

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION [APL] NO.578 OF 2011

Applicant : **Nandkishor Pralhad Vyawahare,**
Aged about 40 years, Occ : Agriculturist,
R/o Tadtoda, Tah. Malegaon,
District Washim.

-- **Versus** --

Respondent : **Sau. Mangala w/o Pratap Bansar**
@ self declared Sau. Mangala
Nandkishor Vyawahare,
Aged Major, Occ : Not Known,
R/o Ward No.4, Malegaon, Tq. Malegaon,
District Washim.

Shri Amit Kinkhede h/f Shri S.V. Sirpurkar,
Advocate for the Applicant.
Shri C.A. Joshi, Advocate for the Respondent.
Shri Sumant Deopujari, Public Prosecutor for the State.
Shri Sahil Dewani, Advocate to assist the Court.

CORAM : **B.P. DHARMADHIKARI, S.B. SHUKRE**
& MRS. SWAPNA JOSHI, JJ.

RESERVED ON : **22nd FEBRUARY, 2018.**

PRONOUNCED ON : **3rd MAY, 2018.**

ORAL JUDGMENT :- (Per S.B. Shukre, J.)

Hearing of this application filed by the deceased-
applicant seeking quashing and setting aside of the proceeding
initiated by the respondent-wife under Section 12(1) of the

Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the D.V. Act" for short) to obtain a monetary relief under Section 20 of the D.V. Act before the Court of Judicial Magistrate First Class, Malegaon, District Washim has been held by us to answer the questions as framed in the reference made over to us.

02] At the initial stage of the hearing of the application, which was before the learned Single Judge (Coram : A.R. Joshi, J.) of this Court, it was brought to the notice of the learned Single Judge that there were conflicting decisions of different benches of this Court on the question of applicability of the provision of Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") to a proceeding initiated under Section 12 of the D.V. Act seeking various reliefs as provided under Sections 18 to 22 of the D.V. Act. The conflicting views taken by two different benches of this Court, that were brought to the notice of the learned Judge arose from the cases of Mangesh Sawant vs. Minal Vijay Bhosale - (2012 ALL MR (Cri.) 1113 (Coram : A.S. Oka, J.) and Narayan Thool and others vs. Mala Chandan Wani in Criminal Writ Petition No.773/2014 (Coram: S.B. Shukre, J.). The view in the case of Mangesh Sawant was that the proceeding under Section 12 of the D.V. Act being not criminal

but civil, power under Section 482 of Cr.P.C. could not be invoked for quashing of the proceeding and whereas the view taken in the case of Narayan Thool was quite opposite holding that such power of quashing of proceeding under Section 482 of Cr.P.C. was available. In view of the conflict of views, the learned Judge made a reference to the Hon'ble the Chief Justice for constituting a larger bench for resolution of the conflict of views. While making the reference, the learned Judge framed two questions, which are as follows :

- (i) Whether or not the proceedings under the Protection of Women from Domestic Violence Act, 2005 are in the nature of criminal proceedings ?
- (ii) Whether or not the High Court can exercise its powers under Section 482 of the Code of Criminal Procedure, 1973 in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005 ?

03] Accordingly, the Hon'ble the Chief Justice was pleased to direct to constitute the Division Bench presided over by one of us (*B.P. Dharmadhikari, J.*) to hear and decide the reference made by the learned Single Judge in this criminal application.

04] As the hearing of the reference before the Division Bench commenced, a new development took place. It was informed at the bar that the original applicant-Nandkishor was no more. The matter was adjourned for further consideration and the learned Counsel for the respondent confirmed the fact that the original applicant-Nandkishor was dead. Thereafter, considering the fact that the questions under reference were required to be answered appropriately, an order was passed on 18/08/2017 directing the Registry of this Court to publish a notice in the cause list, pointing out the issues referred and requesting the Advocates' willing to assist the Court to resolve the issues on the next date of hearing, which was 11/09/2017.

05] In response to the said notice, learned Additional Public Prosecutor Shri M.K. Pathan, appeared before the Court in addition to Shri Amit Kinkhede, learned Counsel for the applicant and Shri C.A Joshi, learned Counsel for the respondent. During the course of hearing, attention of the Division Bench was invited to one more decision rendered in the case of Sukumar Pawanlal Gandhi and another vs. Bhakti Sushil Gandhi and others - (2016 SCC OnLine Bom 12942) by another Division Bench of this Court (Coram: A.S. Oka and A.A. Sayed, JJ.), wherein a view was taken that the High

Court could not exercise the power under Section 482 of Cr.P.C. for quashing of an application under Section 12(1) and that such power would be available only in respect of prosecutions launched under Sections 31 and 33 of the D.V. Act. To arrive at the opinion, the Division Bench examined the scheme of the D.V. Act, its various provisions and drew strength from the judgment of the Apex Court in the case of Kunapareddy alias Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari - (2016) 1 SCC 774.

06] Having taken due note of the view taken by the coordinate bench in the case of Sukumar Gandhi, the Division Bench hearing the reference concluded that the principle of *stare decisis* required that a view holding the field need not be disturbed only because another view was possible, unless there was a prepondering necessity dictated by the demands of the justice. The Division Bench then examined some more decisions, one of them was rendered by Division Bench of the Gujarat High Court in Suo Motu vs. Ushaben Kishorbhai Mistry - (2016) ALL MR (Cri) (Jou) 293, in which a view was taken that when the provisions of Cr.P.C. were made applicable, Section 482 of Cr.P.C. power would also be available for quashing of a proceeding under Section 12(1) of the D.V. Act. The Division Bench hearing the reference also considered

the judgment of the Hon'ble Apex Court in the case of Kunapareddy (supra) and various provisions of the D.V. Act. It found that the answers to the questions under reference made to it, could not be properly given unless a definitive view was taken on the points as to whether or not the nature of proceedings, civil or quasi criminal or quasi civil, would be the factor which determined the applicability of Cr.P.C. and whether or not the clear and unambiguous language of Section 12(1) of the D.V. Act would get clouded because of the nature or character of the proceedings. The Division Bench found that the case of Sukumar Gandhi (supra) did not address these aspects and, therefore, it opined that the reference made to it was required to be made over to a larger Bench for deciding the questions as framed (supra) by the learned Single Judge of this Court.

