

THE HON'BLE SRI JUSTICE K.C.BHANU

CRIMINAL PETITION Nos. 346 of 2009 and 7978 of 2009

COMMON ORDER:

1. The Union Parliament has plenary power of legislation within the field of legislation committed to it, and subject to certain constitutional restrictions, it can legislate an Act to operate prospectively as well as retrospectively.

It is, however, a cardinal principle of construction that every statute is *prima facie* prospective, unless it is expressly or by necessary implication, made to have retrospective operation.

2. The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005) (for short, hereinafter referred to as 'the Domestic Violence Act, 2005') was enacted 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 the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. The World Conference of Human Rights held in Vienna in 1993 and the declaration on elimination of violence against women in the same year, concluded that civil society and the Governments have acknowledged that violence against women is a public health and human rights concern. Therefore, to provide for more effective protection of rights of women, who are victims of violence of any kind occurring within the family, guaranteed under the Constitution, and for the matters concerned thereto or incidental thereto, the Domestic Violence Act, 2005 has been passed. In exercise of powers conferred by sub-section (3) to Section 1 of the Domestic Violence Act, 2005, the Central Government appointed 26th day of October, 2006 as the date on which the provisions of the said Act came into force. Every modern legislation is

initiated with some goals and objectives and speaking broadly has some beneficial purpose and reason. Whether the legislation made by the Parliament is 'prospective' or 'retrospective' in operation, is the question to be decided in these two Criminal Petitions.

3. For sake of convenience, the parties are hereinafter referred to as they are arrayed in the respective D.V.Cs.

4. Criminal Petition No.346 of 2009 is filed to quash all further proceedings in D.V.C. No.163 of 2008 on the file of the Principal Judicial Magistrate of First Class, Mancheri, whereas, Criminal Petition No.7978 of 2009 is filed to quash the proceedings in D.V.C. No.10 of 2009 on the file of the I Additional Munsif Magistrate, Tenali, Guntur district.

5. Shorn of unnecessary details, the brief facts that are necessary for disposal of Criminal Petition No.346 of 2009 may be stated as follows:

Petitioner no.1 married the first respondent on 29.12.2003, which was registered at Nagpur, and again the marriage ceremony was performed on 28.1.2004 at Hyderabad, and thereafter she was taken to Australia by the respondent no.1 on 20.2.2004 and they lived together in Australia for about two months and thereafter she returned to India. Once again, she went back to Australia in September, 2004 and stayed with the respondent no.1 till May, 2005 and later she came back to India along with her husband by which time she was pregnant. Again, on 22.6.2005, the couple went to Australia and a baby was born to the petitioner no.1 on 29.06.2005. The allegation against the respondents is that from the beginning of the marriage life, the petitioner no.1 was ill-treated and insulted by the respondents, demanding to bring more money from her parents and in Australia also, both the respondents gave physical and mental torture to her and therefore the petitioner no.1 and her child left the

house and approached Australian police. Thereafter, the petitioners filed a petition on 16.12.2008 before the Judicial Magistrate of First Class, Mancherial under Section 12 of the Domestic Violence Act, 2005 to grant certain reliefs as mentioned therein, which was taken on file as D.V.C. NO.163 of 2008.

6. Similarly, the brief facts that are necessary for disposal of Criminal Petition No.7978 of 2009 may be stated as follows:

Petitioner no.1 is wife of respondent no.1; respondents 2 and 3 are parents, and respondents 4 and 5 are elder brothers, of respondent no.1; respondent no.6 is the wife, and respondent no.7 is the sister, of respondent no.1; and respondent no.8 is husband of respondent no.7. It is alleged that, marriage of petitioner no.1 with the respondent no.1 took place at Gattavari Kalyana Mandapam, Kanyaka Parameswari Devasthanam, Tenali according to hindu rites and customs. The petitioner no.1 married the respondent no.1 without taking any dowry and cash. They lived happily for a short period and thereafter the respondent no.1, with the instigation of respondents 2 to 8, used to abuse the petitioner no.1 in vulgar language and subjecting her to cruelty demanding to bring additional dowry. Further, the respondent no.1 was addicted to vices and used to come to house late night, and all the respondents did not provide food to petitioners. All the respondents hatched up a plan and attempted to kill her by releasing gas, and respondent no.1, in a drunken state, tried to kill her by pressing her neck. The respondents have not heeded the advice given by elders. Even after a family counseling, the respondents did not change their attitude. Hence, the petitioners filed the complaint under Section 12 of the Domestic Violence Act, 2005, and the same was taken on file as D.V.C. No.10 of 2009.

