IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No.132 of 2021

Reserved on :11.05.2023

Date of Decision: 01.06.2023

Sanjeev Kumar & ors. .....Petitioners.

Versus

Sushma Devi .....Respondent.

Coram

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?*[1] *Yes

For the Petitioners: Mr. Kulbhushan Khajuria, Advocate.

For the Respondent: Mr. Neeraj Gupta, Sr. Advocate with Mr. Ajeet Jaswal, Advocate.

Jyotsna Rewal Dua, Judge

Learned Trial Court dismissed an application moved by the respondent under Section 12 of the Protection of Women from Domestic Violence Act, 2005, primarily on the ground that the complainant (respondent herein) could not prove that she was legally wedded wife of the present petitioner. Learned Appellate Court allowed the respondent's appeal and remanded the matter to the learned Trial Court with a direction to give an opportunity to the parties to lead further evidence and for deciding the matter afresh. The petitioner (alleged husband) has moved this petition against the order of learned Appellate Court.

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. **Facts** that need to be noticed for the purpose of deciding this petition are :-

2 (i). Respondent No.1-Sushma Devi, instituted an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') on 13.05.2016 for providing monetary relief, residence & protection order and compensation. She alleged that marriage between her and the present petitioner was solemnized on 01.08.1999 according to Hindu rites and ceremonies. The petitioner and his parents (proforma respondents No.3 and 4 herein) started torturing and harassing respondent No.1 on one pretext or the other. Respondent No.1 tolerated their unruly behaviour for few years with hope that her husband and in-laws would mend their ways & approach towards her, but all in vain. After three years of marriage, her husband and in-laws started saying openly that respondent No.1 will not beget any child, hence was of no use to them. She was shunted out of the matrimonial home and had to take shelter in her parental house. Respondent No.1 further alleged that she had no source of income and was not in a position to maintain herself. The petitioner was not paying her any maintenance.

2 (ii). The petitioner filed reply to the application. He denied respondent No.1 to be his legally wedded wife or that she

ever resided with him. The allegations levelled against him and his parents were also refuted. The petitioner also pleaded that *"it has come to knowledge of the respondents from reliable sources that the complainant is not competent to sexual relationship, hence she cannot contract a valid marriage. Due to this disability, the complainant is still unmarried and nobody is ready to marry her."* The petitioner also pleaded that Rajni Devi (respondent No.2) was his legally wedded wife and marriage between them was solemnized on 17.01.2001.

2(iii) Parties adduced evidence. Learned Trial Court vide order dated 26.09.2016 held that respondent No.1 had failed to prove that she was legally wedded wife of the petitioner. Primarily on this basis, the application preferred under the Act was dismissed.

2(iv) The appeal against the aforesaid order was filed by respondent No.1. Learned Appellate Court held that parties were not made aware of the issues/points, which were framed and determined by the learned Trial Court in its judgment. Parties had led their evidence without issues having been framed in the matter. Procedure adopted by the learned Trial Court in framing issues in the judgment, was not proper. The approach of the learned Trial Court in focusing on the point as to whether marriage was solemnized between the contesting parties was held to be

erroneous. Learned Appellate Court also observed that the petitioner had not signed the pleadings and this irregularity needed rectification. Accordingly, the case was remanded to the learned Trial Court to give an opportunity to the parties to lead further evidence on the points framed in the judgment. The petitioner was directed to take steps to rectify the irregularities i.e. putting signature on his pleadings by filing an affidavit in support of his reply. The appeal was accordingly allowed on 29.04.2021.

2(v) In the above background, the petitioner has preferred the instant criminal revision petition, under Section 397 read with Section 401 of the Code of Criminal Procedure for setting aside the judgment dated 29.04.2021 passed by the learned Appellate Court.

3. I have heard Sh. K.B. Khajuria, learned counsel for the petitioner, Sh. Neeraj Gupta, learned Senior counsel for the respondent and with their assistance, have also considered the case record.

4. Observations

4(i) It is well settled that in proceedings, under Section 12 of the Protection of Women from Domestic Violence Act, the complainant need not necessary establish her being married to the opposite side. Relationship akin to marriage will also suffice for the maintainability of the application. The provision reads as under :-

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

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

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

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

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

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The 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.