07] Accordingly, we have heard Shri Amit Kinkhede, learned Counsel for the applicant, Shri Sumant Deopujari, the learned Public Prosecutor, Shri C.A. Joshi, learned Counsel for the respondent and Shri Sahil Dewani, the learned Advocate, who all have rendered assistance to us in answering the questions under reference.

08] Shri Amit Kinkhede, learned Counsel appearing for the applicant contends that the case of Kunapareddy (supra) clears the air of doubt around the nature of proceeding contemplated under the D.V. Act. He submits that the Hon'ble Apex Court has held that the proceeding is predominantly of civil nature, owing to the nature of rights it addresses and remedies it provides for assertion of those rights. He submits that even the procedure prescribed in the D.V. Act is neither completely criminal nor civil and a discretion has been given to the Court trying the application filed under Section 12(1) of the D.V. Act to lay down its own procedure to suit the needs of a given case. He further submits that the Hon'ble Supreme Court in S.A.L. Narayan Row and another vs. Ishwarlal Bhagwandas and another - (1966) 1 SCR 190 equivalent to (AIR 1965 SC 1818), has laid down the criteria by which to determine the nature of a proceeding. According to it, he further submits, the expression "civil proceeding" includes all proceedings in which a party asserts the existence of a civil right conferred by the civil law or statute and claims relief for breach thereof, whereas the expression "criminal proceeding" connotes a proceeding which is ordinarily the one which if carried to conclusion, may result in penal consequences such as imposition of sentences of death or imprisonment or fine and/or forfeiture of property. He further submits that by these parameters, one can say that the proceeding initiated under Section 12(1) of the D.V. Act, in order to seek various

reliefs under the Act as are available under Sections 18 to 22 of the D.V. Act, is civil in nature, though, the procedure, that has to be generally followed for taking the proceeding to its logical end, is criminal.

09] Shri Amit Kinkhede, learned Counsel for the applicant submits that whatever may be the nature of proceeding, the scheme of the D.V. Act is such that the conduct of the proceeding is generally by following a criminal procedure, as provided under the Cr.P.C. To demonstrate, he refers to various provisions of the D.V. Act and rules framed thereunder. Provisions pointed out by him are such as; Section 28 of the D.V. Act providing for applicability of the provisions of Cr.P.C. subject to the power of the Court under sub-section (2) Section 28 of Cr.P.C. to lay down it's own procedure in a given case, Sections 31 & 33 making breach of a protection order or an interim protection order and failure of the Protection Officer to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause as punishable offences, Section 32 making the offence under Section 31(1) as cognizable and non-bailable and Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 ("Rules, 2006", for short). According to him, a combined reading of these provisions of law would make it clear to us that the procedure, by which the proceeding under Section 12(1) of the D.V. Act has to be conducted, is generally criminal

and therefore, inherent power of the High Court under Section 482 of Cr.P.C. would be available to quash a proceeding under the D.V. Act.

10] Shri C.A. Joshi, learned Counsel for the respondent submits that the proceeding under Section 12(1) of the DV. Act is predominantly of civil nature, the remedies provided thereunder being of civil nature. He further submits that this fact is also made clear by the Statement of Objects and Reasons, which says that this enactment has been proposed keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under the civil law, which is intended to protect women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. He submits that offences created under the D.V. Act are restricted to only the breach of protection order issued under Section 18 and failure of the Protection Officer to perform his duty, as prescribed under Sections 31 and 33 and, therefore except for quashing of a proceeding under Sections 31 and 33 of the D.V. Act, power under Section 482 of Cr.P.C. cannot be invoked to quash other proceedings under the D.V. Act. Thus, he supports the view of the Division Bench of this Court taken in the case of Sukumar Gandhi (supra).

11] Shri Sumant Deopujari, learned Public Prosecutor submits that answer to the first question regarding the nature of proceeding under Section 12(1) of the D.V. Act, has already been given by the Hon'ble Apex Court in the case of Kunapareddy (supra) and it is that such proceeding is predominantly of civil nature. So, according to him, now there is no room left for entertaining any doubt about the nature of such a proceeding. Inviting our attention to the provision of Section 28 of the D.V. Act, he submits that this provision of law prescribes a self-contained procedure to be followed for conducting a proceeding under Section 12(1) of the D.V. Act and, therefore, there is no need to take any external aid. He submits that once it is provided under sub-section (1) of Section 28 of the D.V. Act that the provisions of Cr.P.C. are applicable to a proceeding under 12(1), no one can say that the intention of the legislature is different and that it intends to only selectively apply the provisions of Cr.P.C. to a proceeding initiated for punishing the persons found to be guilty of the offences under Sections 31 and 33 of the D.V. Act and not to the other proceeding brought in for seeking various remedies provided under Sections 18 to 22 of the D.V. Act. He submits that applicability of Cr.P.C. cannot be doubted because Section 28(1) of the D.V. Act says so. As regards the discretion of the Court to lay down it's own procedure under Section 28(2) of the D.V. Act, he submits that the power is confined to only a particular case wherein it could be invoked, if it is found by the

Magistrate that following of the procedure prescribed under the Cr.P.C. is likely to result in inconvenience, delay or injustice. He submits that this provision of law would make it clear that nature of proceeding is immaterial.

12] Shri Sahil Dewani, learned Counsel draws our attention to Section 29 of the D.V. Act and submits that remedy of appeal to the Court of Sessions against the order of the Magistrate has been provided and Section 28 also makes applicable the provisions of Cr.P.C. to a proceeding initiated under Section 12(1) of the D.V. Act and, therefore, even though the Statement of Objects and Reasons states that a civil remedy has been intended to be provided, the procedure that has to be followed is criminal in accordance with the provisions of the Cr.P.C. subject to the power of the Court to modify or lay down the own procedure in some cases.

13] These arguments indicate that there is an agreement among the arguing Counsel that the nature of proceeding is mainly civil, though they differ on the extent of applicability of the provisions of Cr.P.C. to all proceedings under the D.V. Act, with majority of them, asserting that the Cr.P.C. does apply barring exceptional cases as provided under Section 28 of the D.V. Act and Shri C.A. Joshi, a subscriber of minority view, emphasizing that Section 482 Cr.P.C.

power can be invoked only to quash a proceeding taken in respect of offences under Sections 31 and 33 of the D.V. Act and not in relation to other proceedings.

