

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 2ND DECEMBER 2009 / 11TH AGRAHAYANA 1931

Crl.MC.No. 2225 of 2009()

MC.36/2009 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

PETITIONER/RESPONDENT NO.2

*** DR. V.K. VIJAYALEKSHMI AMMA, AGED 70 YEARS,
W/O. LATE N.RAJAGOPALAN, LEKSHMI NIVAS,
KANKATHUMUKKU, KOLLAM WEST VILLAGE,
THIRUMULLAVARAM P.O., KOLLAM-691 012.**

*** THE NAME OF THE PETITIONER IS CORRECTED AS
"VIJAYALAKSHMI AMMAL", AS PER ORDER DATED 02/12/2009 IN
CRL.MA.NO.6675/2009.**

**BY ADV. MR.C.HARIKUMAR
SMT.MOLLY KOSHY**

RESPONDENTS/PETITIONERS AND STATE

- 1. BINDU V., AGED 34 YEARS,
D/O. VISWANATHAN, 'BINDU', KV 29, KALAVIHAR NAGAR,
KUNNUKUSHY, VANCHIYOOR P.O., TRIVANDRUM-35.**
- 2. ARJUN RAJAGOPAL, AGED 8 YEARS,
NOW REPRESENTED BY HIS MOTHER BINDU V.,
D/O.VISWANATHAN, 'BINDU', KV 29, KALAVIHAR NAGAR,
KUNNUKUSHY, VANCHIYOOR P.O., TRIVANDRUM-35.**
- 3. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**

**R3 BY PUBLIC PROSECUTOR MR.K.J. MUHAMMED ANSAR
R1 BY ADV. MR.PIRAPPANCODE V.S.SUDHIR.**

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 05/11/2009, THE COURT ON 02/12/2009 PASSED THE
FOLLOWING:**

rs.

M. SASIDHARAN NAMBIAR, J.

=====
CRL.M.C.No. 2225 OF 2009
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Dated this the 2nd day of December, 2009

ORDER

Second respondent in M.C.36/2009 on the file of Judicial First Class Magistrate Court-II, Thiruvananthapuram, a petition filed under section 12 of Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as the Act,) is the petitioner. Respondents 1 and 2 are the petitioners before the Magistrate. This petition is filed under section 482 of the Code of Criminal Procedure to quash the proceedings as against her contending that the allegations in Annexure A complaint do not disclose or prove any domestic violence as defined under section 3 of the Act, and first respondent has no right over the property of the petitioner and it is not a shared household. It is contended that petitioner being a female person is not a respondent as defined under section 2(q) of the Act and therefore proceedings under the Act as against the petitioner is not maintainable and is to be quashed.

2. Learned counsel appearing for the petitioner

was heard.

3. The argument of the learned counsel is that respondent as defined under section 2(q) of the Act can only be a male person and not a female and therefore the proceedings initiated by the learned Magistrate on Annexure A1 complaint as against the petitioner is not sustainable and is an abuse of process of the court and hence it is to be quashed. It is also argued that the house involved in the petition is the exclusive property of the petitioner and is not a shared household of respondents 1 and 2 and on that ground also the petition is not maintainable. Relying on the decision of **Madhya Pradesh High Court in Ajay Kant v. Smt.Alka Sharma (2008(Crl.L.J.) 264)**, learned counsel argued that a female person could be proceeded against under the Act only on a complaint for violation of an order under section 18 or 23 and proceedings under section 12 of the Act cannot be continued before the learned Magistrate against the petitioner. Relying on the decisions of this court in **Surendran v. State of Kerala (2009(3) KLT 967)** and the High Court of Andhra Pradesh in **Mohammad Maqeenuddin Ahmed v. State of A.P, (2007 Crl.L.J.3361)** it was argued that High Court has jurisdiction to quash a petition filed under section 12 of

the Act pending before the Magistrate and when continuation of the proceedings as against the petitioner is an abuse of process of the court, it is to be quashed.

4. The questions to be decided in the petition are:-

1. Whether a female person could be a respondent, in a petition filed under section 12 of the Act.

2. Whether the powers under section 482 of Code of Criminal Procedure is to be invoked, to quash a petition filed under section 12 of the Act, on the ground of abuse of process of the court or on the ground that petitioner before the Magistrate is not an aggrieved person or respondent is not a respondent as defined under the Act or the disputed house is not a shared household, as provided under the Act.

5. Clause (a) of Section 2 defines "an aggrieved person as "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." As is clear from the definition, an aggrieved person provided under the Act can only be a woman. Respondent is defined under clause (q) of Section 2 as follows:-

"respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act.

