

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved On : 30.03.2012

Decided on : 17.05.2012

+ **CRL.M.C. 3083/2011 & CRL.M.A.10914/2011**

SHAMBHU PRASAD SINGH

..... Petitioner

Through: Mr. Mr. Tarkeshwar Nath with Mr. B.L. Pandey &
Mr.Saurabh Kumar Tuteja, Advocates

versus

MANJARI

..... Respondent

Through: Mr. Prashant Katara with Mr. Anuj Sehrawat,
Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE S.P.GARG

MR. JUSTICE S.RAVINDRA BHAT

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1. This judgment answers a reference to this Division Bench, requiring resolution of a conflict between the decision of two learned Single Judges of this Court on the question whether a magistrate can act straightaway on a complaint made by an aggrieved person, under the Protection of Woman from Domestic Violence Act, 2005 (hereafter "the Act"). A learned Single Judge had considered and ruled upon the scope and effect of different provisions in an earlier decision of this court. Another learned Single Judge by order dated 03.05.2012 referred the present matter to the Chief Justice for being placed before a Division Bench for consideration. In these circumstances, the reference was assigned to this Court for its opinion. The precise question which this Court is called upon to answer is whether calling for and considering the report of the

Protection Officer under the Act is mandatory before the Court can issue notice to a Respondent in an application under Section 12 of the Act.

2. The issue arose in this case, before the learned single judge in the context of a challenge from the order dated 31st May, 2011 passed by the learned Metropolitan Magistrate in complaint case No. 934/2003 titled as *Manjari Vs. Shambhu Prasad Singh*. The magistrate (hereafter called “Trial Court”) issued notice to the Petitioner on a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short “D.V. Act”) without calling for a report from the Protection Officer; the Petitioner’s challenge to that order was rejected by a the Learned Additional Sessions Judge on 4th August, 2011 dismissing the appeal filed by the Petitioner. No discussion of the factual matrix of the case is required since it is only the question of law which has to be decided by this court.

3. Learned counsel for the petitioner contends that on an application u/s 12 of the D.V. Act, no notice can be issued to the respondent without calling for and considering the domestic incident report (DIR) from the Protection Officer. It is contended that the ruling in *Bhupender Singh Mehra & Anr. Vs. State of NCT of Delhi & Anr.* 2010 (4) JCC 2939 has spelt out that such a procedure bind the magistrate. The relevant portion of the said judgment is reproduced hereunder:

“Domestic Violence Act provides for obtaining domestic incident report. The domestic incident report proforma is given in form 1 of the schedule 2 of the Domestic Violence Rules. This proforma is in detailed analytical form where the details of each incident of domestic violence are to be entered with date, time and place of violence and person who caused domestic violence. The purpose is that all allegations made in application must be specific and the Court should not exercise jurisdiction without considering domestic incident report since it is necessary for the Court to know before issuing any notice to respondent as to who was the respondent who caused domestic

violence and what was the nature of violence and when it was committed.”

4. Counsel for the Petitioner relies on the Proviso to section 12 of the D.V. Act. He cited two judgments of the Madras High Court viz. *Uma Narayan v. Mrs Priya Krishna Prasad* (Criminal Original Petition No 9277 of 2008 decided on 01.08.2008) and *Murugan v. Kasimani* (Crl.R.C. (MD) No. 1133 of 2008 decided on 19.08.2010). Reference was also made to Rules 4, 5, 6, 8 and 9 of the Protection of Women from Domestic Violence Rules, 2006 (in short “the Rules”).

5. On the other hand, counsel for the respondent contended that under Section 12 of the D.V. Act, the complainant herself has the right to apply to the Magistrate. Furthermore, reliance is placed on Section 23 which permits passing of *ex-parte* orders on the basis of an affidavit of the aggrieved person. It was urged that if legislative intent was that the magistrate should first issue notice to the Protection Officer, and then after securing the report of that officer, proceed to issue notice, the Act would have been more forthright. It was argued that if the court were to uphold the decision of the learned Single judge in *Bhupender Singh Mehra*, vital provisions of the Act, such as Section 23 which enables the court to make *ex-parte* orders, would be rendered infructuous and a dead letter. It was emphasized that in the absence of a clear intendment, through express provision, the Court should not fetter its discretion, as would inevitably happen, if the rule in *Bhupender Singh Mehra* were to be followed. Counsel emphasized that the object of the enactment was to provide speedy remedy to the victim of domestic violence, which included protection orders. If the magistrate were to be constrained from issuing orders, that are plainly permissible under the Act, on the basis of *prima facie* appreciation of evidence, the remedy would be defeated, and the victim would be subjected to further domestic violence either in the form of deprivation of a home, or subjected to physical cruelty, or even deprived economic benefits, which rightfully belong to her, as per definition of

“domestic violence”. The Court should therefore avoid such an interpretation, and adopt one which is in harmony with the express provisions, and furthers the intent of the enactment.