14] Now, in the light of these arguments, let us proceed to explore the probable answers to the questions framed under reference. We shall now take up the first question for consideration and resolution. For the sake of convenience, the question is reproduced again thus :

(i) Whether or not the proceedings under the Protection of Women from Domestic Violence Act, 2008 are in the nature of criminal proceedings ?

15] The D.V. Act nowhere makes any reference to the character or nature of the proceedings that are initiated under the D.V. Act. It does not define the characteristics of the proceedings that may be taken under the D.V. Act. So, delving into the object of the Act and examination of the scheme of the Act seems inevitable.

16] The Act is intended to provide a net of protection around women against violence of any kind, especially that occurring within the family and in order to achieve the object, it hands out various

reliefs that can be sought and given to the affected woman. These reliefs can be obtained by her by making an application under Section 12(1) of the D.V. Act to a Magistrate, who has been defined under Section 2(i) of the D.V. Act as the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place. Section 12(1) allows making of an application to seek these reliefs by the affected woman herself or on her behalf by the Protection Officer or any other person. Any order made by the Magistrate is appealable, in terms of Section 29, before the Court of Session and not before the Court of District Judge, within 30 days of the receipt of the order by the aggrieved person or the respondent. The expression "Court of Session" has not been defined in the D.V. Act. But, Section 28 of the Act lays down that all proceedings under the Act, subject to exceptions provided in the Section, shall be governed by the Cr.P.C. So, the expression "Court of Session" would have to be taken, with the aid of Section 28 of the D.V. Act, as one class of Criminal Court from out of several classes contemplated under Section 6 and established in terms of Section 9 of the Cr.P.C.

17] Prescribing a Judicial Magistrate of the first class as an authority competent to deal with such an application and appealability of his order before the Court of Session may be the first indicators of the fact that the proceedings are steeped in criminality. But, a deeper examination of the scheme of the D.V. Act blurs the first impression and as one goes on reading the other provisions of the D.V. Act, the impression gets even more hazier.

18] Reference to one section, Section 26 of the D.V. Act would be sufficient to illustrate the point. Section 26 reads thus :

“26. Relief in other suits and legal proceedings-

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, 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 this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

Sub-section (1) of Section 26, it is clear, lays down that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a Civil Court, a Family Court or a Criminal Court affecting the aggrieved person and the respondent, whether such proceeding is initiated before or after the commencement of the Act. Under sub-section (2), it is provided, any relief referred to in sub-section (1) could be sought for in addition to and along with any other relief which the aggrieved person may seek in such suit or legal proceeding before a Civil or a Criminal Court. So, the reliefs provided under the D.V. Act can also be sought in any civil suit or a legal proceeding before a Civil or Criminal Court, no matter who institutes it and what reliefs are originally sought therein as long as the suit or other legal proceeding affects the aggrieved person and the respondent. It is significant to note that the D.V. Act does not declare anywhere that whenever reliefs under Sections 18 to 22 are sought in other pending proceeding before a Civil Court, Family Court or a Criminal Court, such Court would be deemed to be the Court of Judicial Magistrate, First Class. Silence of the legislature on this issue is likely to create difficulty in selection of the forum for filing of an appeal against any order passed in respect of the reliefs provided under the D.V. Act by a person not satisfied with the order. The reason being that Section 29 of the D.V. Act, which creates right of appeal, mandates that such forum would be the Court of Session and it is

possible in a given case that the order granting or rejecting relief may have been passed by the judicial forum equal in rank or designation as the Court of Session. This issue, however, is not the subject matter of reference and, therefore, it need not detain us here any more. But, the fact remains that the nature of provisions made in the D.V. Act is such that it poses some difficulty in determining the character of the proceedings taken under the Act.

19] In such cases, the Hon'ble Supreme Court has paved the way for finding out the nature of a proceeding. It has held that an examination of the nature of the rights created, the reliefs provided and the kinds of final order that could be passed, would be sufficient indices of the nature of a proceeding.

20] In the case of S.A.L. Narayan Row (supra), the issue was about maintainability of an appeal before the Hon'ble Supreme Court upon due certification by the High Court and the dispute was about levying of penal interest on the income tax assessed by the competent authority under the Income Tax Act. It was the submission of the learned Counsel for the assessee that the proceeding instituted in the High Court in exercise of its jurisdiction - original or appellate - could be broadly classified as (i) proceeding-civil, (ii) proceeding-criminal, and (iii) proceeding-revenue, and where the case did not

involve a substantial question as to the interpretation of the Constitution, what would lie from an order passed in a proceeding-civil would be an appeal to the Supreme Court with certificate granted under Article 133 of the Constitution, and from a judgment, final order or sentence in a criminal proceeding what would lie to the Supreme Court would be an appeal with certificate granted under Article 134 of the Constitution, but from an order passed in a proceeding relating to revenue, the right of appeal may be exercised only with the leave of the Supreme Court. The issue was addressed by the Supreme Court from a perspective which required examination of the kind of rights conferred, the kind of remedies provided and the kind of final orders that may be passed upon conclusion of a proceeding and the answer was provided in paragraph 8 thus :

"8. Counsel relies upon the classification or proceeding made in Article 132(1) and seeks to contrast it with the phraseology used in Articles 133(1) and 134(1). He says that "other proceeding" in Article 132(1) falls within the residuary class of proceedings other than civil or criminal, and such a proceeding includes a revenue proceeding. The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may

result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of Court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. But there is no warrant for the view that from the category of civil proceedings, it was intended to exclude proceedings relating to or which seek relief against enforcement of taxation laws of the State. The primary object of a taxation statute is to collect revenue for the governance of the State or for providing specific services and such laws directly affect the civil rights of the taxpayer. If a person is called upon to pay tax which the State is not competent to levy, or which is not imposed in accordance with the law which permits imposition of the tax, or in the levy, assessment and collection of which rights of the tax-payer are infringed in a manner not warranted by the statute, a proceeding to obtain relief whether it is from the tribunal set up by the taxing statute, or from the civil court would be regarded as a civil

proceeding. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration express or implied of the right claimed and relief such as payment of debt, damages, compensation, deliver of specific property, enforcement of personal rights, determination of status etc.”

