

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF MARCH, 2023

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.12703 OF 2022 (GM – RES)

BETWEEN:

SMT.KAVITHA M.,
W/O RAGHU
D/O MOHAN KUMAR
AGED ABOUT 28 YEARS
R/AT: 15/25, 10TH 'A' CROSS
NEAR CHOWDESHWARI SHCOOL
ITTAMAGUDUGU
BANASHANAKRI III STAGE
BENGALURU – 560 085.

... PETITIONER

(BY SRI NITIN RAMESH, ADVOCATE)

AND:

1. SRI RAGHU
S/O NARAYANAPPA
AGED ABOUT 32 YEARS
2. SMT.NAGARATHNA
W/O NARAYANAPPA
AGED MAJOR.
3. SRI NARAYANAPPA
AGED MAJOR
ALL RESIDING AT:
NO.29, SRI SRINATHA

OLD AGE HOME ROAD
DODDA DUNNASANDRA CROSS
DEVALAPURA VILLAGE
ANUGONDANAHALLI HOBLI
DEVANAHUNDI POST
HOSKOTE TALUK
BENGALURU RURAL DISTRICT – 560 067.

4. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF WOMEN AND
CHILD DEVELOPMENT
SHASTRI BHAWAN
DR.RAJENDRA PRASAD ROAD
NEW DELHI – 110 001.
5. STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
DEPARTMENT OF WOMEN
AND CHILD WELFARE
5TH FLOOR, NEW – M.S.BUILDING
AMBEDKAR VEEDHI
BENGALURU, KARNATAKA – 560 001.

... RESPONDENTS

(BY SRI H.SHANTHI BHUSHAN, DSGI, FOR R-4;
SMT.K.P.YASHODHA, HCGP FOR R-5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO DIRECT THE HONBLE II METROPOLITAN MAGISTRATE TRAFFIC COURT AT BANGALORE IN C.MISC.170/2018 TO DISPOSE OF THE APPLICATIONS FILED BY THE PETITIONER DTD 15.10.2018 U/S 12, 19(1)(E) AND (F), 20 AND 22, 20 AND 23(2), 23(2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 AT ANNEXURE NOS.B, C, D, E AND F WITHIN A STIPULATED PERIOD OF TIME.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 08.02.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner/wife of the 1st respondent is before this Court seeking a direction to dispose of applications dated 15.10.2018 filed by her in C.Misc.No.170 of 2018 before the II Metropolitan Magistrate Traffic Court at Bangalore under Sections 12, 19(1)(E) & (F), 20 & 22, 20 & 23(2) and 23(2) of the Protection of Women from Domestic Violence Act, 2005 ('the Act' for short) within the time frame.

2. Brief facts that lead the petitioner to this court in the subject petition, as borne out from the pleadings, are as follows:-

The marriage between the petitioner and 1st respondent takes place on 16-11-2016. From the wedlock a child is born on 24-08-2017. The relationship between the petitioner and the 1st respondent appears to have turned sore and the petitioner/wife institutes proceedings under the Act invoking Section 12 of the Act and also files several other applications under Section 23 of the Act seeking non-alienation, encumbrance of schedule property, seeking

alternative accommodation, monetary relief, ex-parte maintenance and return of valuable articles. In all, there were five applications filed by the petitioner on 15-10-2018. The learned Magistrate in terms of his order dated 29-10-2018 rejected the application for non-alienation or encumbering the schedule property. Except that order, the learned Magistrate did not pass any order on any other applications. The 1st respondent appeared on 03-05-2019 and filed objections to the applications. On 04-08-2021 the petitioner filed an affidavit of assets and liability statement. For filing of assets and liabilities statement of the 1st respondent seven dates were granted to the 1st respondent/husband between 04-08-2021 and 18-04-2022. The learned counsel for the petitioner submits that assets and liabilities statement is not filed by the 1st respondent even as on date. Being aggrieved by non-passing of orders on several applications that are pending consideration for close to 5 years, the petitioner is before this Court seeking an early disposal of those applications filed along with the claim on 15-10-2018.