6. The respondent distinguished the ruling in *Bhupender Singh Mehra* from the present case. It was contended that in the said case the DIR was necessary in order to determine whether the respondent and the complainant were in a domestic relationship. In that case, the father-in-law and two brothers-in-law were arrayed as respondents giving a common address, and therefore, the observations in the said judgment were purely contextual to the facts. Here, however, only the husband was arrayed as respondent. Thus, the respondent contends that the ruling in *Bhupender Singh Mehra* does not assist the case of the petitioners.

7. Learned counsel for the Respondent has placed reliance on the decisions reported as *Ajay Kant & Ors. v. Alka Sharma* 2008 CrLJ 264 (MP HC) *Rakesh Sachdeva & Ors. v. State of Jharkhand & Anr* 2011 CrLJ 158 (Jharkhand HC), *Md. Basit v. State of Assam* (CrRev. P. No 175/2011) decided by Guahati High Court on 9th June 2011.

8. This Court has carefully considered the arguments of both the parties. Before analysing the merits of the rival submissions, it is necessary to reproduce the relevant provisions of the D.V. Act and the Rules.

“Section 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*;

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(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;

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(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.

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(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.

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9. Duties and functions of Protection Officers.-(1) It shall be the duty of the Protection Officer-

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

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“12. Application to Magistrate.- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

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Section 17 - Right to reside in a shared household

*(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the **Right to reside** in the shared household, whether or not she has any right, title or beneficial interest in the same.*

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

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Section 19 - Residence orders

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

“5. Domestic incident reports.- (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form 1 and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have been committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate.- (1) Every application of the aggrieved person under section 12 shall be in form II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

16. Shelter to the aggrieved person.

(1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

17. Medical Facility to the aggrieved person.- (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility.”

9. The basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Domestic violence, is, *per se*, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move to Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, right to residence, compensation etc. or even move to Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section 26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The Act being a beneficial one, the Court should adopt a construction to its provisions which advances the parliamentary intention rather than confining it. If the latter course is adopted the result would be to defeat the object of the law. As noticed earlier, domestic violence is *per se* not an offence but its incidence or occurrence enables a woman to approach the Court for more than one relief. The Court is empowered to grant *ex-parte* relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc. If such an order is violated by the respondent (a term defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.

10. In *Ajay Kant* (supra) the Madhya Pradesh High Court held, turning down a contention identical to that of the respondent (in this case) that:

“On perusal of the aforementioned proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on a Magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither it is obligatory for a Magistrate to call such report nor it is necessary that before issuance of notice to the petitioners it was obligatory for a Magistrate to consider the report. The words before passing any order provide that any final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words any report also mention that a report, if any, received by a Magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground for quashing the proceeding.”

A similar view was taken by the Jharkhand High Court in *Rakesh Sachdeva* (supra):

“12. It would thus appear that the proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass under Section 18 of the Act. The Protection orders, which the Magistrate may pass under Section 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act. The contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable.”

11. After examining both the views, the Guwahati High Court in *Md. Basit* (supra) expressed a slightly different view:

“10. I partly agree and partly disagree with the views taken by the Hon’ble Madhya Pradesh High Court and Jharkhand High Court. In my considered opinion, Section 12 does not deal with passing of final orders. Final orders are passed under Sections 18,19, 20, 21 and 22 of the Act only. Sec. 12 is akin to Sec 200 of the Criminal Procedure Code, 1973. Section 12 only contemplates as to who can file a

complaint, what reliefs can be sought for, what should be the contents of the complaint and how the complaint can be examined thereafter. If these preconditions are satisfied the court can take cognizance of the complaint, subject to making out a prima facie case on facts. Unlike Sec. 200 CrPC there is no requirement of recording preliminary statement of the aggrieved person, filing a complaint under Sec. 12 of the DV Act, for the purpose of taking cognizance thereof.