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

If there is no proviso to clause (q), it could be contended that a respondent could only be a male person and a female person cannot be the respondent. But under the proviso an aggrieved wife or a female living in a relationship in the nature of marriage can file a complaint against a relative of the husband. But it is not provided that such a

complaint could be filed only against a male relative of the husband. Instead it is against a relative of the husband or the male partner. The legislatures in their wisdom used "a male person" in the main definition of the respondent and purposely did not use "a male relative" and instead used only a relative. The proviso makes it clear that an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. The proviso consciously avoided using "a male relative" and instead used only a "relative" of the husband or male partner. A relative could be both male and female. Hence a female relative is not excluded by the proviso. If that be so, contention that a female relative of the husband cannot be a respondent, as defined under section 2(q) of the Act cannot be accepted. There are sufficient indications in the Act to strengthen the said conclusion.

6. Section 19 provides for residence orders. Sub section (1) of Section 19 reads:-

"19. Residence Orders:- (1) While disposing of an application under sub section (1) of

Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

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

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

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

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

encumbering the same.

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

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

Provided that no order under clause (b) shall be passed against any person who is a woman.(underline supplied)

The proviso makes it absolutely clear that the prohibition is only against passing an order under clause (b) against a person who is a woman. That means except in the case of clause (b), orders could be passed as against the woman also. Otherwise there is no necessity to specifically provide by a proviso that no order under clause (b) passed against a woman. If a woman cannot be a

respondent, when no order could be passed against such a person, there is no need to provide such a proviso as even otherwise in any event an order cannot be passed against a woman who is not the respondent. Moreover in that case there is no rationale for providing that no order could be passed under clause (b) alone, thereby enabling to pass orders under the other clauses of Section 19. Clause (b) provides for passing a residence order, directing the respondent to remove himself from the shared household. In view of proviso, Magistrate cannot direct a woman, to remove herself from the shared household. Under section 19, residence orders could be passed as against a woman also in respect of clause (a) and (c) to (f). It is therefore clear that under clause (a) Magistrate can pass an order restraining the respondent from dispossessing or in any other manner disturbing possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household. Similarly under clause (c) an order restraining the respondent or any of his relative from entering any portion of the shared household in which the aggrieved person resides could be passed. There also it is not restricted as against the male relative alone. Under clause (d) an order restraining the respondent from alienating or

disposing off the shared household or encumbering the same could be passed. Under clause (e) respondent could be restrained from renouncing his rights in the shared household, except with the leave of the Magistrate. Under Clause (f) the respondent could be directed to secure same level of alternate accommodation for the aggrieved person, as enjoyed by her in the shared household, or to pay rent for the same if the circumstances so required. In all these cases such a restraining order could be passed against the woman also as is clear by the proviso to Section 19(1) as those clauses are not included in the proviso. If such an order can be passed against a woman, as it is permissible under the Act, that woman against whom such an order is to be passed should necessarily be a respondent in the petition before the Magistrate. If that be so, it can never be said that a female person cannot be a respondent under the Act.

7. A learned single Judge of the Madhya Pradesh High Court has taken a different view in **Ajay Kant v. Smt. Alka Sharma (2008 Cr1.L.J.264)** for the reason that proviso to clause (q) of Section 2 enables an aggrieved wife or female living in a relationship in the nature of a marriage to file a complaint against a relative of the husband and

as 'complaint' is not defined in the Act and Section 12 provides for filing only an application and not a complaint, the definition of "complaint" in clause (d) of Section 2 of the Code of Criminal Procedure is to be followed and if so the complaint contemplated under the proviso to Section 2(q) could only be in respect of offences provided under section 31(1) and 33 of the Act. It was therefore held that scope of the respondent cannot be widened to include a female.

8.It is to be born in mind that sub section (1) of Section 31 only provides that a breach of protection order or of an interim protection order, by the respondent shall be an offence under the Act and shall be punishable with the sentence provided therein. Section 32 provides for cognizance and proof of the offence. Under sub section (1) notwithstanding anything contained in the Code of Criminal Procedure, the offence under sub section (1) of Section 31 shall be cognizable and non-bailable. Under sub section (2) of Section 32, upon the sole testimony of the aggrieved person, the court may conclude that an offence under section 31(1) has been committed by the accused. Under sub section (1) of Section 31 it is only the breach of a protection order under section 18 or an interim protection

