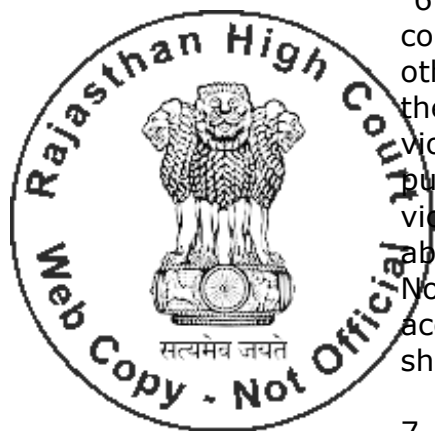
At this stage, we must proceed to consider the various decisions cited by the learned counsel for the parties.

39. The most instructive decision cited by the counsel for the petitioner is the decision of the Delhi High Court in Savita Bhanot's case, wherein the identical issue has been aptly dealt with by the learned Judge taking into consideration all relevant aspects of the matter and which stands upheld by the Hon'ble Supreme Court.

40. In Savita Bhanot's case, the question which came up for consideration of the court was whether a petition under provisions of the Act is maintainable by a woman who had stopped living with the respondent or by a woman who alleges to



have been subjected to any act of domestic violence prior to coming into force of the Act on 26.10.06. The court while considering the entire scheme of the Act with reference to the various provisions of the Act discussed by us hereinabove, held:



"6. The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty. There can be no prosecution of a person under the provisions of this Act, for committing acts of domestic violence, as defined in Section 3 of the Act. No one can be punished under the Act merely because he subjects a woman to violence or harasses, harms or injures her or subjects her to any abuse whether physical, sexual, verbal, emotional or economic. No one can be punished under the provisions of the Act on account of his depriving a woman of her right to reside in the shared household.

7. Article 20(1) of the Constitution provides that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. No provision of the Act makes any act committed prior to coming into force of the Act punishable with any imprisonment, fine or penalty. Since the order, as envisaged in Section 18 or Section 23, as the case may be, can be passed only after coming into force of the Act, it cannot be said that if a person is convicted under Section 31 of the Act, he is convicted for violation of law which was not in force at the time of commission of the act charged as an offence. It has to be appreciated that the act charged as an offence under Section 31 of the Act is not the act of domestic violence committed by a person. It is the breach of or Section 23 of the Act which has been made punishable under the Act. Therefore, it cannot be said that Article 20(1) of the Constitution is contravened if a person is convicted under Section 31 or 33 of the Act.

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11. The use of words 'should live or have at any point of time lived together' in the Section is an indicator of the legislative intent and makes it quite explicit that a person will be deemed to be in domestic relationship even if he had lived together with the respondent at a point of time prior to coming into force of the Act. Had that not been the legislative intent, the words 'or have at any point of time lived' would not have found place in Section 2 (f) of the Act and it would have been sufficient to say that domestic relationship means a relationship between two persons



who live together in a shared household.

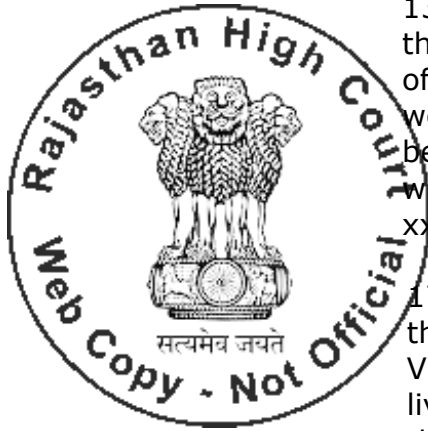
12. Section 2 (a) of the Act defines 'aggrieved person' as under :-

“aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;”

13. If the legislative intent was to keep a person, not living with the respondent at the time of coming into force of the Act, out of the purview of the Act, there was no necessity of using the words 'or has been' in Section 2 (a) of the Act and it would have been sufficient to say that aggrieved person means any woman who is in a domestic relationship with the respondent.