Thus an application under Section 12 of the Act can be filed by an aggrieved person, a Protection Officer or any other person on behalf of the aggrieved person. "**Aggrieved person**" has been defined under Section 2(a) of the Act to mean *"any woman who is, or has been, in a **domestic relationship** with the husband and who alleges to have been subjected to any act of domestic violence by the respondent".*

"domestic relationship" as per Section 2(f) 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.

4(ii) (a) Hon'ble Apex Court in (2010) 10 SCC 469 (**D. Velusamy** vs. **D. Patchaiammal**) examined provisions of the Domestic Violence Act and held that expression "domestic relationship" not only includes the relationship of marriage, but also a relationship in the nature of marriage. The Apex Court further observed that expression the "relationship in the nature of marriage" has not been defined in the Act, but it has to be treated as akin to a common law marriage. Paras from the judgment relevant to the context are :-

> *"19. Having noted the relevant provisions in The Protection of Women from Domestic Violence Act, 2005, we may point out that the expression `domestic relationship' includes not only the relationship of marriage but also a relationship `in the nature of marriage'. The question, therefore, arises as to what is the meaning of the expression `a relationship in the nature of marriage'. Unfortunately this expression has not been defined in the Act. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.*
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31. In our opinion a `relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.
(b) They must be of legal age to marry.
(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

In our opinion a `relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a `shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a `domestic relationship'.

32. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

33. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression `relationship in the nature of marriage' and not `live in relationship'. The Court in the garb of interpretation cannot change the language of the statute.

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37. There is also no finding in the judgment of the learned Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. In our opinion such findings were essential to decide this case. Hence we set aside the impugned judgment of the High Court and Family Court Judge,

Coimbatore and remand the matter to the Family Court Judge to decide the matter afresh in accordance with law and in the light of the observations made above. Appeals allowed."

4(ii) (b) In (2013) 15 SCC 755 (**Indra Sarma** vs. **V.K.V. Sarma**) it was held that while examining whether a relationship will fall within the expression "relationship in the nature of marriage" within the meaning of Section 2(f) of the Domestic Violence Act, the Court should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. The Court cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved. Following paras from the judgment are relevant:-

"Relationship in the nature of marriage.

34. *Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:*

a) Consanguinity

b) Marriage

c) Through a relationship in the nature of marriage

d) Adoption

e) Family members living together as joint family.

35. *The definition clause mentions only five categories of relationships which exhausts itself since the expression "means", has been used. When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of marriage".*

36*. We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine the meaning and scope of the expression "relationship in the nature of marriage" which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is "relationship in the nature of marriage" which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.*

37*. The distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in- relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of".*

38. *Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:*

38.1. (a) Domestic relationship between an unmarried adult woman and an unmarried adult male*: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.*

38.2. (b) Domestic relationship between an unmarried woman and a married adult male*: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.*

38.3. (c) Domestic relationship between a married adult woman and an unmarried adult male*: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".*

38.4. (d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male*: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.*

38.5. (e) Domestic relationship between same sex partners (Gay and Lesbians): *DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004*

(U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

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40. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", have a common sense/balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage". Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression "relationship in the nature of marriage", of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression "in the nature of marriage". Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment."

Following guidelines were laid down for testing, under what circumstances live-in-relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act :-

*"**56.** We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV*

Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

56.1. Duration of period of relationship.- *Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.*

56.2. Shared household.- *The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.*

56.3. Pooling of Resources and Financial Arrangements Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

56.4. Domestic Arrangements.- *Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.*

56.5. Sexual Relationship.- *Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.*

56.6. Children.- *Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.*

56.7. Socialization in Public*.- Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.*

56.8. Intention and conduct of the parties.- *Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship."*

4(iii) In the instant case, parties led evidence in support of their respective pleadings. The record makes it apparent that the parties led their evidence without any points/issues having been framed in the matter. The record also shows that it is only while deciding the case that the learned Trial Court framed following points/issues in the judgment for determination:-

> "*1. Whether the applicant is legally wedded wife of respondent No.1 as alleged ? OPA.*
>
> *2. Whether applicant is entitled for protection order, residence order, monetary relief, compensation etc. as prayed for? OPA.*
>
> *3. Whether the complaint is not maintainable as alleged? OPR.*
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> *4. Whether complainant has no cause of action to file the present complaint, as alleged ?OPR.*
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> 5. *Final Order.*"