21] It would be clear now that a proceeding in which the party asserts the existence of civil rights conferred by the civil law or by statute and claims a relief for breach thereof would be a proceeding of civil nature and the proceeding which upon conclusion results in the imposition of sentences, such as death, imprisonment, fine or forfeiture of property would be a proceeding of criminal nature. This would also tell us that it is not the nature of the tribunal invested with an authority to grant relief which determines the character of a proceeding and it is the nature of the right violated and the relief provided for violation of the right is what ultimately decides the nature of a proceeding. This would call for us to look into the object and purpose of the D.V. Act, the nature of the rights conferred and the kind

of reliefs provided for in the Act.

22] Preamble to the Act indicates that the enactment is intended to provide more effective protection of rights of women guaranteed under the Constitution, who are victims of the violence occurring within the family and for matters connected therewith or incidental thereto. The relevant portions of the Statement of Objects and Reasons read thus :-

*“**Statement of Objects and Reasons** - 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 United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.*

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

3. It is, therefore, proposed to enact a law keeping

in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.”

23] The Statement of Objects and Reasons enlightens us on the legislative mind. The Parliament treats domestic violence as a human rights issue and considers that it is a serious deterrent to the development and one can see why it is so. As one would agree, family, being a smallest unit of an organized society, is a nursery for children to acquire values and necessary equipment to be the responsible members of the society and make their meaningful contribution to the development of society. It is said that no family with children as it's members attains its completeness without a woman. If there is any disturbance, mental or physical for a woman member of the family, it would have it's deleterious effect on the health of the family as a whole. A disturbed and distressed family would not be able to give its contribution to the society to grow, develop and flourish in the world community.

24] If we go through texts of different religions, we would find that at different points of time, in the history of human civilizations, there are instances when women and womanhood have been

respected, revered and sometimes even put on a high pedestal. Israelites considered Deborah as mother of Israel and she has been eulogized in a poem in Judges 5, in words, *“Till you arose, O Deborah, Arose, O mothers, in Israel !”* One of the Ten Commandments found in Exodus, Chapter 20, calls upon children to honour their father and mother in the words, *“Honour your father and your mother, that your days may be prolonged upon the land which the Lord, your God giveth you”*. In the old testament, it is said that God created man in his own image, in the image of God He created him, male and female He created them and God said to them, *“Be fruitful and increase in number; fill the earth and subdue it, rule over the fish of the sea and the birds of the air and over every living creature that moves on the ground”*. (Genesis 1:26-28). Hindu texts present diverse views on the subject, though, they generally acknowledge the feminine energy as the essence of the Universe (Devi Sukta - Rigveda), the one who creates all matter and consciousness, the external and infinite, the metaphysical and physical reality (Brahman), and the soul (Atman) of everything. Even Manusmriti, not generally considered as treating women with equality, praises women saying, *“यत्र नायस्तु पुज्यन्ते रमन्ते देवतः | यत्रतास्तु न पुज्यन्ते सर्वास्तत्रफलः क्रियाःते ||”*, or where women are revered, there Gods reside, but where they are not, all actions bear no fruits.

25] Coming to modern times, we have an array of luminaries who fought and worked for emancipation of women in India. Making a reference to all of them is not possible here. Suffice it to say, from Mahatma Jyotiba Phule through Bharat Ratna Dr. Babasaheb Ambedkar, Pandit Jawaharlal Neharu to Dr. A.P.J. Abdul Kalam, all have seen that no human society can ever make progress unless it's women are treated with dignity and honour that they deserve. At international level too, a global consensus on the need for protecting women against all kinds of violence has emerged amongst the nations, which is seen in the Vienna Accord, 1994, the Beijing Declaration and the Platform for Action (1995) and the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which is reflected in the Statement of Objects and Reasons.

26] So, no wonder that the Parliament has thought in its wisdom that the domestic violence is a human rights issue and a serious dampner for the growth and prosperity of the society. This vision of the Parliament should provide us an insight into the scheme of the D.V. Act and help us understand the nature of a proceeding initiated in it and the procedure applicable to it.

27] The Statement of Objects and Reasons, as we can see, has acknowledged that even though domestic violence is widely prevalent in Indian society and one aspect of it, albeit a smaller one, has also been dealt with as an offence punishable under Section 498-A of the Indian Penal Code, the issue has remained largely ignored by the civil law. In order to remove this deficiency in civil law and keeping in view the rights guaranteed under Articles 14, 15, 19 and 21 of the Constitution of India, the Parliament has enacted the D.V. Act to provide for a remedy under the civil law. Further examination of the scheme of the D.V. Act would show that the Act not only deals with various acts and omissions which would constitute domestic violence by laying down an elaborate definition of “domestic violence” in Section 3 of the Act, but also provides for different reliefs that can be obtained by an affected woman described and defined as “aggrieved person” in Section 2(a) and the procedure by which such reliefs can be obtained. A notable feature of the D.V. Act is that it does not say in so many words that domestic violence is abolished or prohibited or banished so as to give an indication of conferment of a corresponding right upon the aggrieved person, but it provides for a mechanism for redressal of the grievances of the aggrieved person arising from her being a victim of domestic violence. These provisions are unique and appear to be an admixture of best of both the worlds, civil and criminal. This could be seen from various provisions contained in

Chapter IV of the D.V. Act.

28] Chapter IV of the D.V. Act contains Sections from 12 to 29, lays down the kind of reliefs that can be obtained and the procedure applicable to them. Section 12 deals with an application to be made to the Magistrate for seeking various reliefs provided under the subsequent sections. Section 13 prescribes the mode of service of notice. Sections 14, 15 and 16 are about counselling, assistance of welfare expert and proceedings to be held in camera. Section 17 confers upon every woman in a domestic relationship the right to reside in a shared household. The reliefs available to an aggrieved person are enumerated in Sections 18 to 22. Under Section 18, a protection order prohibiting the respondent from committing or abetting commission of any act of domestic violence and so on, can be obtained. Under Section 19, relief in the nature of residence order can be sought. Monetary relief can be obtained under Section 20. An order for obtaining temporary custody of any child can be sought by the aggrieved woman under Section 21. Compensation order can also be obtained under Section 22. Section 23 invests a magistrate with power to grant an interim and *ex parte* order in respect of various reliefs that could be sought under the D.V. Act. Sections 24 and 25 deal with supplying the aggrieved person copies of orders free of cost, duration and alteration of orders. Section 26 makes it clear that any

relief available under the D.V. Act can also be sought in any other legal proceeding before a Civil Court, Family Court or a Criminal Court as long as such proceeding affects the aggrieved person and the respondents. Section 27 clarifies the limits of territorial jurisdiction of the Court of Judicial Magistrate, First Class or the Metropolitan Magistrate, as the case may be. Section 28 makes applicable the provisions of the Cr.P.C. to all the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 except as otherwise provided in the D. V. Act and subject to power of the Court to lay down different procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 in a particular case. Section 29 prescribes that appeal from the order made by the Magistrate shall lie to the Court of Session, within thirty days from the date of an order. सत्यमेव जयते

