

Reserved on 06.05.2025

Delivered on 27.05.2025

Court No. - 73

Case :- APPLICATION U/S 528 BNSS No. - 11345 of 2025

Applicant :- Ram Kumar Pandey

Opposite Party :- State of U.P. and another

Counsel for Applicant :- Bijai Prakash Tiwari

Counsel for Opposite Party :- Ashok Kumar Yadav, G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Bijai Prakash Tiwari, learned counsel for the applicant as well as Sri Vikas Sharma, learned State Law Officer for the State and Sri Ashok Yadav, Panel Counsel for the opposite party no. 2.

2. This application u/s 528 of BNSS has been preferred for quashing the entire proceeding as well as the summoning order dated 08.05.2024 passed by the Additional Civil Judge (Junior Division), Room No. 8, Kanpur Nagar in Complaint Case No. 36139 of 2024 (Akriti Pandey Vs. Vijay Kumar Pandey and others), under Section 12 of Domestic Violence Act, P.S. Jajmau, District Kanpur Nagar, pending in the Court of Additional Civil Judge (Junior Division), Room, No. 8, Kanpur Nagar.

3. The case of the applicant is that he happens to be the real grand father of the opposite party no. 2 who is the grand daughter. A complaint is stated to have been lodged by the opposite party no. 2, grand daughter on 15/16.04.2024 against the applicant, uncle and aunty, under Sections 12, 17, 18, 19, 20, 21 and 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') with an allegation that the mother of the opposite party no. 2 is a Government teacher and the father is posted as a Manager in a

Maruti Service Station. The father and mother of the opposite party no. 2 in connection with their jobs are mostly outside the house. It is further asserted that the opposite party no. 2 and the applicant have domestic relationship, since the birth of the opposite party no. 2, she is living under the common roof. However, when the opposite party no. 2 was born then the applicant along with other respondents in the complaint became unhappy and angry and started threatening that they would destroy and jeopardize the life of the opposite party no. 2. It is also alleged that the entire money, which was earned by the mother of the opposite party no. 2, has been forcibly taken for construction of the house and the respondents in the complaint including the applicant herein have created hindrance in the study of the opposite party no. 2 and even the necessities for pursuing the studies are also not being provided as rather to the contrary she is being subjected to maltreatment and domestic violence. Allegation is that about two days prior to 09.03.2024 the respondents in the complaint including the applicant herein hurled abuses and had beaten the opposite party no. 2 on account whereof the opposite party no. 2 called her maternal uncle and when he was with the opposite party no. 2 then the uncle of the opposite party no. 2, Vijay Kumar Pandey, respondent in the complaint entered the room and hurled abuses and ran to hit the maternal uncle and the opposite party no. 2 and when the opposite party no. 2 resisted the same then abuses were hurled in Hindi vernacular and on account of the said noises, the other respondents in the complaint entered the room and threatened the opposite party no. 2 that she will be done to death. The mother of the opposite party no. 2 came to the rescue of the opposite party no. 2 and her maternal uncle, however, the respondents in the complaint including the applicant with the aid of fist and legs had beaten the opposite party no. 2 and thereafter the opposite party no. 2 was admitted in a hospital for a surgery of appendix and ovary on account

of the internal injuries, she became unconscious. It is further alleged that the maternal uncle of the opposite party no. 2 got her hospitalized but applicant and other co-accused who were respondent in the complaint created obstacles and even restricted the entry and the arrival of the doctor on account whereof the opposite party no. 2 kept on ailing. Allegation is that the opposite party no. 2 got a first information report no. 22 of 2024 lodged on 13.03.2024 against the respondents in the complaint including the applicant, however, the police officials are known to the respondents in the complaint, an assurance was also extended that nothing would be done on the complaint of the opposite party no. 2. It is also alleged that on account of maltreatment and domestic violence at the instance of the respondents in the complaint including the applicant, the opposite party no. 2 along with her mother are living in a rented accommodation and they have been thrown out of the house.