Not only the points/issues were framed by the learned Trial Court in its judgment but the onus to prove such issues was also fastened upon respective parties, who were not even aware of formulation of the issues leave aside the onus to prove them. This approach was wholly erroneous. The parties were required to be made aware of the issues or the points they needed to prove in the case before directing them to lead evidence. This would have been not only in the interest of justice and fair play, but would have also provided the parties an opportunity to know the issues required to be proved by them. In accordance with provisions of the

Act, demonstration by the complainant of existence of a relationship in the nature of marriage with the petitioner would have been sufficient under the Act. The complainant accordingly led her evidence. However, the learned Trial Court held the complainant could not establish that she was lawfully married to the petitioner. The complainant was not made aware of the points/issues framed by the learned Trial Court that she was required to prove her marriage with the petitioner in order to be successful in the proceedings. In case in the given facts, learned trial Court was of the view that the respondent-complainant was required to prove solemnization of her marriage with the petitioner, then the correct procedure would have been to make this issue known to the parties before ordering them to lead evidence. Framing of issues, for the first time, only in the judgment, placing burden of proving such issues on respective parties, deciding the case on the basis of such issues about which parties have not even been made aware of, is a procedure alien to well established legal and procedural conventions. It was imperative for the learned Trial Court to have framed issues/points for determination before directing the parties to lead evidence. The order passed by the learned Trial Court determining the points/issues and fixing the onus of proving those issues/points at the time of deciding the case was not in consonance with law. The order passed by the learned Trial Court was, therefore, justly interfered with by the learned First Appellate Court. The learned First Appellate Court also correctly observed that the petitioner had not signed the pleadings before

the learned Trial Court. Accordingly, it gave an opportunity to the petitioner to rectify this irregularity by filing his affidavit before the learned Trial Court in support of unsigned pleadings.

4(iv) In the net result, this petition is dismissed. Impugned order passed by learned appellate Court on 29.04.2021 is upheld. Parties through their learned counsel are directed to appear before the learned Trial Court on 23.06.2023. Records be returned forthwith.

5. This Court is coming across several cases arising from the decisions rendered under Chapter IV of the Domestic Violence Act. Recourse to different provisions of law is being taken for filing petitions. At times petitions are preferred under Section 482 of the Code of Criminal Procedure ; at times the petitions are preferred under Section 397 read with section 401 of the Code of Criminal Procedure and sometimes petitions are preferred under Article 227 of the Constitution of India.

5(i) Chapter IV of the Domestic Violence Act encompasses Sections 12 to 29. This Chapter pertains to procedure for obtaining orders of reliefs. Application under the Domestic Violence Act is preferred in terms of Section 12 of the Act. Section 12 (3) of the Act provides that "every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto". Right to reside in a shared household (Section 17), protection orders (Section 18), residence orders (Section 19), monetary reliefs (Section 20), custody

orders (Section 21) and compensation orders Section 22), all fall within the ambit of Chapter IV of the Act.

Section 37 of the DV Act delineates power of the Central Government to make rules for carrying out the provisions of the Act. Sub-section (h) of Section 37 (2) authorizes the Central Government to frame rules about the form in which an application under Section 12 (1) seeking reliefs under the Act may be made and the particulars which such applications are required to contain under Section 12 (3). In exercise of powers conferred by Ss. 37 of the DV Act, the Central Government has made the Protection of Women from Domestic Violence Rules 2006. Rule 6 thereof pertains to applications made to the Magistrate. Rule 6(1) states that application under Section 12 shall as nearly as possible be in Form-II.

Form-II appended to the Rules gives lay out of the application to be made under Section 12 of the Protection of Domestic Violence Act.

Section 28 of the Act provides for following procedure to be followed by a Magistrate while dealing with application for reliefs under Chapter IV of the Act :-

> ***"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).*
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> *(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."*

Section 28 (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.