order under section 23 which is made punishable. As is clear from sub section (1) of Section 31, such breach shall be by the "respondent". Therefore unless the "respondent" could be a female person, an offence cannot be committed by breach of such an order by a female person. If that be so, the complaint provided under proviso to Clause (q) of Section 2, cannot be a complaint as interpreted by the learned Judge, as it is an impossibility because if a female person cannot be a respondent as defined under section 2(q), no protection order under section 18 or interim protection order under section 23 could be passed against the female person and in that case the proviso enabling filing of a complaint against the female relative of the husband would be redundant. If that be so, it could only be taken that the complaint provided in the proviso to clause (q) of Section 2 is the application filed under section 12, though inadvertently an application is referred in the Section as complaint. A learned single Judge of this Court in Remadevi v. State of Kerala (2008(4) KLT 106) has taken an identical view that respondent as defined under section 2(q) could also be a female person. It cannot be said that proceedings under section 12 cannot be initiated against a female person.

9. The next question is whether the extra ordinary jurisdiction of this court under section 482 of Code of Criminal Procedure is to be invoked to quash a petition filed by a person claiming to be an aggrieved person against a respondent, for the reliefs provided under the Act.

10. Undoubtedly the High Court possess inherent powers under section 482 of the Code. These inherent powers are meant to act ex-debito justitiae to do real and substantial justice for the administration of justice or to prevent abuse of process of court. Inherent powers under section 482 can be exercised either (1) to give effect to an order under the Code or (2) to prevent abuse of process of court and (3) to otherwise secure the ends of justice. Apex Court in State of Haryana v. Bhajan Lal (1992 supp.(1) SCC 335) enunciated the principles relating to the exercise of the extra ordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 of the Code of Criminal Procedure as follows:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a

cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for

the grievance of the aggrieved party. (underline supplied)

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

The content of the inherent power under section 482 of the Code of Criminal Procedure were examined and laid down in Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551 as follows:-

"(1) that the power is not to be resorted to if there is a specific provision in the code for the redress of the grievance of the aggrieved party;

(2) that it should be exercised very sparingly to prevent abuse of process of any court or otherwise to secure the ends of

justice;

(3) that it should not be exercised as against the express bar of law engrafted in any other provision of the Code."

In R.P.Kapur v. State of Punjab (AIR 1960 SC 866) Apex Court summarised some categories of cases where inherent powers are to be exercised to quash the proceedings as follows:-

"(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced

clearly or manifestly fails to
prove the charge.

The question whether the extra ordinary inherent powers under section 482 of Code of Criminal Procedure is to be exercised by the court to quash a proceeding initiated under the Protection of Women from Domestic violence Act, 2005 is to be considered in the background of the settled legal position. For a better appreciation of the relevant aspects, it is necessary to bear in mind the object and purpose of the Act. The Act was enacted to provide for more effective protection of rights of woman guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and incidental thereto. Relevant portion of the Statement of Objects and reasons of the Act reads:-

"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."(underline supplied).

11. It is clear that the Act was enacted to provide "a remedy under civil law" to protect the woman from being victims of domestic violence and to prevent occurrence of domestic violence in the society.

12. The definition in clause (a) of Section 2 shows that an "aggrieved person" could only be a 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. Chapter IV provides the procedure for obtaining orders of reliefs under the Act. Under sub section (1) of Section 12, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application before the Magistrate seeking one or more reliefs under the Act. Under sub section (2), the reliefs sought for under sub section (1) may include a relief for issuance of an order for payment of compensation or damages, without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent.

Under sub section (3) every such application shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto. Prescribed is defined under clause (m) of Section 2, means prescribed by rules made under the said Act. Sub section (5) of Section 12 provides that Magistrate shall endeavour to dispose of every application made under sub section (1) within a period of sixty days from the date of its first hearing. Section 16 provides that if the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under the Act in camera. Section 17 provides for the right of an aggrieved person to reside in a shared household. Under sub section (1) of Section 17, notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Shared household is defined under clause (s) of Section 2. Under sub section (2) of Section 17, the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent, except in accordance with the procedure established by law. Section 18 provides for protection

orders. Under section 18, 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, pass a protection order in favour of the aggrieved person and prohibit the respondent from committing any acts as provided under clause (a) to clause (g). Section 19 provides for Residence orders. Under sub section (1) while disposing of an application under sub section (1) of Section 12 and on being satisfied that domestic violence has taken place, Magistrate may pass a residence order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household or directing the respondent to remove himself from the shared household or restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides or restraining the respondent from alienating or disposing off the shared household or encumbering the same or restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate or directing the respondent to secure same level of alternate

accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same if the circumstances so require. Proviso makes it clear that no order shall be passed against any person who is a woman under clause (b) directing the respondent to remove herself from the shared household. Sub section (2) enables the Magistrate to impose any additional condition or pass any other direction which may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person. Sub section (3) enables the Magistrate to require from the respondent to execute, a bond with or without sureties, for preventing commission of domestic violence. Sub section (4) makes it clear that an order under sub section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure and shall be dealt with accordingly making it clear that other orders are not to be treated as orders passed under the Code of Criminal Procedure as essentially they are orders in respect of the civil liability. Sub section (5) provides that while passing an order under sub section (1) or sub section (2) or sub section (3), court may also pass an order directing the officer-in-charge of the nearest police station, to give protection to the aggrieved person or to assist her or the person making an

application on her behalf in the implementation of the order. Sub section (6) enables the Magistrate while making an order under sub section (1) to impose on the respondent obligations, relating to the discharge of rent or other payments having regard to the financial needs and resources of the parties. Sub section (7) provides that Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. Under sub section (8) Magistrate may direct the respondent to return to the possession of the aggrieved person, her stridhan or any other property or valuable security, to which she is entitled to. Section 20 provides for monetary reliefs. Under sub section (1) while disposing the application under sub section (1) of Section 12, Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person or her child as a result of domestic violence. Sub section (2) makes it clear that the monetary relief granted under sub section (1) shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Sub section (6) provides that on the failure of the respondent to make payment in terms of the order under sub section

(1), Magistrate may direct the employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit in court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent and that amount may be adjusted towards the monetary relief payable by the respondent. Section 21 provides that notwithstanding anything contained in any other law for the time being in force, Magistrate may, at any stage of hearing of the application for protection order or for any other relief under the Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, the arrangements for visit of such child or children by the respondent. Section 22 provides for compensation orders. Under the said section in addition to other reliefs as may be granted, Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries including mental torture and emotional distress caused by the respondent, by acts of domestic violence. Section 23 provides the power to grant interim and ex parte orders. Section 25 provides for duration and alteration of the orders. Under sub section (1) a protection order made under section 18 shall be in force till the aggrieved

person applies for discharge. Under sub section (2), on receipt of an application from the aggrieved person or the respondent if satisfied that there is a change in the circumstances requiring alteration, modification or revocation or any order made under the Act, for reasons to be recorded in writing he may pass such order as he may deem appropriate. Section 26 provides for relief in other suits and legal proceedings. Under sub section (1) any relief available under section 18 to 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting aggrieved person and the respondent, whether such proceeding was initiated before or after the commencement of the Act. Sub section (2) provides that 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. Sub section (3) mandates that in case any relief has been granted in favour of the aggrieved person in any proceedings other than a proceeding under the Act, she shall be bound to inform the Magistrate of the grant of such relief.

13. Section 28 provides the procedure. It reads:-

"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."

Therefore under sub section (1) all proceedings under section 12, 18 to 23 and offences under section 31 shall be governed by the provisions of Code of Criminal Procedure, 1973. Sub section (2) provides that 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 of the Act. Section 29 provides for an appeal against the order, by either the aggrieved person or by the respondent within thirty days

from the date of passing of the order.

14. Section 31 and 33 are the only penal provisions in the Act. Section 31 reads:-

"31. Penalty for breach of protection order by respondent-

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under subsection(1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under

sub section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

15. Section 32 provides cognizance and proof. Under sub section (1) notwithstanding anything contained in the Code of Criminal Procedure, the offence under sub section (1) of Section 31, shall be cognizable and non-bailable. Under sub section (2) the court may on the sole testimony of the aggrieved person conclude that an offence under sub section (1) of Section 31, has been committed by the accused. Only if the respondent, against whom a protection order or interim protection order is passed, commits breach of that order, an offence under the Act is attracted. Under sub section (2), the said offence, as far as practicable, shall be tried by the Magistrate who had passed the order the breach of which has been alleged

to have been caused by the accused. Under sub section (3) while framing charge for the offence under sub section (1), Magistrate may also frame charge under section 498A of Indian Penal Code or any other provisions of the Indian Penal Code or Dowry Prohibition Act, if the facts disclose the commission of such an offence. Section 33 provides that if any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order, without any sufficient cause, he shall be punished with imprisonment as provided therein. Under section 34 Magistrate is not competent to take cognizance of such an offence unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf. Section 35 provides for protection, taken in good faith, to the Protection Officer. Section 36 provides that the Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

16. It is thus clear that though under sub section (1) of Section 28, all proceedings under sections 12,18,19,20,21,22 and 23 of the Act and offence under section 31, shall be governed by the provisions of Code of Criminal Procedure, the penal provisions under the Act are under sub section (1) of Section 31 and Section 33 of the

Act. When under section 34, cognizance of offence under section 33 could only be taken by the Magistrate on a complaint filed with the previous sanction of the State Government or an officer authorised by it on that behalf. Under sub section (1) of Section 32, an offence under sub section (1) of Section 31 is cognizable and no complaint is necessary for the Magistrate to take cognizance of that offence.