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17. If the court takes the interpretation that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 cannot be filed by a woman unless she was living with the respondent, in the shared household, on the date this Act came into force, or a date subsequent thereto or that a petition under the provisions of the Act cannot be filed by a person who has been subjected to domestic violence before coming into force of the Act, that would amount to giving a discriminatory treatment to the woman who despite living with the respondent and having a domestic relationship with him before coming into force of the Act, is later compelled to live separately from him on account of the acts attributable to the respondent and to the woman who was, prior to coming into force of the Act, subjected to domestic violence, viz-a-viz, the women who are living with the respondent or women in respect of whom acts of domestic violence are committed after coming into force of the act. There can be no reasonable classification based upon an intelligible differentia between the women who are living with the respondent on the date of coming into force of the Act or who are subjected to domestic violence after coming into force of the Act on one hand and the women who were living with the respondent or who were subjected to domestic violence prior to coming into force of the Act, on the other hand. Therefore, any discriminatory treatment to women in either category would be violative of their constitution right guaranteed under Article 14 of the Constitution. The court needs to eschew from taking an interpretation which would not only be violative of the rights conferred upon the citizens under Article 14 of the Constitution but would also result in denying the benefit of the beneficial provisions of the Act to the women who have been subjected to domestic violence and are





compelled to live separately from the respondent on account of his own acts of omission or commission. Such an interpretation would at least partly defeat the legislative intent behind enactment of the Protection of Women from Domestic Violence Act, 2005, which was to provide an efficient and expeditious civil remedy to them, in order either to protect them against occurrence of domestic violence, or to give them compensation and other suitable reliefs, in respect of the violence to which they have been subjected.



18. For the reasons given in the preceding paragraphs, I am of the considered view that a petition under the provisions of the Protection of Women from Domestic Violence Act, 2005 is maintainable even if the acts of the domestic violence have been committed prior to coming into force of the Act or despite her having in the past lived together with the respondent a shared household woman is no more living with him, at the time of coming into force of the Act. It is be open for the Magistrate to pass appropriate order under the provisions of Sections 12, 18, 19, 20, 21, 22 or 23 of the Act on a petition filed by such a woman and the person who commits breach of the protection order or interim protection order passed on an application filed by such a woman will be liable to punishment under Section 31 of the Act."

41. The view taken by the Delhi High Court as aforesaid, has been upheld by the Hon'ble Supreme Court while disposing of a Special Leave Petition preferred against the said decision, in the following terms:

"12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005."

42. Thus, as a matter of fact, the question with regard to the



retrospective applicability of the provisions of the Act in respect of the act of domestic violence committed prior to coming into force of the Act and the entitlement of aggrieved person, who was subjected to domestic violence and stopped living with the respondent before coming into force of the Act, stands set at rest

with the Hon'ble Supreme Court upholding the decision of Delhi High Court in Savita Bhanot's case (supra) in the terms indicated above.



Coming to the decision of this court in Khushi Mohd.'s case (supra), the learned Judge of this court after due examination of the various provisions of the Act and taking into consideration the statement of objects and reasons, held:

9. The Domestic Violence Act, 2005 (Act No. 43 of 2005) was enacted by the Parliament to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

10. From the statement of objects and reasons of said enactment, it is clear that domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. The provisions like Section 498A of the Indian Penal Code to provide protection against cruelty by her husband or his relatives were found to be insufficient law to address this phenomenon of domestic violence in its entirety. Therefore, the Parliament 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 was intended to protect the women from being victims of domestic violence and to



prevent the occurrence of domestic violence in the society. The said enactment covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women or living with the abuser are entitled to legal protection under the said legislation.



11. Thus, obviously, such enactment was to provide protection to weaker sex or females in the family irrespective of marital relationship and that is why the definition in Clause 2 (a) is of "aggrieved person" is widely worded to including any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The word "domestic relationship" was also widely worded to mean a relationship between two persons who live or have, at any point of time, lived together in a shared household, whether they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Section 2 (g) read with Section 3 of the Act of 2005 defines the words "domestic violence" to mean any act, omission or commission or conduct of the person shall constitute domestic violence in case it harms, or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse.

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14. From a reading of the provisions of the Act and with understanding of the scheme of the said enactment, it is clear that it is not necessary that the applicant-woman should have a marriage subsisting and existing with the respondent at the time of filing of such application under Section 12 of the Act. No time period is also prescribed in the said Act as to when the aggrieved person should have been in domestic relationship with the respondent. On the other hand, definition of words "domestic relationship" given in Section 2 (f) of the Act clearly uses the words "at any point of time, lived together in a shared household". In view of this clear provision of the Act covering the aggrieved person or woman in such domestic relationship, the contention of the learned counsel for the petitioner-husband Khushi Mohd. that in view of divorce given by the petitioner-husband to the respondent-wife, which fact is disputed from the opposite side, no relief could be granted to her under the provisions of this Act, falls flat on its face.