5(ii) A combined and holistic reading of the provisions of the DV Act, leads to a definite inference that proceedings before a Magistrate under Chapter IV of the Act are not criminal proceedings before a criminal Court. An application under Section 12 of the DV Act is not akin to the complaint under Section 2 (d) of the Code of Criminal Procedure. Application under Section 12 of the DV Act is to be on a specified format as prescribed under the DV Rules. Notice for appearance under the DV Act is to be in terms of Form-VII appended to the DV Rules. Personal appearance of parties is not mandatory under the DV Act. Even the Statements of Objects and Reasons of the DV Act in the following passage states about the remedies provided under Chapter IV of the Act being of civil nature :-

> *"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."*

Provision of criminal law will not be applicable sricto-senso. Recourse to Section 482 of the Code of Criminal Procedure for quashing application filed under Section 12 of the DV Act is mis-directed. In this regard, it would be profitable to refer to a decision of the Madras High Court, in Crl.

OP No. 28458, of 2019 (**Dr. P. Pathmanathan and others** vs. **Tmt. V. Monica and others**) decided on 18.01.2021 :-

> *"39.. In fact, the litmus test as to whether a proceeding is civil or criminal in nature has been authoritatively settled by a three judge bench of the Hon'ble Supreme Court in Ram Kishan Fauji v. State of Haryana, (2017) 5 SCC 533. The Hon'ble Supreme Court reiterated the test laid down in S.A.L Narayan Row (cited supra), and opined as under: https://www.mhc.tn.gov.in/judis/ "31. The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend 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 appropriate relief which may be claimed." The Hon'ble Supreme Court eventually concluded that it is conceptually fallacious to determine the nature of the proceeding with reference to the nature of the Court, since the litmus test is the nature of the proceeding, nothing more nothing less. Applying the aforesaid test, it is beyond a pale of controversy that all of the reliefs claimed under Chapter IV of the Act are civil in nature for the enforcement of civil rights, as was held by the Supreme Court in Kunapareddy (cited supra) and a proceeding before the Magistrate would, therefore, partake the character of a civil and not a criminal proceeding.*
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> *40. As the proceedings before a Magistrate exercising jurisdiction under Chapter IV is not a criminal proceeding before a Criminal Court, the next question is whether a petition under Section 482 of the Code would lie to quash an application under Section 12 of the D.V. Act. It is settled law that a petition under Section 482, Cr.P.C would lie only against an order of a criminal court. In State of W.B. v. Sujit Kumar Rana, (2004) 4 SCC 129, the Supreme Court has opined as under:*
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> > *"33. From a bare perusal of the aforementioned provision, it would be evident that the inherent power of the High Court is saved only in a case where an*

order has been passed by the criminal court which is required to be set aside to secure the ends of justice or where the proceeding pending before a court amounts to abuse of the process of court. It is, therefore, evident that power under Section 482 of the Code can be exercised by the High Court in relation to a matter pending before a court; which in the context of the Code of Criminal Procedure would mean "a criminal court" or whence a power is exercised by the court under the Code of Criminal Procedure."

41. As pointed out by a Division Bench of this Court in Rajamanickam v State of Tamil Nadu, 2015 (3) MWN Cri 379, Section 482 Cr.P.C preserves only the inherent criminal jurisdiction of the High Court. Thus, a petition under Section 482, Cr.P.C would be maintainable only if the order complained of is passed by a criminal Court or by a Court in exercise of powers under the Cr.P.C. Quashing an application under Section 12 of the D.V Act does not fall in either category, as what the Court is called upon to do at that stage is to interdict the exercise of civil jurisdiction by the Magistrate at the threshold. As indicated supra, since the Magistrate is exercising only a civil jurisdiction in granting reliefs under Chapter IV of the Act, it follows that a Magistrate is not a criminal court for the purposes of proceedings under Chapter IV of the Act. It follows that an application under Section 482, Cr.P.C does not lie to quash an application under Section 12 of the D.V Act.

42. This does not, however, mean that an aggrieved respondent is remediless. The Magistrate exercising jurisdiction under Chapter IV of the D.V Act, is certainly a subordinate Court for the purposes of Article 227, and a petition under Article 227 of the Constitution would still be available challenging the proceedings under Chapter IV of the D.V Act, in an appropriate case.