7. Sri K. Sadasiva Reddy, learned counsel appearing

for the petitioners in Criminal Petition No.346 of 2009 contended that, the Domestic Violence Act, 2005 came into force with effect from 26.10.2006 and all the allegations with regard to domestic violence alleged in the complaint, were allegedly occurred prior to the Act came into force; that, the language used in the Act would clearly establish that it would apply prospectively and therefore continuation of the proceedings against the petitioners is nothing but abuse of process of court.

8. The learned counsel appearing for the petitioners in Criminal Petition No.346 of 2009 placed strong reliance on a decision in *K.Ramaraju v. K.Lakshmi Pratima & another*,^[1] wherein it is held thus:

“.. The same needs no expression of opinion herein, as the first respondent claims herein to be prohibited from having shelter in the shared household before and after coming into force of the Act and even after filing of the petition. She also claims to be deprived of any economic resources to which she is entitled under law or custom payable even otherwise under the order of the Court by way of liability of the husband to maintain her both before and after the Act up-to-date. Such deprivation and prohibition fall within the meaning of clauses (a) and (c) respectively of economic abuse as defined in Explanation-I Section 3(iv) of the Act. Section 3 defining domestic violence for the purposes of this Act includes any act or omission or commission or conduct of the respondent as constituting domestic violence in case of any harm or injury to the aggrieved person including economic abuse. While not going into the truth or otherwise of the allegations made by the first respondent at different stages, it has to be noted that *ex-facie* her allegations constituted allegations of economic abuse amounting to domestic violence committed by the petitioner and his son before and after commencement of the Act also and continuing uptodate. ..”

In the above decision, no finding has been given by the learned single Judge of this Court as to whether the Domestic Violence Act, 2005 is retrospective or prospective in operation.

9. Smt. M.S.Tirumala Rani, the learned counsel appearing for the petitioners in Criminal Petition No.7978 of 2009 contended that, the acts of domestic violence allegedly took place long prior to the Domestic Violence Act, 2005 came into force and hence she prays to quash the complaint as it is nothing but abuse of process of Court.

10. The learned counsel relied on the following decisions in support of her contention.

(a) In *Shri Banwari Dass v. Shri Sumer Chand & others*^[2], wherein it is held thus: (para 15)

“In the instant case also, if the phrase ‘found to have been guilty’ in Section 9(1) (d) is construed in the context of clause (a) of Section 17(1), then on the analogy of *Re Storie* (supra), it will mean ‘found to have been guilty *at the time of election, and immediately preceding the election*’.”

Because the above interpretation fits in better, in the general scheme of the Corporation Act, the Apex Court interpreted the words ‘found to have been guilty’.

(b) In *Dena Bank v. Bhikhabhai Prabhudas Parekh & co. & others*^[3] wherein it is held thus:

“...The ordinary rule is that a legislative enactment comes into operation only on its enactment. Retrospectivity is not to be inferred unless expressed or necessarily implied in the legislation, specially those dealing with substantive rights and obligations. It is a misnomer to say that Sub-section (2A) of Section 15 of the Karnataka Sales Tax Act is being given retrospective operation. Determining the obligation of the partners to pay the tax assessed against the firm by making

them personally liable is not the same thing as giving the amendment a retrospective operation. In Principles of Statutory Interpretation (by Justice G.P. Singh, Seventh Edition, 1999, at page 369) it is stated:

The rule against retrospective construction is not applicable to a statute merely "because a part of the requisites for its action is drawn from a time antecedent to its passing". If that were not so, every statute will be presumed to apply only to persons born and things which come into existence after its operation and the rule may well result in virtual nullification of most of the statutes. An amending Act is, therefore, not retrospective merely because it applies also to those to whom pre-amended Act was applicable if the amended Act has operation from the date of its amendment and not from an anterior date."