11. Under Section 12(1) of the DV Act, an application/complainant can be filed before a Magistrate either by an aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person. In this way, Section 12(1) does not contemplate that such an application should invariably be accompanied by a report from a Protection Officer. Proviso to Section 12(1) is in the nature of a rider, which mandates that the Magistrate shall consider any domestic incident report, if received by him either from a Protection Officer or Service Provider. I have already mentioned earlier that an application under Section 12 can be independently filed by an aggrieved person, which may not be accompanied by any report from a Protection Officer. However, if any report from a Protection Officer is available before the Magistrate that shall have to be taken into consideration, but, the law does not impose a precondition for the Magistrate to call for a report from the Protection Officer. On this point I differ with the view taken by Hon'ble M.P. High Court, wherein it has been held that it is not obligatory for the Magistrate to consider the report. With the same analogy, I also differ with the view taken by the Hon'ble Jharkhand High Court wherein, it has been held that 'the insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act'.

12. For aforesaid reasoning, I approve the view taken by the learned Sessions Judge that it is not obligatory for a Magistrate either to call for a report from a Protection Officer or a Service Provider at the stage of taking cognizance of the complaint. However, if any such report is available before the Magistrate, the same should be taken into consideration."

12. This court notices that Section 23 empowers the Magistrate to pass such *ex-parte* interim orders as he may deem just and proper, based only on the affidavit of the aggrieved person. Nowhere does this provision express or imply

by necessary intendment that the consideration of the DIR is obligatory. Since an *ex-parte* interim order may be granted immediately upon institution of the complaint, it is likely that the Protection officer's DIR may not be prepared by then. Thus, the Magistrate is definitely empowered to exercise this power, and pass interim order(s) against the concerned respondent. If this can be done without considering the DIR, then certainly notice to the respondent must also be allowed to be served without first considering the DIR.

13. It is noteworthy that Section 12(1) does not mandate that an application seeking relief under the Act be accompanied with the DIR or even that it should be moved by a Protection officer. Even Rule 6 which stipulates the form and manner of making an application to the Magistrate does not require that the DIR must accompany an application for relief made under Section 12. It is only the proviso to section 12(1) which mandates that the Magistrate shall consider the DIR "*received by him from the Protection Officer or the service provider*". No obligation to call for the DIR has been imposed upon the Magistrate. The plenitude of the power under Section 12, to pass appropriate orders, upon the application by "*an aggrieved person*" i.e. the victim of domestic violence is thus emphasized. A unique feature which the Court has to keep in mind is that the opening phrase in Section 12 are wide ("*An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act...*") If Parliament had intended that a report of the Protection Officer is a pre-condition for the magistrate to act upon the complaint of an aggrieved person, or someone acting on her behalf, it would have expressed that intention more clearly. The Court instead, is circuitously asked to interpret that provision, in the light of a Proviso, which is contextual, rather than compulsive. In this context, it was held by the Supreme Court, in *Tribhovandas Haribhai Tamboli vs Gujarat Revenue Tribunal And Ors*: AIR 1991 SC 1538 that:

“It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.”

This rule of interpretation was again applied in *Romesh Kumar Sharma v Union of India* 2006 (6) SCC 512, where it was held that:

*“The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in *Mullins v. Treasurer of Survey* [1880 (5) QBD 170, (referred to in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha* (AIR 1961 SC 1596) and *Calcutta Tramways Co. Ltd. v. Corporation of Calcutta* (AIR 1965 SC 1728)); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case.”*

14. The proviso to Section 12 obliges the court to, *“before passing any order on such application.....take into consideration any domestic incident report received by him from the Protection Officer or the service provider.”* The plenitude of the jurisdiction conferred by Section 12 is in no way affected by the proviso; all that it mandates is that before any order

is made on an application (under Section 12) the magistrate “shall” take into consideration “any” report made by the Protection Officer. It is one thing to say that Parliamentary mandate to the court is to take into consideration, in every case, a protection Officers’ report, as a precondition for exercise of jurisdiction – as the petitioner contends- and entirely another to say that if “any” such report is available, it shall be considered. This clear cut difference, in our opinion was lost sight of by the Single Judge in *Bhupender Singh Mehra’s* case. If Parliament had indeed mandated that in every case the Court was obliged to call for a Protection Officer’s report, and thereafter proceed with the complaint, the structure of Section 12 would have been entirely different. Such intention would have been expressed in more definitive, or imperative terms. In this context, this Court is also unpersuaded by the Petitioner’s argument that Rule 6 and the form appended to the Rules have to be read into Section 12, to discern the precondition urged. This Court sees no need to do so; it would result in artificially curtailing what is otherwise a wide power.