44. It is entirely true that the nomenclature of the petition is not decisive of the jurisdiction of the Court. Section 482, Cr.P.C merely saves the inherent power of the High Court to make such orders as may be necessary to a) give effect to an order under this Code; or b) prevent abuse of process of any Court; or c) otherwise secure the ends of justice. It is well settled that this section has not given any new power to the High Court but has merely preserved the power inherently possessed by every High Court as a superior Court of record. As a highest Court of Justice in the State, the High Court exercises a visitorial or supervisory jurisdiction over all Courts in the State. However, the plenitude of the inherent

power under Section 482, Cr.P.C does not extend to annul proceedings which are not before a Criminal Court. As pointed out supra, to constitute a criminal court, it is not sufficient that the Court is one of the Courts enumerated under Section 6 Cr.P.C, it is also necessary that the proceedings before it are criminal in character. If the proceeding before the Court is civil in nature, then it cannot be said that the Court is a Criminal Court exercising criminal jurisdiction for the purposes of Section 482, Cr.P.C.

45. The decision in Muruganandam (cited supra) is, therefore, an authority for the proposition that a petition under Article 227 of the Constitution would lie to quash an application under the D.V Act in an appropriate case. This being a judgment of a bench of co-ordinate strength, is also binding on this Court. The Kerala High Court has also taken the same view in two of its later decisions in Santhosh v. Ambika.R, (2015) SCC Online Ker 26542 and T. Rajan v Vani.P, (2020) SCC Online Ker 25170. In a recent decision, Latha P.C v State of Kerala, 2020 (6) KLT 496, the Kerala High Court held that an application under Section 482 Cr.P.C is not maintainable to quash a complaint under Section 12 of the D.V. Act.

48. Again, with all due respect, it must be pointed out that in view of the law laid down by the Supreme Court in S.A.L Narayan Row (cited supra) and Ram Kishan Fauji (cited supra), the nature of the Court or the procedure followed by such a Court cannot determine the character of the proceeding before it. The litmus test, in all cases, is focused on the nature of the right infringed and the relief sought for the vindication of such a right. This is precisely why the Full Bench of the Bombay High Court in V.B. D'Monte (cited supra), had ordered a revision to be listed on its civil side despite the order having been passed by a Court of Session."

The judgment in Dr. P. Pathmanathan's case supra was quoted with approval by the Hon'ble Apex Court while deciding Criminal Appeal No.627 of 2022, arising out of Special Leave to Appeal (Crl.) No.2514 of 2021 (**Kamatchi vs. Lakshmi Narayanan**). Relevant part of the judgment reads as under :-

"19. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in Dr. P. Padmanathan & Ors. as under:

> *"19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a "complaint" as contemplated under the D.V. Act and the D.V. Rules is not the same as a "complaint" under Cr.P.C. A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) of the Cr.P.C. is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.*
>
> *20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Cr.P.C, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C, given to a Magistrate and not to an application under Section 12 of the Act."*

20. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence."

Based on above, the Apex Court held that decision of the High Court (impugned in Criminal Appeal) equating the application filed under Section 12 of the Act to the complaint under Criminal Procedure Code was wrong. The directions issued in Pathmanathan's case *(supra)* have been reiterated by the Full Bench of Madras High Court on 17.11.2022 in Crl. O.P. 31852 of 2022 **(Arul Daniel** Vs. **Suganya and other connected matters)**.

In view of the above discussion, following observations/directions are made/issued :-

(i) The remedies available under Chapter IV of the Protection of Women from Domestic Violence Act, 2005 are civil in nature.

(ii) The Courts dealing with applications under Section 12 or 23 (2) of the Domestic Violence Act, in the given facts and circumstances of the case, may deviate from the procedure prescribed under Section 28(1) of the DV Act and may formulate their procedure in accordance with enabling provision of Section 28(2) of the DV Act.

(iii) In case, evidence is considered necessary for the adjudication, the issues/points that arise for determination, shall be formulated and framed in accordance with law before directing the parties to lead evidence.

(iv) In case the evidence is considered not necessary, the application shall be heard and decided.

(v) Petitions under Section 482 of the Code of Criminal Procedure are not maintainable for challenging the proceedings under Section 12 of the DV Act. In appropriate cases, however, recourse can be made to Article 227 of the Constitution of India on satisfaction of well established parameters.

Learned Registrar General of this Court shall ensure conveying the directions to all the concerned Courts in the State of Himachal Pradesh for compliance.

The petition to stand disposed of on above terms read with para 4(iv) of this judgment. All pending applications, if any, to also stand disposed of.

1st June, 2023 (K)

Jyotsna Rewal Dua
Judge