(c) In *J.Mitra & Company Private Limited v. Assistant Controller of Patents & Designs and Others*,^[4] wherein it is held thus: (para 27)

"An act cannot be said to commence or to be in force unless it is brought into operation by legislative enactment or by the exercise of authority by a delegate empowered to bring it into operation."

11. On the other hand, Smt. S.Vani, learned counsel appearing for 2nd respondent in Criminal Petition No.346 of 2009 contended that, the Domestic Violence Act, 2005 is a remedial statute; that, no new right is created in favour of women, but only speedy and comprehensive remedies are provided under the Act and therefore it is retrospective in operation.

12. The learned counsel relied on the following decisions in support of her contention.

a) In *Pratap Singh v. State of Jharkhand & another*,^[5] wherein it is held thus:

"The legislative intent underlying Sections 3 and 26

read with the preamble, aims and objects of the Act is clearly discernible. A conjoint reading of the Sections, preamble, aims and objects of the Act leaves no matter of doubt that the legislature intended to provide protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication thereof. ...”

b) In *S.R.Batra & another v. Taruna Batra (Smt.)*^[6], wherein it is held thus: (paras 27 & 30).

“It is well settled that any interpretation which leads to absurdity shall not be accepted.

...

No doubt, the definition of ‘shared household’ in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society.”

It is also observed by the Apex Court that the definition of shared house hold is not very happily worded.

c) In *B.P. Achala Anand v. S.Appi Reddy*,^[7] wherein it is held thus: (para 21)

“This indicates that the right of residence is a part of the right to maintenance and in which case in the absence of an order by the matrimonial court in the proceedings for divorce, she would not be able to set up a claim in respect of the house even as against her husband, leave alone the landlord of her husband.”

d) In *the Secretary, Regional Transport Authority, Bangalore & anor. V. D.P. Sharma & another*^[8], wherein it is held thus:

“.. In that case, the words ‘where a date has been proved under the principle Act,’ came to be construed and it was observed, ‘But this form of words is often used to refer, not to a

past time which preceded the enactment, but to a time which is made past by anticipation a time which will have become a past time only when the event occurs on which the statute is to operate.” In our opinion, whether the expression ‘has been’ occurring in a provision of a statute denotes transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute.”

13. It is not in dispute that there is no express provision under the Domestic Violence Act, 2005 that it applies retrospectively. Unless there are words in the statute sufficient to show the intention of the legislature or by necessary implication made to have retrospective operation, it is deemed to be prospective only.

Retrospective legislation is never presumed and therefore a law will only be applied to cases occurring after its date of coming into force, unless it appears from the statute itself that it is intended to have retrospective effect. Similarly, it is also established that one of the cardinal principles of interpretation is that when language of a particular provision is plain and unambiguous, then the same should be read as such without importing foreign words to it. So also, the cardinal rule of construction of a statute is that it should be construed according to the intention expressed in statute itself. Construction of a Section is to be made of all parts together. Different parts of the same Section must be read together. With reference to the rule of construction, the Latin maxim ‘*verbis standum ubi nulla ambiguitas*’ which means ‘one must abide by the words there is no ambiguity’ is relevant. This maxim expresses the rule of construction where the words of statute are ambiguous, it becomes necessary in order to ascertain their meaning and intention to consider the circumstances in which the statute originated, the object of it had in view, the evil it was intended to correct, or the right it had intended to

confer and in the light thus afforded an interpretation or construction is put upon the ambiguous words or phrases.

But, where there is no ambiguity and the meaning of the words used is plain and distinct, that meaning must be given to them. Further, construction is not permitted where the expression is clear.