29] It would be clear from these provisions that what they essentially create is a plethora of civil rights breach of which results in basically providing civil remedies which are alien to criminal law. These rights and remedies are such as; right against domestic violence to be realized through a prohibitory order (Section 18), right to reside in a shared household and right from being dispossessed or disturbed in enjoying the possession of a shared household to be realized through a suitable restraining order (Section 19), right to get

monetary reliefs and compensation (Sections 20 and 22), right to seek temporary custody of the child (Section 21) and right to seek interim and *ex parte* orders in certain cases (Section 23). These rights and reliefs are not found in classical criminal jurisprudence, which is about punishing the rule breaker by sentencing him to death or imprisonment or forfeiture of property and in some cases making him pay the compensation to the victim of crime. A prohibitory order or a restraining order or an injunction, is never a part of the sentences that the criminal law would impose upon the offender. Similarly, the notice that is issued first on an application under Section 12(1) of the D.V. Act is civil in nature as can be seen from the provision of Section 13 and neither any cognizance is taken as under Section 190 of Cr.P.C. nor any process is issued as under Section 204 of Cr.P.C. in respect of such an application. सत्यमेव जयते

30] Under Section 12(1) of the Act, an application may be made to the Magistrate, who could be a Judicial Magistrate of the first class or as the case may be, the Metropolitan Magistrate in Mumbai metropolitan region, as defined under Section 2(i), for seeking various reliefs as provided under Sections 18, 19, 20, 21, and 22. These reliefs, we cannot ignore, are for redressing breach of civil rights and have a civil flavour, not known to criminal law. Besides, it is not the Judicial Magistrate First Class or the Metropolitan Magistrate, as the

case may be, who alone is competent to decide an application under Section 12(1). Even a Civil Court or a Family Court or any other Criminal Court conducting any legal proceeding which has the power under Section 26 to do so. This would mean, just to give example, it is possible to obtain these reliefs even in a petition filed for divorce between the same parties under the provisions of Hindu Marriage Act, 1955. This should leave no doubt in our mind that the rights created and remedies provided for breaches thereof in the D. V. Act have been viewed by the Parliament as basically of civil nature and, therefore, by specific provisions, authority has been conferred even upon the civil courts, in addition to criminal courts, under Section 26 of the Act, to deal with an application filed for seeking various remedies provided under Sections 18 to 22 of the D.V. Act.

सत्यमेव जयते

31] The provision made for designating the Court of Judicial Magistrate or the Metropolitan Magistrate as the Court where application under Section 12 (1) of the D. V. Act can be made, appears to have been done only with a view to provide teeth to the powers of the Court. After all, a court of Judicial Magistrate, First Class with a jurisdictional sway over the police stations, would be in a better position to lend help to the aggrieved person in executing the orders passed by it. But, in order to give more option to and widen the choice of the forum of the aggrieved person, it is laid down in Section 26 that

the reliefs under the D. V. Act could also be sought in other proceedings before other courts - civil or criminal, affecting the aggrieved person and the respondent.

32] Making of criminal and civil courts simultaneously as appropriate fora to obtain the reliefs provided under the D.V. Act is a certain pointer to the fact that the character of the proceeding is not dependent upon the nature of the tribunal which is invested with the authority to grant relief, but upon the nature of the right violated and the kind of relief that may be had. We have already seen that rights created and remedies provided for in the D.V. Act are basically of civil nature.

33] At the same time, we can also not ignore some procedural and penal provisions in the D.V. Act and Rules, 2006 to which we will shortly refer. These provisions also give rise to a question - Would these provisions determine the character of the proceedings or make up together an effective tool for the aggrieved person to get the fruits of the remedies provided under the D.V. Act ? This question would also have to be answered by us while we give our consideration to these procedural and penal provisions.

34] Section 28 of the D.V. Act, a procedural provision, lays down that except for the savings made in the Act and subject to power of the Court to laydown it's own procedure, all proceedings under the Act are governed by the provisions of the Cr.P.C. A separate part in Chapter V contains some penal provisions. Sections 31 and 33 create two distinct offences. Section 31 prescribes that any breach of protection order or interim protection order by the respondent is an offence under the D.V. Act and is punishable with imprisonment of either description for a term which may extend to one year or fine up to Rs. 25000/- or with both. This offence has been made cognizable and bailable under Section 32. Section 33 prescribes one more offence and it provides that any failure or refusal to discharge duty as directed by the Magistrate in the protection order without any sufficient cause on the part of the protection officer would be an offence punishable with imprisonment of either description for a term which may extend to one year or with fine of amount up to Rs. 20,000/- or with both. However, cognizance of the offence under Section 33 can be taken only upon a complaint filed with the previous sanction of the State Government or its duly authorized officer. Rule 6(5) of the Rules, 2006 framed by the Central Government in exercise of it's rule making power under Section 37 of the D.V. Act lays down that applications under Section 12 shall be dealt with and the orders enforced in the same manner as prescribed under Section 125 of the Cr.P.C.

35] Applicability of provisions of the Cr.P.C. and providing of criminal consequences for breaches are only indicative of the intention of the the Parliament to make various civil remedies available under the D.V. Act more effective and meaningful. Parliament thought in it's wisdom that mere giving of remedies of civil nature or an order of injunction or prohibition for that matter, may not be sufficient to enable the aggrieved person realise the benefits of civil remedies. It were the speed and fear of the criminal procedure generally and the penal consequences visiting the respondent for some of his indiscretions would what really make a disobedient respondent behave. So, as an effective tool in the hands of the Court and the aggrieved person, the procedure to be followed generally is criminal and breach of protection order and directions issued in such order constitute two separate and distinct offences. Obviously, they have no bearing upon and do not determine the basic character of the proceeding initiated under Section 12 (1) of the Act which is by and large of the civil nature. Making of breach of the protection order or failure to perform by the protection officer duty in terms of the direction given by the Magistrate in the protection order are only instances of efficacy and inherent punch of the remedy provided under Section 18 of the Act which is at its core civil in nature. These provisions at best, are the effective instruments by which to make available speedily the remedies under the Act to the aggrieved person

and enable her to enjoy the fruits of the remedies.