4. On the basis of the complaint so lodged by the opposite party no. 2, the Court of Civil Judge (J.D.) (Batch 081), Kanpur Nagar registered the Complaint Case No. 36139 of 2024 and noticed the respondents in the said complaint including the applicant herein on 08.05.2024.

5. Questioning the order dated 08.05.2024 noticing the applicant as well as the entire proceedings in the Complaint Case No. 36139 of 2024, the present applicant has been filed.

6. Learned counsel for the applicant has submitted that the complaint itself was not maintainable against the applicant less to say about the noticing the respondent in the complaint including the applicant. Submission is that the opposite party no. 2 who happens to be a grand daughter does not come within the definition of aggrieved person as per Section 2(a) and there is no domestic relationship under Section 2(f) and the applicant along with the respondents in the

complaint also do not answer the description of respondent under Section 2(q) of the Act. Argument is that whatever right or claim stand accrued, it is of the father or the mother of the opposite party no. 2 and not the opposite party no. 2 who happens to be the grand daughter of the applicant herein. It is also contended that the opposite party no. 2 is already living in one of the portion of the house and, thus, the present proceedings is nothing but a grossest misuse of process of law. Additionally, it has been argued that multiple reliefs have been sought against the applicant just in order to harass the applicant taking advantage of variety of reliefs so enumerated under the Act. It is, thus, prayed that the entire proceedings including the complaint be quashed.

7. Sri Ashok Kumar Yadav who appears for the opposite party no. 2 submits that the word “any women” mentioned in Section 2(a) of the Act encompasses the grand daughter also. According to him, the Protection of Women from Domestic Violence Act, 2005, has been enacted to provide protection to the rights of the women and the same does not exclude grand daughter claiming relief against grand parents. It is also contended that the allegations made in the complaint, *prima facie*, show that the opposite party no. 2 had been subjected to domestic violence. He also submits that post issuance of the notice, the applicant herein has appeared before the court below and filed its response/written statement, a copy whereof is annexed as Annexure-4 at page 45. Submission is that once the applicant has put in appearance before the court below and submitted its reply then it would not be appropriate to throttle the proceedings particularly when no orders under Chapter IV of the Act had been passed and it is always open to question the same by way of an appeal.

8. Sri Vikas Sharma, learned State Law Officer has supported the argument of the opposite party no. 2 and submits that no orders under Chapter IV of the Act has been passed, thus, it would not be appropriate for the Court to throttle the proceedings at this stage.

9. I have heard the submissions of the rival parties and perused the record carefully.

10. Before delving into the tenability of the argument so sought to be advanced by the rival parties, it would be apposite to extract the relevant provisions of the Protection of Women from Domestic Violence Act, 2005.

2. Definitions.—In this Act, unless the context otherwise requires,—

(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;

(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;

(q) “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;

(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 house hold 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

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.

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.

17. Right to reside in a shared household.—(1) 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.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

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.

19. Residence orders.—(1) While disposing of an application under subsection (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.

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 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.

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.”

11. The Protection of Women from Domestic Violence Act, 2005 had been enacted with an object to provide for more effective protection of the rights of the women guaranteed under the Constitution who are the victims of violence of any kind occurring within the family and for the matters connected therewith or incidental thereto.

12. A survey of the statutory provision would reveal that Section 2(a) defines “aggrieved persons” which means any woman who is or has been in domestic relationship with the respondent who alleges that she has been subjected to any act of domestic violence by the respondent.

13. Section 2(q) deals with the respondent which means any adult male person against male persons and their relatives against whom allegations is of domestic violence.

14. Section 2(f) deals with domestic relationship which means a domestic relationship between two persons who live or have any point of time live together in a shared household whether consanguinity marriage, adoption or are family members living together as a joint family.

15. Section 2(s) defines shared household which means a household whether the person aggrieved lives or at any stage has lived in domestic relationship either singly or along with the respondent.