14. The statement of objects and reasons should not be used for interpreting the Act, but, it is permissible to refer them to know the historical background and mischief intended to cure. On this aspect, it is pertinent to refer to a decision in *State of West Bengal v. Union of India*^[9], wherein it is held thus:

“It is however well settled that the Statement of Objects and Reasons accompanying a bill, when introduced in Parliament cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments’ rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.”

15. The object of interpreting a statute is to ascertain the intention of the legislation enacting it. In *Siva Shakti Co-op. Housing Society, Nagpur v. Swaraj Developers & others*^[10], it is held thus: (para 19)

“It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and

unambiguous. A statute is an edict of the Legislature. The Language employed in a statute is the determinative factor of legislative intent.

Words and phrases are symbols that stipulate mental references to reference. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India v. Price Waterhouse and Anr.*: (1997)6SCC312) The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner* , Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction take up deficiencies which are left there. (See *The State of Gujarat and Ors. v. Dilipbhai Nathjibhai Pateni and Anr.* : [1998]2SCR56). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tiptan) Ltd.* (1978 1 All ER 943 (HL)). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd. v. Evans* (1910) AC 445 (HL), quoted in *Jamma Masjid, (SIC) v. Kodimanjandra Deviah and Ors.*: AIR1962SC847 .”

16. In a decision in *Doypack Systems P. Ltd. v. Union of India*,^[11] case it is held thus:

“The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear, manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. ..”

“It has to be reiterated that the object of interpretation of

a statute is to discover the intention of Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the Legislature as expressed in the statute, considering it as a whole and in its context. *That intention, and, therefore, the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand ...*”

17. Similarly, on the aspect of whether the enactment passed by a legislature is prospective or not, it is pertinent to refer to a decision in *Zile Singh v. State of Haryana & others*^[12], wherein it is held thus:
(para 13)

“It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only '*nova constitutio futuris formam imponere debet non praeteritis*' -- a new law ought to regulate what is to follow, not the past. (See : Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid, p.440)”

Similarly, in para 15, four factors are suggested whether the intention of legislature is to give retrospectively.

“Though retrospectivity is not to be presumed and rather

there is presumption against retrospectivity, according to Craies (Statute Law, Seventh Edition), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the Courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the Courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the Statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of , the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated (p.388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (p.392).”

18. The following statutory provisions of interpretation have to be kept in view while considering whether the main Act as well as its amendment are prospective or retrospective in effect: (1) what was the object of the Act; (2) what was the evil that was intended to be cured by the Act; (3) the establishment of the machinery for achieving the object.

19. Similarly, retrospectivity is liable to be decided on a few touch stones, as laid down in National Agricultural Co-operative Marketing Federation of India Ltd. and Anr. v. Union of India (UOI) and Ors.[\[13\]](#) (para 20).

“As has been held in **Ujagar Prints v. Union of India**:
[1989]179ITR317a(SC) .

“A competent legislature can always validate a law which has been declared by courts to be invalid, provided the infirmities and vitiating in factors noticed in the declaratory judgment are removed or cured. Such a

validating law can also be made retrospective. If in the light of such validating and curative exercise made by the legislature - granting legislative competence - the earlier judgment becomes irrelevant and unenforceable that cannot be called an impermissible legislative overruling of the judicial decision. All that the legislature does is to usher in a valid law with retrospective effect in the right of which the earlier judgment becomes irrelevant".

20. Similarly, in a decision in *S.L.Srinivas Jute Twine Mills P. Ltd. V. Union of India & anr.*,^[14] it is held thus: (para 15)

“It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.(See Keshvan Madhavan Memon v. State of Bombay 1951CriLJ680). But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only 'nova constitutio futuris formam imponere debet non praeteritis'. In the words of LORD BLANESBURG, "provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." (See Delhi Cloth Mills & General Co. Ltd. v. CIT, Delhi. "Every statute, it has been said", observed LOPES, L.J., "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect."(See Amireddi Raja Gopala Rao v. Amireddi Sitharamamma : [1965]3SCR122). As a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express

words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary. (See Reid v. Reid (1886) 31 Ch D 402. In other words close attention must be paid to the language of the statutory provision for determining the scope of the retrospectivity intended by Parliament. (See Union of India v. Raghbir Singh : [1989]178ITR548(SC) . The above position has been highlighted in "Principles of Statutory Interpretation" by Justice G.P. Singh. (Tenth Edition, 2006) at PP. 474 and 475)