3. Heard Sri Nitin Ramesh, learned counsel appearing for the petitioner, Sri H.Shanthi Bhushan, learned Deputy Solicitor General

of India appearing for respondent No.4 and Smt. K.P. Yashodha, learned High Court Government Pleader for respondent No.5.

4. The learned counsel appearing for the petitioner would contend with vehemence that the concerned Court is refusing to pass orders on all the applications on the plea that ex-parte orders cannot be passed on certain applications as procedure under the CrPC has to be followed in terms of law. Since the 1st respondent/husband has not filed his objections, no order has been passed. The act stipulates that any application filed has to be decided within 60 days, and 60 days was long over and, therefore, there should be a direction to the concerned Court to conclude the proceedings within a particular time frame. The learned counsel would seek to place reliance upon several judgments rendered by co-ordinate Benches of this Court to contend that ex-parte orders can be passed under the Act and the procedure under the CrPC should not hinder the Court, as the Act itself empowers the Court to regulate its own procedure.

5. The learned High Court Government Pleader and the learned Deputy Solicitor General of India who was asked to come

into these proceedings as it involved interpretation of provisions of the Act, a Central enactment would also submit that speedy disposal of the application is imperative as the benevolent legislation that is promulgated is for the purpose of extending benefits to women who face domestic violence and would submit that any timeline that would be stipulated by this Court would become a welcome measure.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts and the link in the chain of events are not in dispute and they lie in a narrow compass. What is required to be decided is –

"Whether a direction should be issued to the concerned Court to dispose of the applications filed under the Act within a time frame?"

8. To consider the aforesaid issue it is germane to do a clinical dissection of the legal frame work i.e., Protection of Women

from Domestic Violence Act, 2005 beginning from the genesis of the Act itself. The Act was promulgated in furtherance of the Vienna accord of 1994 after several platform recognized domestic violence to be a human rights issue. The United Nations Committee on Convention on elimination of all forms of discrimination against women recommended that State parties to act to protect women against any violence of any kind especially that occurring within the family. Pursuant to the aforesaid proceedings, the Act was promulgated with certain objects and reasons on the score that women's right on the issue had remained largely invisible in the public domain.

The legal frame work:

9. The objects and reasons for the legal frame work reads as follows:

"Statement of Objects and Reasons:-

Domestic violence is undoubtedly a human right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect

women against violence of any kind especially that occurring within the family.

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

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. *The Bill, inter alia, seeks to provide for the following:—*

- (i) *It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.*
- (ii) *It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.*

- (iii) *It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.*
- (iv) *It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.*
- (v) *It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.*

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill."

The objects and reasons themselves indicate that it is for the rights of women in securing them various benefits mentioned therein and also protect them from domestic violence, the Magistrate has to pass appropriate orders in favour of aggrieved person. Certain provisions of the Act are germane to be noticed. Section 2 deals with definitions. Sub-sections (a), (e), (f), (g), (n), (o) and (p) of Section 2 read as follows:

- (a) **"aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;**
- (e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;
- (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
- (g) **"domestic violence" has the same meaning as assigned to it in Section 3;**
- (n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of Section 8;
- (o) "protection order" means an order made in terms of Section 18;
- (p) "residence order" means an order granted in terms of sub-section (1) of Section 19;
- (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household;

(Emphasis supplied)