Admittedly, the respondent-wife used to live in the shared accommodation with the petitioner-husband for considerable period and out of this wedlock, a female child Asu was also born and the applicant-wife chose to leave or was thrown out of the matrimonial home only about 1½ years prior to the said application under Section 12 of the said Act. In the absence of any period of limitation prescribed in the said Act for approaching the Court, the contention that she left the matrimonial home about 1½ years back and therefore, she is not entitled to any relief under this Act is also devoid of any merit. The period of 1½ years even otherwise is not such a long gap of period to disentitle the wife from claiming relief under this Act, even otherwise. The application under Section 12 of the Act could not be said to be suffering from the vice of delay, laches, acquiescence or estoppels on this ground. The Act of 2005 was enacted around the same period and was brought into force w.e.f. 26.10.2006 even though it received the assent of President on 13.9.2005. In the kind of social background the applicant-wife is living and with the low level of awareness of legal rights under this Act, which can be reasonably presumed for such a lady, this Court is not inclined to uphold the contention of the respondent-husband in this regard." (emphasis added)



44. However, in Hema @ Hemlata's case (supra), the learned Single Judge of this court held:

"5. I have heard the learned counsel for the parties and perused the judgment passed by the Special Judge (SC and ST Cases) Alwar. Admittedly marriage between the petitioner No.1 and non-petitioner was dissolved by a consent divorce on 3.9.2003 and thereafter both of them are residing separately. Provisions of Protection of Women from Domestic Violence Act, 2005 came into force on 17.10.2006 and after enforcement of the Act the petitioners were not residing with the respondent and they were not subjected to any domestic violence by the respondent. There is no provision in the Act having a retrospective effect. Special Judge (SC and ST Cases) Alwar by a detailed order held that there is no question of any violence by the respondent with the petitioner No.1 after dissolution of marriage and there is no question of petitioners being aggrieved person as defined in Section 2A of the Act. It was specifically mentioned by the Special Judge in the impugned order that on a bare perusal of Section 12 (1) of the Act specifically provided that before passing the order as per the provisions of the Act, the Magistrate has to look into the report



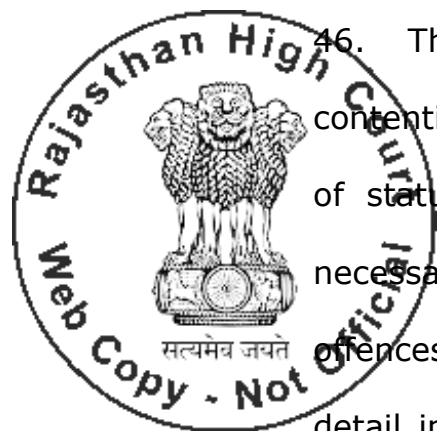
of domestic violence. In the instant case, there is no question of any report of domestic violence as is clear from the facts that the divorce between the parties took place in September 2003 and after coming into force of the provisions of the Act the parties cannot be termed as aggrieved person. The Special Judge has given cogent reasons for setting aside the order of the Judicial Magistrate allowing maintenance to the petitioners. The order passed by the Special Judge is perfectly legal and not contrary to law. The Special Judge has not committed any illegality in passing the same. Thus, the impugned order does not call for any interference in the revisional jurisdiction. The revision petition being devoid of merits stands rejected. As the main petition has been dismissed the stay application also stands dismissed."



45. It is pertinent to note that the conclusion arrived at by the learned Single Judge in Hema's case (supra) in terms that the marriage between the parties having been dissolved prior to coming into force of the Act on 17.10.06 and thereafter, the petitioners were not residing with the respondent and were not subjected to domestic violence and therefore, they cannot be termed as 'aggrieved person', is not supported by the consideration of the various provisions incorporated in the Act indicating that subsistence of marriage or the domestic relationship as on the date of coming into force of the Act is not a condition precedent for invoking the remedial measures under the provisions of Section 12 of the Act. The learned Single Judge has arrived at the conclusion as aforesaid merely on the ground that there is no specific provision in the Act having retrospective effect. In view of the discussion made hereinabove, with utmost



respect, we are not in agreement with the view taken by the learned Single Judge in Hema's case (supra). In our considered opinion, it does not lay down the correct law and therefore, deserves to be overruled.