21. The object of the Domestic Violence Act, 2005 is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. The Act only confers right to remedy to the wives and women in domestic relationship. A machinery is provided for achieving the said object, viz. it is the duty of a Police Officer, Protection Officer, Service Provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, availability of services of Service Provider and Protection Officer, right to avail free legal services. Similarly, a Magistrate is under obligation to fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing. The Domestic Violence Act, 2005 provides for comprehensive and speedy relief within a set time frame. Where aggrieved person's right is invaded or destroyed or likely to be destroyed, the Domestic Violence Act, 2005 gives a remedy by interdict to protect it or damages for its loss, etc.

22. If a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the state, it can be said that legislation will be classified as remedial statute. Remedial statutes are known as welfare,

beneficent or social justice oriented legislations. A remedial statute receives a liberal construction. In case of remedial statutes, doubt is resolved in favour of the class of persons for whose benefit the statute is enacted.

Whenever a legislation prescribes a duty or penalty for breach of it, it must be understood that the duty is prescribed in the interest of the community or some part of it and the penalties prescribed as a sanction for its purpose. None of the provisions of the Domestic Violence Act, 2005 has direct penal consequences.

23. Under Section 31 of the Domestic Violence Act, 2005, breach of protection order, or of an interim protection order, by the respondent shall be an offence under the Act. Therefore, all other orders passed under Sections 17, 18, 19, 20 and 22 of the Domestic Violence Act, 2005 have no penal consequences, even if the respondent committed breach of the order, except as provided under Section 31 of the Act. Therefore, as seen from the provisions of the Act, some new remedies are provided to the women with regard to existing rights. Such remedies do not alter the contract or right; it had taken away no vested right, for, the defaulter can have no vested right in the state of law which left the victim without or with only defective remedy. The Act is passed to stop the pandemic that violence suffered by women, with an object to prevent the gender based violence.

24. The learned counsel for the petitioners mainly relied on the verb used in the definition of 'aggrieved person' and also in the definition of 'domestic relationship' in Section 2 of the Act.

Section 2(a) of the Act defines 'aggrieved person' which 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. '

Section 2 (f) of the Act defines 'domestic

relationship' which 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.'

25. The words 'at any point of time', 'lived together' cannot be understood in narrow sense, so as to mean that such living together is only after the Act came into force. In its sweep, shared household between two persons by relationship as defined in Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family.

26. There cannot be any dispute that remedial statutes which are more literally interpreted are sometimes allowed retrospective effect. In other words, close attention must be paid to the language of the statutory provision for determining the scope of retrospectivity intended by the Parliament. In deciding the question of applicability of a particular statute to past events, the language used is no doubt most important factor to be taken into account, but cannot be stated as an inflexible rule that use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. The words 'who is' or 'has been' in clause (a), 'who live or have' in clause (f), 'who is, or has been,' in clause (q), of Section 2 of the Act, may denote the events happened before or after the Act came into force. All that necessary is that the event must have taken place at the time when action on that account is taken under the statute.

27. There cannot be any dispute that present perfect tense is used to denote the action beginning at some time in the past and continue up to the present moment. Simple present is used in vivid narrative as substitute for the simple past. One of the general rules of the Halsbury Laws of England third edition is that the statute is to be

regarded as always speaking. On the aspect that language used in the enactment may give retrospectivity, it is useful to refer to a decision in *Ahmedabad mfg. & Calico Printing Co. Ltd. v. S.G. Mehta*^[15] wherein it is held thus:

“Under ordinary circumstances, an Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But, this rule is not unalterable. The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed.”