Section 2(a) defines an 'aggrieved person' to 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. Section 2(e) defines that 'domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person. Section 2(f) defines that a 'domestic relationship' means a relationship between two persons who live or have lived at any point of time together in a shared household and related by consanguinity, marriage or through a relationship in the nature of marriage. Section 2(g) defines what is 'domestic violence' giving the same meaning as assigned to it in Section 3. Section 2(n) defines a 'protection officer' to be an officer of the State Government under sub-section (1) of Section 8. Section 2(o) defines 'protection order' to be made by the learned Magistrate under Section 18. Section 2(p) defines a 'residence order', an order granted in terms of sub-section (1) of Section 19. Section 2(s) defines that a 'shared household' means where a person aggrieved lives or at any stage has lived in a domestic relationship. Chapter-II deals with domestic violence. Section 3 defines what is a 'domestic violence' and reads as follows:

"3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or**
- (b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or**
- (c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or**
- (d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.**

Explanation I.—For the purposes of this section,—

- (i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*
- (ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;*
- (iii) "verbal and emotional abuse" includes—*
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and**

- (b) **repeated threats to cause physical pain to any person in whom the aggrieved person is interested.**
- (iv) "economic abuse" includes—
- (a) **deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;**
- (b) *disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*
- (c) *prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.*

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

(Emphasis supplied)

Section 3 defines any person who harms or injures or endangers the health, safety, life, limb or even well being and several treats to form a domestic violence. Explanations to those ingredients are also rendered under the Act. Chapter III deals with powers and duties of protection officers, service providers and others.

10. Chapter-IV deals with procedure for obtaining orders of reliefs. Section 12 empowers an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to present an application. Section 12 reads as follows:

"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."

(Emphasis supplied)

Sub-sections (2), (3), (4) and (5) of Section 12 permit an aggrieved person to seek relief or compensation or damages for injuries caused by the acts of domestic violence committed by the respondent. Sub-section (5) thereof mandates that the Magistrate shall endeavour to dispose of every application made under sub-section (1) within 60 days of its first hearing which would mean that when an aggrieved person approaches the learned Magistrate seeking one or more reliefs under the Act, it is mandatory that the Magistrate shall dispose of every, application made under sub-section (1) within 60 days from the date of its first hearing.

11. Section 23 deals with power to grant interim and ex parte orders. It reads as follows:

"23. Power to grant interim and ex parte orders.—
(1) *In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.*

(2) *If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.*

(Emphasis supplied)

Section 23 of the Act empowers the learned Magistrate in any proceeding before him under the Act to grant interim and ex-parte orders. On any application filed by the aggrieved person under Sections 18, 19, 21 and 22 against the respondent, if the learned Magistrate is satisfied that the application *prima facie* discloses that domestic violence has happened in the case before him, he is empowered to grant such ex-parte order on the basis of the affidavit. Section 18 of the Act deals with 'protection orders' which the learned Magistrate is empowered to grant in a case where he is *prima facie* satisfied that there has been acts by the respondent

committed which attract ingredients of Section 18. Section 18 reads as follows:

"18. Protection orders.—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—

- (a) committing any act of domestic violence;**
- (b) aiding or abetting in the commission of acts of domestic violence;**
- (c) 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;**
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;**
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;**
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;**
- (g) committing any other act as specified in the protection order."**

(Emphasis supplied)

Section 19 deals with 'residence orders' and reads as follows:

"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.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the 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.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The 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.

(8) The 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."

(Emphasis supplied)

While disposing of application under sub-section (1) of Section 12, a Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order. The manner and tenor of the said residence order is also depicted under sub-clauses (a) to (f) of

sub-section (1) of Section 19. Section 20 deals with monetary relief and reads as follows:

"20. Monetary reliefs.—(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of 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 credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”

(Emphasis supplied)

Section 20 empowers the Magistrate to direct payment of monetary relief to meet expenses. The monetary relief to be granted under the section should be adequate, fair and reasonable consistent with the standard of living to which the aggrieved person is accustomed; the Magistrate also has power to order appropriate lumpsum payment or monthly payment of maintenance and such payment is to be directed by the Magistrate to be paid within a specified period and upon failure on the part of the respondent to make payment, the Magistrate has power to direct the employer or a debtor of the respondent to directly pay to the aggrieved person. These are various powers under Section 20 conferred upon the Magistrate to pass in every case where application is filed under sub-section (1) of Section 12. Having scanned the anatomy of the Act, a dip into

the facts of the case, on the strength of the mandate of the statute, now becomes germane. They lie in a narrow compass.