15. In this context, this Court notices that the difference in the reasoning of the Jharkhand and M.P. High Court, on one hand, and the Guwahati High Court, on the other, is that while the former two held that the orders referred in the proviso to Section 12(1) refer to only the final orders that may be passed under Sections 19-22 of the Act, the latter view declines to hold so. The Guwahati High Court, in addition, held that if the DIR is available, the same must be taken into consideration before passing an order. This Court agree with the reasoning of the Guwahati High Court. In the absence of any express or implied mention of any limitation as to the kinds of orders to which the Proviso to Section 12(1) would apply, it shall be equally applicable to interim orders as well as final orders. Thus, in all cases where the magistrate is in receipt of the DIR, he must take the same

into consideration. This applies even at the stage of serving notice to the respondent. However, where the DIR has not been prepared, or has not been submitted to the Magistrate, he is under no obligation to call for the same for consideration as a precondition to exercising his power, and making such orders as the justice and the facts of the case may warrant.

16. The obligation to submit a DIR is imposed only upon the Protection Officers under Section 9 of the D.V. Act and upon the Service providers under Section 10 of the Act. The proviso to Rule 16(2) of the D.V. Rules, provides that the omission to file the DIR by the Protection Officer or the Service provider, as the case may be, therefore, does not deprive the aggrieved person from getting shelter at the shelter home. Similarly, the proviso to Rule 17(2) stipulates that medical assistance from the medical facility shall not be denied merely because the DIR has not been filed. These provisions – contemplated under the Rules imply that Parliamentary intent is not to make provision of relief under the Act subject to the filing of the DIR. The initiation of proceedings by serving a notice to the respondent can still be done, even if no DIR has yet been submitted to the Magistrate.

17. The other aspect is that the plenitude of Section 23 – which empowers the Court to make wide ranging *ex-parte* orders, and Section 25 (2) –which permits the Court to devise its own procedure, having regard to the exigencies of the case, are uniquely suited mechanisms intended by Parliament to empower the Court to take into consideration unique situations which might confront it, whenever relief is applied for by an aggrieved person, or on her behalf.

18. So far as the authorities cited by the petitioner, are concerned, the observation in *Bhupinder Singh Mehra* (supra) was made without properly analyzing the provisions of the Act and the Rules, and is as such incorrect. The said view is therefore overruled. Moreover, the facts of the case can be

distinguished as firstly, therein the report had already been submitted, but was still not considered, and secondly, in that case there was doubt whether the named respondents were in a domestic relationship with the aggrieved person therein. The *Uma Narayan* case (supra) decided by the Madras High Court does not concern the issue at hand, and is not of any assistance to the petitioner. In *Murugan* (supra), the Madurai Bench of the Madras High Court observed as follows:

“10. It is incumbent upon the trial Court to go through all the materials available before it and to come out with a considered opinion. Section 23 of the Act does not apply to the present case since the order challenged is not an interim order but it is a final order. A scheme has been formulated under Section 23 of the Act to provide interim relief to the aggrieved person. As far as Section 23 of the Act is concerned, it deals with the relief available to the aggrieved persons in other suits and legal proceedings. When the Judicial Magistrate Court is dealing with any application filed by the aggrieved persons under sections 12(1) of the Act, it shall necessarily follow and act in accordance with the Proviso viz., considering the Domestic Incident Report from the Protection Officer or the service provider and in default, any order passed by the Court would get vitiated.”

The observations were in the context of the Magistrate appointing a Protection Officer, who duly filed a DIR. Thereafter the Magistrate passed his order without considering the same. In such circumstances, the case was remitted back with the direction that all materials available be considered. The import of the Madurai Bench of the Madras High Court decision does not extend beyond the true effect of Proviso to Section 12 (1) since the Court was only considering a case where the report was received by the Magistrate, but not considered. That decision does not help the case of the petitioner. The other provisions of the Act and the Rules referred to by the petitioner also offer no support to his case.

19. To conclude we answer the question referred to the Court in the negative; a Magistrate, when Petitioned under Section 12 (1) is not obliged to call for and consider the DIR before issuing notice to the respondent. However, if the DIR

has already been submitted, that should be considered, in view of the proviso to Section 12 (1).

20. In view of the fact that the Court has taken a view which results affirming the judgment of the Additional Sessions Judge as well as the concerned Metropolitan Magistrate (who had issued notice under Section 12 without calling for a report from the Protection Officer, and none was on the record) the petition is bereft of merit and it is therefore dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

May 17, 2012

**S.P. GARG
(JUDGE)**