28. ‘Domestic Violence’ is any act of physical, mental or sexual violence and any attempted such violence, as well as the forcible restriction of individual freedom and of privacy, carried out against individuals who have or had family or kinship ties or cohabit or dwell in the same house. It infringes the basic right to feel comfortable within the confines one’s house to all domestic violence victims is not a home. A home where one can live without any fear or insecurity. It is with this in mind, the new Protection of Women from Domestic Violence Act was passed.

29. One of the contentions raised by the learned counsel for the petitioners is that, if the words used in the Act can be construed as acts or omissions relating to the domestic violence apply retrospectively, it would lead to absurdity and contended that if a woman shared domestic

relationship in the household in the year 1970, can she come and say that because of her sharing domestic household with the husband and file a petition under the Domestic Violence Act, 2005 ? Such an illustration, as pointed by the learned counsel for the petitioners, cannot be accepted, because the absurdity would depend upon the nature of the relief claimed because the definition of the word 'domestic violence' is very clear that two persons who live or have at any point of time lived together in a shared house, the word 'at any point of time' indicates not only after the Act came into force but also prior to it. There cannot be any dispute that the definition clause must be read in the context of the subject matter and the scene of the Act and consistency with the objects and other provisions of the Act.

30. Similarly, Section 26 of the Act reads thus:

“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.”

The above provision makes it clear that any relief available under the Domestic Violence Act, 2005 may also be sought in any legal proceedings before the civil court, family court or criminal court, whether such proceeding was intended before or after commencement of this Act. If the contention of the learned counsel for the

petitioners is to be accepted that the Act is prospective in nature, the question of claiming any relief under Sections 18 to 22 of the Act does not arise in a suit instituted prior to commencement of the Act. Similarly, it is also clear from the above provision that any relief which may be granted under the Act may be sought for, in a suit or legal proceedings before a civil court or criminal court. Sub-section (3) to Section 26 lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceedings other than under the Domestic Violence Act, 2005.

31. Section 18 of the Domestic Violence Act, 2005 provides that the Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her stridhan or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.

32. Section 19 of the Domestic Violence Act, 2005 provides that the Magistrate may on being satisfied that domestic violence has taken place pass a residence

order restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household, restraining the respondent or his relatives from entering the shared household, restraining the respondent from alienating or disposing of or encumbering the shared household, restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or directing the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. It is also provided in this section that no order shall be passed against any person who is a woman directing her to remove herself from the shared household. Sub-section(2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Sub-section(3) provides for execution of a bond by the respondent for prevention of the domestic violence. Sub-section(5) empowers the Magistrate to pass an order directing the officer-in-charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order. It is also provided in this section that the Magistrate may impose on the respondent an obligation to discharge rent and other payments and to direct the respondent to return to the aggrieved person her stridhan or any other property or valuable security to which she is entitled.

33. Section 20 of the Domestic Violence Act, 2005 empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earning, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition, to Section 125 of the Code Criminal Procedure, 1973 or

any other law for the time being in force. Sub-section(2) provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. This section also empowers the Magistrate to order lump sum or monthly payments for maintenance. Sub-section(6) provides that on the failure of the respondent to make payments of the monetary relief, the Magistrate may direct the employer or a debtor or the respondent to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the respondent.

34. Section 21 of the Domestic Violence Act, 2005 lays down that notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specify the arrangements for visit of such child by the respondent. However, the magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interests of the child.

35. Section 22 of the Domestic Violence Act, 2005 lays down that in addition to other reliefs which may be granted under the Act, the Magistrate may, on an application by the aggrieved person, pass an order directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the respondent.

36. Section 36 makes it clear that provisions of the Act shall be in addition to and not in derogation of the provisions of any other law.