36] This is also, as we find, in keeping with the vision of Parliament which sees domestic violence as a human rights issue and a serious impediment to development. Unless a wide array of remedies is provided, and it is possible only in civil law and not in criminal law and the remedies are also made speedy and effective, which is possible by infusing them with criminality, the issues of human rights and development can not be addressed properly. This is what seems to be the overall scheme and theme of the D.V. Act.

37] Learned Counsel Shri Kinkhede, relying upon the case of Smt Kuldip Kaur vs. Surinder Singh & another - (1989) 1 SCC 405, submits that offences under Sections 31 and 33 could only be viewed as those prescribed by the Legislature for enforcing the protection order. With due respect, we would say that it is not possible to agree with the submission of learned counsel for the applicant. In Smt Kuldip Kaur, the Hon'ble Apex Court interpreting the provisions contained in Chapter XIX of the Code of Criminal Procedure comprising Sections 125 to 128 which deal with three questions - (i) adjudication as regards the liability to pay the monthly allowance to the neglected wife and children etc., (ii) the execution of order for recovery of monthly allowance and (iii) the mode of an execution of

order for monthly allowance, held that one of the modes for enforcing the order of maintenance allowance is to impose sentence of jail on the person liable to pay the monthly allowance. However, it has clarified that sentencing a person to jail is a “mode of enforcement” and it is not a “mode of satisfaction” of the liability. The provisions of Sections 31 and 33 create distinct offences resulting from commission of the acts or omissions described therein for which punishments are prescribed. Therefore, the offences could not be viewed as mere “modes of enforcement”, rather, they would be adding the necessary power and punch to the remedy provided under Section 18 of the D.V. Act by leaving an impression in the mind of the disobedient or deviant that his disobedience or deviance may land him in jail and/or his being made to suffer consequence of fine.

सत्यमेव जयते

38] In Kunapareddy (supra), the Hon'ble Apex Court, after considering the Statement of Objects and Reasons of the D. V. Act, the nature of rights dealt with under the Act, the nature of remedies provided under the Act and the procedure prescribed for dealing with the applications under Section 12 (1) of the D. V. Act , held that the proceedings are predominantly of civil nature. The observations of the Hon'ble Apex Court appearing in paragraph 11 are relevant and they are reproduced as under :-

"11. We have already mentioned the prayers which were made by Respondent 1 in the original petition and Prayer A thereof relates to Section 9. However, in Prayer B, Respondent 1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, Prayer A is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by Respondent 1. Therefore, the petition is essentially under Sections 18 and 20 of DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature." सत्यमेव जयते

39] The Division Bench of this Court in Sukumar Gandhi (*supra*) following the view taken by the Hon'ble Supreme Court in Kunapareddy held that the proceedings under Section 12 (1) of the D.V. Act are predominantly of civil nature and so it opined that the power under Section 482 of Cr.P.C. would not be available for quashing of an application under sub-section (1) of Section 12 seeking reliefs under Sections 17 to 22 of the Act. However, it gave a clarification that because Sections 31 and 33 create distinct offences, power under

Section 482 Cr. P. C. could always be exercised for quashing of the prosecutions under Sections 31 and 33 of the Act.

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

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

The first question is answered accordingly.

41] Now, we take up for answer the second question which is reproduced again, for convenience, thus : :

(ii) Whether or not the High Court can exercise its power under Section 482 of the Code of Criminal Procedure, 1973

in respect of the proceedings under the Protection of Women from Domestic Violence Act, 2005 ?

42] We have seen that the nature of proceeding initiated under the D.V. Act is predominantly of civil nature. But, can we say, only because the proceedings have a dominant civil flavour, the applicability of the provisions of Cr.P.C. to the proceedings under the D.V. Act, is excluded or to be precise inherent power of the High Court under Section 482 of Cr.P.C. is not available to deal appropriately with these proceedings, in spite of express application of the provisions of Cr.P.C. by the Parliament as provided under Section 28 of the D.V. Act ? In other words - Would the nature of the proceedings decide the fate of Section 28 or the intention of the Parliament as expressed in Section 28 of the D.V. Act would ? To find out an answer, as a first step, we must look into the express language of the provision of Section 28 of the D.V. Act and then if required, we may look for external aids, if any, as dictated to us by the settled principles of statutory interpretation.

43] The first and foremost rule of construction is the rule of literal construction. According to this rule, if the language of the provision is clear and unambiguous and expresses legislative intent in no uncertain terms, that intent must be given effect to and in such a

case there is no need to resort to the other rules of construction of statute or take assistance from any other external aid of construction. The rule is succinctly expounded by the Hon'ble Apex Court in the case of M/s. Hiralal Ratan Lal Vs. The Sales Tax Officer, and another - AIR 1973 SC 1034. The relevant observations of the Apex Court appearing in paragraph 21 are as under :

“21 In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intent is not clear.....”

44] The literal rule of construction is reiterated by the Hon'ble Supreme Court in the case of Lt. Col. Prithi Pal Singh Bedi vs. Union of India and others - (1982) 3 SCC 140. In paragraph 8, it has observed thus :

“8. The dominant purpose in construing a statute is to ascertain the intention of the Parliament. One of the well recognised canons of construction is that the legislature speaks its mind by use of correct expression and unless there is any ambiguity in the language of the provision the

Court should adopt literal construction if it does not lead to an absurdity. The first question to be posed is whether there is any ambiguity in the language used in Rule 40. If there is none, it would mean the language used, speaks the mind of Parliament and there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to an absurdity, external aids to construction can be resorted to. To ascertain the literal meaning it is equally necessary first to ascertain the juxtaposition in which the rule is placed, the purpose for which it is enacted and the object which it is required to subserve and the authority by which the rule is framed. This necessitates examination of the broad features of the Act.”

45] It would be clear now that what is to be seen first in the provision of law under consideration is as to whether or not there is any ambiguity in the language used. If there is none, the presumption would be that Parliament speaks its mind through the language used and there is no need to look somewhere else to discover the intention or meaning. The literal rule of construction is about what the law says and means, as understood from the plain language of the law and not what the law should and ought to be, as understood by taking recourse to the external aids of construction. It is also well settled that literal construction should not be excluded only because the consequences lead to some undesirable results or penalty. In the case

of Tata Consultancy Services vs. State of A.P. - (2005) 1 SCC 308, the Hon'ble Supreme Court has cautioned the Courts by observing that the Court should not be overzealous in searching for ambiguities or obscurities in the words which are plain.