16. Sub-section (1) of Section 20 deals with for monetary relief to an aggrieved person or any child of an aggrieved person.

17. Pertinently, there is no categorization of any class of women in particular which implies that a daughter, grand daughter also stands included within the definition of an aggrieved person. Legislature was quite conscious about the rights and the protection of women and that is why any woman who is subjected to domestic violence can avail remedies under the Protection of Women from Domestic Violence Act, 2005.

18. The issue as to whether a daughter stands covered under the definition of aggrieved person fell for consideration before Coordinate Bench of this Court in **Naimullah Sheikh and another Vs. State of U.P.**

& 3 others Matters under Article 227 No. 3046 of 2023 decided on 10.01.2024 wherein it was held as under.-

“7. Perusal of the above provision demonstrates that any aggrieved person including any child of the aggrieved person, who has been subjected to domestic violence, may claim monetary relief to meet the expenses incurred and losses suffered as a result of domestic violence and also monetary relief for such incidental matters like monetary relief for loss of earnings, medical expenses, loss of any property and also for maintenance. This provision of law further provides that such reliefs of monetary nature can also be claimed which do not fall under the categories enumerated above as the provisions clearly lay down that reliefs need not be limited to reliefs as described under section 20(1), 20(1)(a), 20(1)(b), 20(1)(c) and 20(1)(d). Section 20(1)(d) of the DV Act further expands the scope of monetary relief for maintenance.

19. Further, the High Court of Andhra Pradesh at Amaravati had also the occasion to consider the said issue in **Menti Trinadha Venkata Ramana Vs. Menti Lakshmi & 2 others : Criminal Petition No. 1920 of 2013** decided on 09.09.2021, the following order was observed:-

“5. However, it may be apposite to note that the Magistrate is entitled to entertain an application under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DV Act') and grant monetary relief i.e., to meet the expenses incurred and losses suffered by an aggrieved person under Section 20 of the DV Act, in the event of domestic violence by way of economic abuse is established. A conjoint reading of Section 2(a)3 and 2(f)4 of the DV Act would show that a daughter, who is or was living with her father in a domestic relationship by way of consanguinity, is entitled to seek reliefs including monetary relief on her own right as an 2002 (5) SCC 422 AIR 2020 SC 4355 "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 "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 JB,J aggrieved person under Section 2(a) of the DV Act irrespective of the fact whether she is a minor or major. In the present case, the relationship between the parties as father and

daughter is admitted and they had stayed together in a shared household. In view of the fact that the petitioner neglected to maintain the 1st respondent-wife and 2nd respondent-daughter, proceedings under Section 125 of Cr.P.C. came to be instituted and maintenance was awarded to respondents including to the 2nd respondent. As the award was not paid, the learned Magistrate issued the impugned order, dated 14.03.2012, directing recovery of maintenance to the tune of Rs.22,000/- for a period of 11 months from 17.12.2009 to 16.11.2010. In the aforesaid facts, the order of learned Magistrate may be traced to his powers to grant monetary relief under the DV Act and by a combined reading of the provisions of Section 125 of Cr.P.C. and Section 20 of the DV Act, the said order cannot be said to be illegal on the mere ground that the 2nd respondent had become a major. I am further fortified to arrive at such finding as the relief under the DV Act can be granted in addition to other reliefs available to the aggrieved person as envisaged under Section 26(2) of the DV Act.”

20. The Hon'ble Supreme Court in one of the landmark judgment in **Criminal Appeal No. 511 of 2022 (Prabha Tyagi Vs. Kamlesh Devi)** decided on 12.05.2022 had observed as under:-

“36. In our view, the D.V. Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. Therefore, the expression ‘joint family’ cannot mean as understood in Hindu Law. Thus, the expression ‘family members living together as a joint family’, means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under Sub-Section (1) of Section 17 of the D.V. Act. When such a girl child or woman becomes an aggrieved person, the protection of Sub-Section (2) of Section 17 comes into play.