46. The various decisions cited at the bar in support of the contention that all statutes are prospective unless the language of statutes makes them retrospective either expressly or by necessary implication but the penal statute which create new offences are always prospective, need not be dealt with by us in detail in view of the conclusions arrived at by us as aforesaid, after detailed discussion of the provisions incorporated under the Act providing for various remedial measures to the aggrieved person, a woman, victim of domestic violence. As discussed above, the Act is essentially a remedial statute and it is trite law that a remedial statute needs to be interpreted liberally to promote the beneficial object behind it and any interpretation which may defeat its object necessarily needs to be eschewed. Undoubtedly, a woman subjected to domestic violence even after coming into force of the Act has to be treated a victim of domestic violence requiring protection of her rights and therefore, merely because on account of compelling circumstances, may be on account of some act, omission or



commission on the part of the respondent constituting domestic violence, she started living separately cannot be picked up for a different treatment being given vis-a-vis a woman who continues to live with the respondent in a domestic relationship in a shared household even after coming into force of the Act or who started living separately but in respect of whom the act of violence was committed after coming into force of the Act. We are firmly of the opinion that any such interpretation of the provisions incorporated creating to different classes of victims subjected to domestic violence based on fortuitous circumstances shall be discriminatory and fall foul of Article 14 of the Constitution of India.



47. Coming to the decision of the Hon'ble Supreme Court in Inderjit Singh Grewal's case (supra), relied upon by the counsel appearing for the respondents, it is to be noticed that in that case, the marriage between the parties was dissolved by a decree of divorce under Section 13B of Hindu Marriage Act, 1955 on 20.3.08. Thereafter, the wife filed a complaint under the provisions of Protection of Women from Domestic Violence Act, 2005 alleging that the decree of divorce obtained by them was sham transaction and she was forced to leave the matrimonial home. Later, the wife filed a complaint under the Act before the



Magistrate on 12.6.09. The Magistrate issued the summons to the husband, aggrieved thereby, he preferred a petition under Section 482 Cr.P.C. before the Punjab & Haryana High Court. The petition was dismissed by the High Court on 9.8.10. Precisely, the case of the wife was that the decree of divorce by mutual consent was obtained as they wanted to settle in USA and therefore, they had decided to get divorce on paper so that the husband may go to USA and get American citizenship by negotiating marriage of convenience with some U.S. citizen and divorce her and again re-marry to the complainant wife. It was alleged in the complaint by the wife that even after decree of divorce, she had been living with her husband till 7.2.09 and continual cohabitation with him. It was alleged that the child had been forcibly snatched from her by the appellant. The contention advanced on behalf of the wife that even after decree of divorce they continued to be together as husband and wife and therefore, the complaint under the Act is maintainable was not found worth acceptance by the court and accordingly, observing that permitting the Magistrate to proceed further with the complaint under the Act is not compatible and consonance with the decree of divorce which shall subsist and thus, the process amounts to abuse of the process of the court and accordingly, the complaint was quashed.





48. A perusal of the decision in Inderjit Singh Grewal's case (supra), reveals that the question with regard to the right of the divorcee wife to maintain the petition under Section 12 of the Act, keeping in view various provisions of the Act indicating that subsistence of the marriage is not condition precedent for maintaining the petition under Section 12 did not arise for consideration of the Court inasmuch as the complainant wife proceeded on the premise that since the divorce obtained was a sham transaction and she continued to live with the respondent-husband even thereafter and therefore, marital relationship continued, which was not accepted by the Court holding that even if a decree is void ab initio declaration to that effect has to be obtained by the person aggrieved from the competent court and no such declaration can be obtained in collateral proceedings. As a matter of fact, in the said case the aggrieved person a divorcee wife sought the relief under the Act on the basis of the act of violence alleged to have been committed subsequent to the domestic relationship having come to an end. Thus, on the fact situation obtaining in the said case, the decision of the Hon'ble Supreme Court in the matter of D. Velusamy's case was also distinguished by the Court saying that the said case relates to live in relationship without marriage. Suffice it to say that the question whether a woman who was in





domestic relationship with the respondent and was subjected to domestic violence prior to coming into force of the Act falls within the definition of "aggrieved person" so as to make her entitle to invoke the jurisdiction of the Court under Section 12 of the Act for various reliefs provided for under the Act did not come for consideration of the Hon'ble Supreme Court in Inderjit Singh's case (supra), whereas, the said question has been specifically dealt with by the Hon'ble Supreme Court in Savita Bhanot's case (supra), while upholding the view taken by the Delhi High Court in the matter. Thus, in our opinion, the decision of the Hon'ble Supreme Court in Inderjit Singh Grewal's case (supra) also does not help the respondent in any manner.