46] Let us now examine the provision of Section 28 of the D.V. Act, in the light of these well settled rules of statutory construction. It reads thus :

“28. Procedure - (1) *Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).*

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

47] A plain reading of the section impels us to say and say only that the language used therein is plain and unambiguous and that it does not leave any scope to doubt that what it connotes expressly is what the Parliament means to convey. It would then follow that there is no need to resort to any external aids or other rules of construction to interpret Section 28 of the D.V. Act. This can

be seen from a bare reading of Section 28.

48] Sub-section (1) of Section 28 clearly lays down that all proceedings taken under Sections from 12 to 23 and in respect of offence under Section 31 shall be governed by the provisions of Cr.P.C. except as otherwise provided in the D.V. Act. It means that only such of the provisions of the Act as would lay down a particular procedure to be followed by the Magistrate, which would have prevalence over the provisions of the Cr.P.C. to the extent of their inconsistency with the specific provisions of the D.V. Act. To give examples, these specific provisions are seen embedded in Section 12(3) of the D.V. Act requiring filing of the application in the prescribed form; Rules 6(1) and 6(5) of the Rules, 2006, prescribing form of application under Section 12 and following of procedure governing proceedings filed under Section 125 Cr.P.C., while dealing with an application under Section 12 and enforcing the orders passed on it; Section 12(4) mandating fixing of the first date of hearing ordinarily not beyond three days from the date of receipt of the application; Section 13(1) directing the service of notice through the Protection Officer and so on and so forth. Barring such specific procedural requirements, however, the provisions of the Cr.P.C. have been made applicable under Section 28(1) of the D.V. Act. This applicability, it is seen from the plain and clear language of this provision, is general and omnibus. It

unequivocally speaks of the intention of the Parliament to generally apply provisions of the Cr.P.C. to the proceedings under or arising from the D.V. Act, subject to exceptions specifically indicated in Section 28. It appears that such criminal procedure is generally applied with the avowed purpose of giving teeth to the remedies provided under the civil law.

49] We have seen earlier that Parliament's intention was to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring especially within the family and for matters connected therewith or incidental thereto. The Parliament, in order to realize this object, has provided a remedy under the civil law on the one hand and has applied generally the criminal procedure subject to few exceptions on the other. These exceptions are created only to ensure that the disadvantages of some of the provisions of Cr.P.C. especially those applicable at the initial stage of issuance of notice and also at the time of recording of evidence, do not bog down the proceeding leading to delay in its conclusion. In any case, these provisions stand only as exceptions to the generality of the provision of sub-section (1) of Section 28 of the D.V. Act and we may say, if we could say, proverbially exceptions prove the general rule.

50] Coming to the second part of Section 28 of the D.V. Act, which is in sub-section (2), our view is no different than what we hold for the other exceptions we have expressed our mind on. This provision also stands as an exception to the generality of the applicability of the provisions of Cr.P.C. It only enables the Court to lay down its own procedure, notwithstanding the general applicability of the provisions of Cr.P.C. to all the proceedings under the D.V. Act, as laid down in Section 28(1). As it is only an enabling provision of law, it may or may not be put to use by the Court in a given case and everything will depend upon fact situation of each case. An enabling section, empowering the Court to make an exception to the generality of the previous section, does not by itself divest the previous section of its general character and affects the generality of the previous section only when it is actually put to use in a particular case. Whenever, such power conferred by the enabling section is used, it comes to an end the moment the proceeding is concluded. This power under Section 28(2) exists for speedy and effective disposal of an application under Section 12 or under sub-section (2) of Section 23 and as soon as the purpose is achieved, the power extinguishes itself. In other words, the power under sub-section (2) of Section 28 begins, if at all it begins, upon the decision taken by the Court on the commencement of or during the course of the proceeding under Section 12 or Section 23(2) and comes to an end the moment the

proceeding is disposed of in accordance with law. Therefore, such power of the Court cannot be construed in a way as to confer more power than intended by the Parliament so as to exclude the applicability of the provisions of Cr.P.C., forever and for all times to come after the Court has disposed of such a proceeding. If this enabling section is to be understood, even when it is not put to use, as excluding criminal remedies and measures made available under the D.V. Act to a party aggrieved by the decision of the Court, as for example, remedy of criminal revision under Section 397 or invocation of High Courts' inherent power under Section 482 of Cr.P.C, we would be doing violence to the language of entire provision of Section 28 of the D.V. Act and putting into the mouth of the Parliament something not intended by it, which is not permissible under the settled rules of construction.

51] The purpose of the power given to the Court under Section 28(2) of the D.V. Act is only to provide a powerful tool in the hands of the Court to provide effective and speedy remedy to the aggrieved person. Such power given to the Court is likely to come in handy for the Court dealing with Section 12 D.V. Act application in a given case and especially the Courts contemplated under Section 26 of the D.V. Act before whom similar applications are

filed. Section 36 of the D.V. Act also lays down that the provisions of the Act are in addition to and not in derogation to the provisions of any other law, for the time being in force. The combined reading of all these provisions of law would only strengthen the conclusion so reached by us.

52] If the concept of limited applicability of the provisions of the Cr.P.C., as propounded by Shri C.A. Joshi, learned Counsel for the respondent is accepted, in our considered view, it would defeat the very object of the Act which is to provide effective protection to women against the incidence of domestic violence. If the Parliament, intended to provide for a remedy under the civil law, it also intended to make the remedy effective and meaningful by laying down for general applicability of the criminal procedure, subject to the exceptions created in the Act. It has envisaged that the job of providing effective remedy to the aggrieved person is best performed by the Courts only when the procedure adopted to do it is informed by the best of both the worlds. That is the reason why the Parliament has provided for general applicability of the criminal procedure and has also simultaneously given freedom to the Court to devise it's own procedure in a particular case so as to suit the exigencies of that case. We may add here that language used in Section 28(2) is significant

and needs to be taken into account. The freedom to lay down “own procedure” is confined to only a particular proceeding either under Section 12 or Section 23(2) of the D.V. Act pending before the Court, which is clearly seen from the use of the words “for disposal of an application under Section 12, sub-section (2) of Section 23” after the words “nothing in sub-section (1) shall prevent the Court from laying down its own procedure”.