12. The petitioner, on 15-10-2018, files an application under Section 12 (*supra*) and along with it files five applications under different provisions of the Act. The petitioner while preferring an application under Section 12 prefers application under Section 19(1)(e) and (f) which deals with 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 pay rent for the same. Another application was filed under Section 20 seeking monetary relief. The application seeking non-alienation and encumbering of the schedule property was rejected by the learned Magistrate. Therefore, applications seeking alternative accommodation, monetary relief and *ex-parte* interim maintenance were all pending consideration and they are pending consideration even as on date, despite the passage of **52 months** after their filing.

13. A perusal at the afore-quoted provisions i.e., Sections 19 and 20 which permit the aggrieved person to seek interim protection by way of residence order or monetary relief as the case would be, and even the custody orders under Section 21, all point out to one provision i.e., Section 12. If an application is filed by the aggrieved person under sub-section (1) of Section 12 and applications are filed under Sections 18, 19 and 20 they have to be decided within the time frame stipulated under sub-section (5) of Section 12 of the Act, as sub-section (5) of Section 12 mandates that any application filed before the learned Magistrate while filing an application under Section 12 should be decided by the Magistrate within 60 days from the date of its filing. Therefore, any interim protection that is sought by filing an application under Sections 19 and 20 ought to be decided by the learned Magistrate within 60 days from the date of its filing as they form a part of the mandate of the statute i.e., Section 12. Section 12 therefore becomes the heart and soul of the entire Act and applications under Sections 19 & 20 are clearly maintainable along with an application under Section 12. Therefore, those applications would also be bound by the time limit stipulated under Section 12. Section 28

deals with procedure to be adopted by the concerned Court for disposal of applications and it reads as follows:

"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."

Sub-section (1) of Section 28 directs that save as otherwise provided in this Act, all proceedings under Sections 12, 18 to 23 and offences under Section 31 shall be governed by the provisions of the CrPC, 1973. Sub-section (2) mandates 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. What would unmistakably emerge is, notwithstanding the proceedings governed by the CrPC, the Court considering the application under Section 12 is empowered to lay down its own procedure both under Section 12 and under Section 23 of the Act. It thus becomes its inherent power. If the purpose for which the Act was brought into force and the soul of Section 12 is noticed, notwithstanding the fact that the procedure stipulated

under the CrPC is to be followed and since sub-section (2) of Section 28 directs that nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of the application, the concerned Court i.e., the learned Magistrate shall have the liberty to lay down his own procedure for disposal of applications under Section 12 and sub-section (2) of Section 23 of the Act.

14. In the aforesaid circumstances, reference being made to the judgment of the Apex Court in the case of **KUNAPAREDDY v. KUNAPAREDDY SWARNA KUMARI**¹ is apposite, wherein the Apex Court has held as follows:

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

¹ (2016) 11 SCC 774

Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

12. *In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality. In order to demonstrate it, we may reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the said Act, as follows:*

"Introduction

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Penal Code, 1860. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the Protection of Women from Domestic Violence Bill was introduced in Parliament.

Statement of Objects and Reasons

1. *Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.*

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 women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.*

4. *The Bill, inter alia, seeks to provide for the following—*

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the

respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence."

... ..

18. In this context, provisions of sub-section (2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-section (1) of Section 28 are to be governed by the Code, the legislature at the same time incorporated the provisions like sub-section (2) as well which empowers the court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act. This provision has been incorporated by the legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex parte orders and sub-section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

"23.(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent."