49. Lastly, coming to the contention of the learned counsel for the respondent that as per provisions of Section 28, the proceedings under the Act are governed by the provisions of Criminal Procedure Code and therefore, the same has to be treated to be criminal proceedings. It is pertinent to note that the Act has been enacted by the legislature with the sole object to provide a remedy in the civil law for protection of women from being victims of domestic violence and to prevent the occurrence of the domestic violence in the society. As noticed above, the proceedings before the Magistrate under Section 12 of the Act



for the reliefs as provided for under Section 18 to 22 of the Act are remedial in nature which fall in the realm of civil law and by no stretch of imagination, the proceedings under Section 12 of the Act could be considered to be criminal proceedings. Of course, the provisions of Cr.P.C. are made applicable to the proceedings under the Act, but a bare perusal of Section 28 reveals that a clear distinction has been drawn in the proceedings under Section 12 and Sub-Section (2) of Section 23 and the proceedings for offences under Section 31 & 33 of the Act, obviously, for the reason that the remedy as provided under Section 12 for the reliefs to be claimed in terms of Section 18 to 23 are not the penal proceedings whereas, the proceedings initiated under Section 31 & 33 are penal proceedings inasmuch as, the breach of protection order and failure on the part of Protection Officer in discharging the duties as directed by the Magistrate in the protection order without any sufficient cause, are the offences entailing penal consequences in terms of the said provisions. It is also pertinent to note that apart from the applicability of the provisions of Cr.P.C., by virtue of sub-section (2) of Section 28, for the disposal of an application under Section 12 or under sub-section (2) of Section 23, the provisions of Section 28 shall not prevent the court from laying down its own procedure. In this view of the matter, in our considered





opinion, the proceedings under the provisions of Section 12 and 18 to 23 cannot be considered to be the proceedings in criminal law.

50. For the aforementioned reasons, we hold that the remedy under Section 12 of the Act covers the act of violence committed even prior to coming into force of the Act and could be taken into consideration by the Magistrate while passing the orders extending the reliefs to the aggrieved person under Sections 18, 19, 20, 21, 22 and 23 of the Act. That apart, it is not necessary that the applicant-woman should have a marriage or relationship in the nature of marriage existing and subsisting with the respondent as on the date of coming into force of the Act or at the time of filing of the application under Section 12 of the Act before the Magistrate for one or more reliefs as provided for under the Act. In other words, the aggrieved person, who had been in domestic relationship with the respondent at any point of time even prior to coming into force of the Act and was subjected to domestic violence, is entitled to invoke the remedial measures provided for under the Act.

51. In the ordinary course, the question having been answered as aforesaid, we would have sent the matter back to the learned





Single Judge for decision of the revision petition on merits but since, the order impugned in the revision petition passed by the Appellate Court, affirming the order passed by the trial court holding that the act of violence committed prior to coming into force of the Act cannot be made basis for initiating proceedings under the Act and therefore, the petitioner cannot be said to be an aggrieved person, is solely based on the decision of this court in Hema @ Hemlata's case (supra), which stands over ruled by us, therefore, no fruitful purpose will be served in sending the matter back to the learned Single Judge for disposal.



52. In the result, the revision petition succeeds, it is hereby allowed. The order impugned dated 19.4.11 passed by the court of Session i.e. Special Judge, S.C./S.T. (Prevention of Atrocities) Cases , Jodhpur in Criminal Appeal No.53/2010 and order dated 5.6.2010 passed by the Additional Chief Judicial Magistrate (Economic Offence), Jodhpur in Criminal Misc. Case No. 350/09 are set aside. The matter is remanded to the court of Additional Chief Judicial Magistrate (Economic Offence), Jodhpur for disposal afresh on merits, in accordance with law.

(SANGEET LODHA),J.

(AMITAVA ROY), C.J.

Aditya/-

All corrections made in the order have been incorporated in the order being emailed.

Aditya Joshi, PS