17. In an application filed under section 12 claiming reliefs either under section 18,19, 20, 21 or 22, the Magistrate can pass an interim order under section 18 to 23. All these reliefs are in respect of the civil liability and not the criminal liability. If that be so, it is not for this court under section 482 of the Code of Criminal Procedure, to quash the proceedings invoking the extra ordinary inherent powers provided under the Code, as such order is necessary neither to give effect to any order under the Code nor to prevent abuse of the process of any court nor to secure the ends of justice. An offence under sub section (1) of Section 31, or an offence under section 33 taken cognizance by the Magistrate or an order passed by the Magistrate directing the respondent to execute a bond as provided under sub section 3 of Section 19, which by the mandate under sub section 5 that such

order is to be treated as an order under Chapter VIII of Code of Criminal Procedure, stand on different footing. They are truly criminal proceedings. Except in respect of such proceedings it is not for the High Court to exercise the extraordinary inherent jurisdiction to quash the proceedings pending before the Magistrate.

18. A person to whom notice was issued by the Magistrate in a petition filed under section 12 of the Act can appear before the Magistrate and contend that the proceedings is not maintainable either on the ground that the person who filed the application is not an aggrieved person as defined under section 2(a) or the application is not filed for an aggrieved person. He is also entitled to contend that he is not a respondent, as defined under section 2(q) of the Act. He is also entitled to contend that there is no domestic violence as defined under section 2(g) or the reliefs sought for are not the reliefs provided under the Act. In all such cases, it is not for this court to consider the question, when it could legitimately be raised and decided before the Magistrate. So long as the respondent is not an accused in a proceeding initiated under the Act and pending before the Magistrate and he is not obliged to apply for bail in respect of such proceedings and even his personal presence is not

mandatory for hearing and disposing a petition under section 12, it is not for this court to consider the question whether the petitioner before the Magistrate is an aggrieved person as defined under section 2(a) or the respondent is a respondent as defined under clause (q) of Section 2 or the household is a shared household as defined under clause (s) or whether there is any domestic relationship between the parties or whether the reliefs sought for in the petition could be granted. These are matters which are to be considered by the Magistrate, before granting relief in the petition filed under section 12, either under section 18 or 19 or 20 or 21 or 22 or 23.

19. Learned counsel appearing for the petitioner pointed out that in various decisions of this court and the other High Courts and Apex Court, proceedings initiated under section 12 of the Act were quashed invoking the powers under section 482 of Code of Criminal Procedure and in such circumstance, it cannot be held that inherent powers under section 482 of the Code of Criminal Procedure is not to be exercised. In none of those decisions, the question was addressed as stated above and in fact in none of those decisions, question whether the inherent jurisdiction under section 482 of Code of Criminal

Procedure is to be invoked to quash a proceeding initiated under the Act which is enacted to provide a remedy under the civil law was not considered. In such circumstances, for the reason that proceeding under the Act was quashed invoking the powers under section 482 of the Code of Criminal Procedure it cannot be said that the powers under section 482 is to be invoked in all cases. I am of the firm view that a party against whom proceedings were initiated by the Magistrate under section 12, on a petition filed under section 12(1) of the Act seeking relief under section 18 to 23, has adequate remedy before the Magistrate, it is not for the High Court to exercise the extraordinary inherent powers and quash the proceedings. Section 482 is to be invoked in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of process of any court or to secure the ends of justice, when cognizance was taken by the Magistrate for an offence under sub section (1) of Section 31 or Section 33 of the Act. In all other cases, the affected party could raise the question and seek an order from the Magistrate including the maintainability of the proceedings and if an order is passed against him, he is at liberty to file an appeal as provided under section 29 of the Act. If that be so, it is not for this court to invoke the extraordinary

jurisdiction under section 482 of the Code of Criminal Procedure, to quash a proceeding initiated under section 12 (1) of the Act.

The petition is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

CrI.M.C.NO.2225 /09

ORDER

2ND DECEMBER,2009