53] This would mean that generally the provisions of Cr.P.C. would be applicable, to all proceedings taken under Sections 12 to 23 and also in respect of the offence under Section 31 of the D.V. Act, subject to the exceptions provided for in the Act including the one under sub-section (2) of Section 28. It would then follow that it is not the nature of the proceeding that would be determinative of the general applicability of Cr.P.C. to the proceedings referred to in Section 28(1) of the D.V. Act, but the intention of the Parliament as expressed by plain and clear language of the Section, which would have its last word. We have already held that Section 28 of the D.V. Act announces clearly and without any ambiguity the intention of the Parliament to apply the criminal procedure generally subject to the exceptions given under the Act. So, the inherent power of the High Court under Section 482 of Cr.P.C., subject to the self-imposed restrictions including the factor of availability of equally efficacious

alternate remedy under Section 29 of the D.V. Act, would be available for redressal of the grievances of the party arising from the orders passed in proceedings under Sections 12, 18, 19, 20 21, 22 and 23 and also in respect of the offence under Section 31 of the D.V. Act.

54] We are also fortified in our view by the opinion expressed by the Division Bench of the Gujarat High Court in the case of Ushaben (*supra*), wherein it is observed that a proposition that because the proceedings are of civil nature, the Cr.P.C. may not apply, is too general a proposition to be supported in a case where the Parliament, by express provision, has applied the provisions of Cr.P.C. to the proceedings under the Act (Paragraph 16). It also held that the remedy under Section 482 of Cr.P.C. would be available to an aggrieved person, of course, subject to self-imposed restrictions on the power of the High Court in this regard. Relevant observations of the Division Bench appearing in paragraph 19 of the judgment are reproduced as under :

“19. *In view of the discussion and the observations made by us herein above, once the provision of the Code has been made applicable, it cannot be said that remedy under Section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under*

Section 29 before the court of Session or revision under Section 397, the Court may decline entertainment of the petition under Section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under Section 482 of the Code.”

55] At this juncture, we would like to go back to the observations of the Hon'ble Apex Court made in paragraph 11 of its judgment in Kunapareddy (supra) wherein the Hon'ble Supreme Court finding that the petition in that case was essentially under Sections 18 and 20 of the D.V. Act held that though it could not be disputed that these proceedings are predominantly of civil nature, the proceedings were to be governed by Cr.P.C. as provided under Section 28 of the D.V. Act. These observations would also make it clear to us that at least a proceeding initiated for obtaining protection order under Section 18 and monetary relief under Section 20 would be governed by the provisions of Cr.P.C. in terms of Section 28 of the D.V. Act, in spite of the fact that such proceeding is almost like a civil proceeding. If these observations apply to a proceeding taken for obtaining reliefs under Sections 18 and 20 of the D.V. Act, there is no warrant for us to say that the observations would not be applicable to other proceedings, like those under Sections 19, 21 and 22 of the D.V. Act. In our humble opinion, these observations would also have their applicability to the other proceedings discussed just now.

56] In the case of Sukumar Gandhi (supra), the Division Bench of this Court, however, held that because the proceedings under Section 12(1) initiated to obtain various reliefs under the Act, mainly being of civil nature, no resort to Section 482 of Cr.P.C. could be taken for the purpose of seeking their quashment. It was of the view that if such an inference is made, it would defeat the very object of the D.V. Act of providing for a speedy and effective remedy for enforcing an amalgamation of civil rights. Accordingly, it held that barring the prosecutions initiated for trying of the offences prescribed under the Act, inherent power of the High Court under Section 482 of Cr.P.C. could not be invoked for quashing of the proceedings. In view of the discussion made and the conclusions drawn in the earlier paragraphs, it is not possible for us to agree with the view so taken by the Division Bench of this Court and we declare it to be an incorrect view. If we accept the opinion of the Division Bench, the result, in our view, would be quite opposite to what has been thought of by it. That apart, making Section 482 of Cr.P.C. as not applicable may also amount to doing harm to plain and clear language of Section 28 of the D.V. Act, which expresses unequivocally and clearly the intention of the Parliament, thereby excluding the possibility of resorting to external aids and other rules of construction.

57] While there is no difference of opinion about what the

intention of the Parliament is, our disagreement is with the view that this very intention gets defeated by applying the provision of Section 482 to the proceedings under Section 12(1) of the D.V. Act and it is achieved by removing its applicability. The issue can be examined from a different angle as well.

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

Section 12 of the D.V. Act. If this power is removed from Section 28 of the D.V. Act, the affected woman may as well or equally get adversely hit, and this is how, the very object of the D.V. Act may get defeated.

59] Now, one incidental question would arise as to from what stage the provisions of the Cr.P.C. would become applicable and in our view, the answer could be found out from the provisions of Sections 12 and 13 of the D.V. Act. A combined reading of these provisions shows that the commencement of the proceedings would take place the moment, the Magistrate applies his mind to the contents of the application and passes any judicial order including that of issuance of notice. Once, the proceeding commences, the procedure under Section 28 of the D.V. Act, subject to the exceptions provided in the Act and the rules framed thereunder, would apply. In other words, save as otherwise provided in the D.V. Act and the rules framed thereunder and subject to the provisions of sub-section (2) of Section 28, the provisions of the Cr.P.C. shall govern the proceedings under Sections 12 to 23 and also those relating to an offence under Section 31 of the D.V. Act on their commencement.

60] In view of above, we express our agreement with the view propounded through the majoritarian argument advanced by Shri Sumant Deopujari, learned Public Prosecutor, Shri Kinkhede and Shri

Dewani, learned Counsel and reject the minority view put forward by Shri C.A. Joshi, learned Counsel for the respondent and answer the second question as in the affirmative.

61] We record our appreciation for the assistance rendered to us by Shri Amit Kinkhede, learned Counsel for the applicant, Shri Sumant Deopujari, learned Public Prosecutor for the State, Shri C.A. Joshi, learned Counsel for the respondent and Shri Sahil Dewani, learned Counsel. The reference is returned accordingly.

(Mrs. Swapna Joshi, J.)

(S.B. Shukre, J.)

(B.P. Dharmadhikari, J.)

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