37. If the remedies provided in the aforesaid mentioned provisions are applicable prospectively to the acts or omissions of domestic violence occurred prior to

26.11.2006, then the aggrieved persons who suffered violence prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies available to the women, who suffered domestic violence prior to 26.11.2006, under the Act, then the aggrieved persons who suffered prior to it, would be deprived of claiming any relief under the Act. There is no justification or reason to deny certain remedies provided to the women, who suffered domestic violence prior to 26.11.2006, under the Act. The object and purpose of enacting the Act would be defeated if narrow interpretation is given. No doubt, Article 20(1) of the Constitution of India prohibits the making of *ex post facto* criminal law with regard to conviction and sentence. The Domestic Violence Act, 2005, under no stretch of imagination, can be said to be *ex post facto* criminal law. Any act or omission under the Domestic Violence Act, 2005 performed by the respondent prior to the Act came into force has no direct penal consequences of conviction or sentence.

38. From the above discussion, it is clear that the intention of the legislation is to provide certain remedies to the victims of domestic violence and also to prevent occurrence of domestic violence in the society. Therefore, the acts of violence occurred prior to 25.10.2006 would come within the meaning of 'domestic violence' as defined under the Act. For the foregoing reasons, this court is of the opinion that the Domestic Violence Act, 2005 is retrospective in operation.

39. It is not in dispute that in Domestic Violence Case No.163 of 2008, sought to be quashed in Criminal Petition No.346 of 2009, there are allegations with regard to domestic violence. Similarly, in Domestic Violence Case No.10 of 2009, sought to be quashed in Criminal Petition No.7978 of 2009, there are specific allegations against first petitioner. The truth or otherwise of those allegations has to be decided during the course of trial only. Correctness or otherwise of those allegations cannot be

determined exercising the powers under Section 482 Cr.P.C.

40. The contention of the learned counsel for the petitioners is that no allegation of whatsoever is there against petitioners 2 to 8 in Criminal Petition No.7978 of 2009. Since this Criminal Petition is disposed of at the stage of admission, it is not desirable to quash the proceedings against the petitioners 2 to 8 in Criminal Petition No.7978 of 2009 behind back of the respondents 2 and 3 herein. Therefore, liberty is given to the petitioners 2 to 8 in Criminal Petition No.7978 of 2009 to challenge the D.V.C. No.10 of 2009 on the file of the I Additional Munsif Magistrate, Tenali, by separate Criminal Petition, if they are so advised. It is made clear that no finding is given against the petitioners 2 to 8 on merits of the case. Therefore, there are no grounds to quash the impugned proceedings and both the Criminal Petitions are liable to be dismissed.

40. The Criminal Petitions are, accordingly, dismissed.

(K.C.Bhanu, J.)

.11.2009
DRK

THE HON'BLE SRI JUSTICE K.C.BHANU

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COMMON ORDER

IN

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CRIMINAL PETITION Nos. 346 of 2009 and 7978 of 2009

.11.2009

THE HON'BLE SRI JUSTICE K.C.BHANU

CRIMINAL PETITION Nos. 346 of 2009 and 7978 of 2009

Date: .11.2009

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Criminal Petition No.346 of 2009 :

Mohit Yadam & another

...Petitioners

And

State of A.P., rep. by the
Public Prosecutor, High Court of A.P.,
Hyderabad & others

...Respondents

Criminal Petition No. 7978 of 2009 :

Angaluri Sambasiva Rao & others

...Petitioners

And

State of A.P., rep. by the
Public Prosecutor, High Court of A.P.,
Hyderabad & others

...Respondents

[1] 2008(2) ALD (Cr.) 1 (A.P.)

[2] (1974) 4 Supreme Court Cases 817

[3] (2000) 5 Supreme Court Cases 694

[4] (2008) 10 Supreme Court Cases 368

[5] AIR 2005 Supreme Court 2731

[6] (2007) 3 Supreme Court Cases 169

[7] AIR 2005 Supreme Court 986

[8] AIR 1989 Supreme Court 509

[9] AIR 1963 SC 1241

[10] (2003) 6 Supreme Court Cases 659

[11] (988) 2 SCC 299, 331, 332

[12] (2004) 8 SCC 1

[13] (2003) 5 Supreme Court Cases 23

[14] (2006) 2 Supreme Court Cases 740

[15] AIR 1963 SC 1436