(Emphasis supplied)

The Apex Court, in the aforesaid judgment, while considering the purport of promulgation of the Act and its provisions clearly holds that sub-section (2) of Section 28 is significant. The concerned Court is well within its powers to lay down its procedure for disposal of the application under Section 12 or Section 23(2) of the Act. The Apex Court also recognizes that this provision is incorporated by the Legislature keeping a definite purpose for which it is enacted. This Court also recognizes the power of the Magistrate under Section 23 to grant an interim order ex-parte owing to the specific power under sub-section (2) of Section 23 of the Act which is carved out in that behalf. In the light of the judgment of the Apex Court, any other law that is laid down by the co-ordinate Benches of this Court will have to be placed into the oblivion on two counts, as the heart and soul of the Act is found in Section 12 and its beat in Section 23. The reliance placed by the respondent/State upon the judgment of the co-ordinate Bench in the case of **KRISHNA MURTHY NOOKULA v. Y SAVITHA**² is in clear contradiction with what the Apex Court has held. The said judgment has also been distinguished in the case of one **K.MANJUNATH REDDY v. SMT.**

² 2011 (3) KCCR 2221

A.C. LATHA³. The co-ordinate Bench in the case of **K.MANJUNATH**

REDDY has held as follows:

"3. Having regard to the object and the scope of the legislation, the prescription of such enabling provision is obviously not to cramp the style of the court which requires to address issues with some expedition. Therefore, the section providing that the court can form its own procedure, would also over-ride sub-section (1) of Section 28 to Rule 6(5) of the Rules as well.

4. There is no illegality, as the court in exercise of its inherent power while prescribing the procedure for disposal of the application, would even permit evidence by way of an affidavit in such cases. And where the deponent would be available for cross-examination to test the veracity of the evidence, there is no miscarriage of justice or other illegality in such a procedure being adopted.

5. The decision which was cited at the Bar namely the order in W.P.No.53683 of 2014 dated 27-02-2015 in the case of Shridhar Das v. Smt. Nalinakshi rendered, is without reference to Section 28(2) of the Domestic Violence Act and therefore, would stand distinguished."

(Emphasis supplied)

The co-ordinate Bench recognizes that the section itself provided that the Court can form its own procedure and it would override sub-section (1) of Section 28 and any Rules framed thereunder. The co-ordinate Bench then holds that there was no illegality committed by the Court in exercise of its inherent power for

³ *Crl.P.No.1726 of 2016 decided on 1-08-2016*

disposal of the application without an inquiry and by way of an affidavit filed by the parties before the concerned Court.

15. On a coalesce of the aforesaid analysis of the provisions of the Act and the law laid down by the Apex Court and that of the co-ordinate Bench of this Court, what would unmistakably emerge is that applications concerning protection orders under Section 18, residence orders under Section 19 and monetary relief under Section 20, all of which direct that if the learned Magistrate is *prima facie* finds justification he could grant those reliefs. Section 23 of the Act empowers the learned Magistrate to grant of interim and ex-parte orders in any application under Sections 18, 19, 20 and 21 or even 22 against the respondent, granting interim relief in terms of the application/s so filed cannot be after an *eon*, it has to be granted *anon*. Therefore, there is no warrant for any Magistrate to await for the procedure as stipulated under the CrPC to get concluded, and then grant the relief that is sought in the application. It defeats the very life blood of the Act. If Section 12 is the one under which applications are filed before the concerned

Court, sub-section (5) of Section 12 mandates disposal within 60 days.

16. It is quite appalling that an application filed by the petitioner under Section 12 of the Act for the relief as available under Sections 19, 20 and 22 of the Act has been kept pending for close to 52 months after its filing, notwithstanding the fact that the mandate of the Act is disposal of those applications within 60 days. The applications being kept pending would display apathy towards the litigants. The reason for the applications being kept pending is free fall for adjournments being granted by the concerned Court. In the case at hand, close to two years have passed by and the Court has gone on granting time to the husband for filing assets and liabilities statement to determine the payment of maintenance to the wife under the provisions of the Act while the wife/aggrieved person suffers. An application that has to be disposed of within 60 days, has taken 52 months, and is yet to be disposed of.

17. The law Courts which exist to remedy the wrong when it is brought to its notice has to act swiftly, as it is trite that, **actus**

curiae neminem gravabit that the act of Court should prejudice no person. If an act of the Court should not prejudice any person; the Court should not permit any procrastination of the proceedings before it. A woman, who is a victim of domestic violence, knocking at the doors of the Magistrate, under the Act seeking maintenance or shelter such grievance, will have to be addressed with immediacy. It is for this reason that the statute mandates that such applications have to be disposed of within 60 days in terms of sub-section (5) of Section 12 of the Act. The mandate is unequivocal as sub-section (5) mandates that the Magistrate shall endeavour to dispose every application; every application would mean each and every, not a few or more. If the delay takes away the very soul of the enactment, such delay would definitely deny justice. It is, therefore, often said that "***justice delayed is justice denied***". If the facts of the case at hand are taken note of, it would display that the petitioner has been denied maintenance and other benefits available under the Act for close to five years now, after she has been out of the matrimonial house.

18. In the aforesaid circumstances, it becomes necessary for this Court to direct the Magistrates, to henceforth decide the applications filed by the aggrieved persons within the time frame. The applications could be for the benefit of Sections 19 and 20 of the Act which are filed along with the application under Section 12 of the Act. Any delay beyond 60 days to consider the application should be only for reasons to be recorded in writing. For a maintenance application, the concerned Court shall direct the husband, after receipt of notice, to file his assets and liabilities statement within four weeks from the date of appearance and in the event, he would dodge appearance before Court, the Court is empowered to grant interim maintenance, on what is filed by the aggrieved person as assets and liabilities statement and as sought in the application, failing which, such cases, like the one that is brought before this Court, would mushroom and defeat the very purport of the promulgation of the Act.

19. In view of the preceding analysis, I deem it appropriate to issue the following directions:

- (a) Applications filed along with the application under Section 12 be it under Section 18, 19 or 20 of the Act, the concerned Court shall decide those applications filed along with the petition under Section 12 within 60 days from the date of its filing;
- (b) The husband shall be granted 4 weeks time to file his assets and liabilities statement for a decision on an application filed under Section 20 of the Act. If it is not filed within the time frame, the concerned Court shall accept the application filed by the wife/aggrieved person and pass appropriate orders in accordance with law;
- (c) Objections if any, to the application/s filed by the aggrieved person under Sections 18 and 19 by the opposite party, shall be filed within 4 weeks from the date of receipt of notice, failing which, the Court concerned will be at liberty to pass appropriate orders in accordance with law;

- (d) To achieve the said timeline, the concerned Court shall draw up and regulate its procedure in terms of its inherent power under Section 28(2) of the Act.

The concerned Court shall strictly adhere to what is indicated hereinabove and its deviation can only be for reasons to be recorded in writing while passing orders on the applications.

20. Adherence to the aforesaid timeline would be of paramount importance, as remedy under Section 12 to an aggrieved person is imperative. Therefore, timely disposal of such applications are also imperative as Section 12 is ***the salt of the statute; if by delay the salt would lose its savour; the statute would lose its flavour.***

21. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.

- (ii) The concerned Court is directed to dispose of the applications as sought for in the prayer within four weeks from the date of receipt of a copy of this order, if not earlier.
- (iii) It is needless to observe that the parties to the *lis* shall co-operate with the Court to pass appropriate orders on the applications, failing which, the Court should be at liberty to pass ex-parte orders in terms of Section 23 of the Act.
- (iv) The Registry is directed to circulate this order to all the concerned Courts handling cases arising out of the Protection of Women from Domestic Violence Act, 2005.

I.A.No.2 of 2022 also stands disposed, as a consequence.

**Sd/-
JUDGE**

bkp
CT:MJ