42. This takes us to the next question raised for consideration being ‘whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed’. As already noted, the expression ‘domestic relationship’ is an expansive one and means the relationship between two persons who live or have at any point of time lived together in a shared household when they are related by (i) consanguinity; (ii) marriage; (iii) through a relationship in the nature of marriage; (iv) adoption; (v) are family members living together as a joint family. The expressions ‘consanguinity’, ‘marriage’ and ‘adoption’ do not

require elaboration as they are well understood concepts both in common law as well as in the respective personal law applicable to the parties. However, it is relevant to note the expression 'marriage' also encompasses a relationship in the nature of marriage. Secondly, the expression 'adoption' also takes into consideration family members living together as a joint family.

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. The 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. Socialisation in public.- Holding out to the public and socialising 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 the 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.”

43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption.

As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption.

Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act.

The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

- (a) Any relationship by consanguinity is a lifelong relationship.
- (b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.
- (i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.
- (ii) In the event of a divorce, marriage would no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or even subsequent to a divorce decree being passed but relating to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.
- (iii) That is why, the expression 'domestic relationship' has been defined in an expansive manner to mean 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 marriage. We have also interpreted the word 'live' or 'lived' in the context of right to reside in Sub-Section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the D.V. Act.
- (iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.
- (c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.
- (d) In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been ousted in any way or has been a victim of domestic violence has remedies under the D.V. Act.

In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also a past domestic relationship. Therefore, the Parliament has intentionally

used the expression ‘domestic relationship’ to mean a relationship between two persons who not only live together in the shared household but also between two persons who ‘have at any point of time lived together’ in a shared household.”

21. Applying the principles of law as culled out in the above noted decision an irresistible conclusion stands drawn that the opposite party no. 2 who happens to be the grand daughter of the applicant and the niece of the other respondents in the complaint comes within the definition of aggrieved person and she has a right to lodge proceedings under the D.V. Act.

22. The next question would be whether the proceedings at the instance of the opposite party no. 2 would be maintainable particularly when it has been alleged in the complaint that she has been thrown out of the house though it is the stand of the applicant that the opposite party no. 2 is staying in one of the portions of the same house.

23. In **Prabha Tyagi (supra)**, the Honb’e Apex Court had recognized the right to reside in the shared household without restricting it to actual residence while observing as under.-

30. Further, though, the expression ‘shared household’ is defined in the context of a household where the person aggrieved lives or has lived in a domestic’ relationship either singly or along with respondent, in the context of Sub- Section (1) of Section 17, the said expression cannot be restricted only to a household where a person aggrieved resides or at any stage, resided in a domestic relationship. In other words, a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to an act of domestic violence by the respondent, has a right to reside in a shared household. Thus, a mother, daughter, sister, wife, mother-in-law and daughter-in- law or such other categories of women in a domestic relationship have the right to reside in a shared household de hors a right, title or beneficial interest in the same. Therefore, the right of residence of the aforesaid categories of women and such other categories of women in a domestic relationship is guaranteed under Sub-Section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence. By contrast, Sub-Section (2) of section 17 deals with a narrower right in as much as an aggrieved person who is inevitably a woman and who is subjected to domestic violence 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. Thus, the expression 'right to reside in a shared household' has to be given an expansive interpretation, in respect of the aforesaid categories of women including a mother-in-law of a daughter-in-law and other categories of women referred to above who have the right to reside in a shared household.

31. Further, the expression 'the right to reside in a shared household' cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce her right to reside therein. The aforesaid interpretation can be explained by way of an illustration. If a woman gets married then she acquires the right to reside in the household of her husband which then becomes a shared household within the meaning of the D.V. Act. In India, it is a societal norm for a woman, on her marriage to reside with her husband, unless due to professional, occupational or job commitments, or for other genuine reasons, the husband and wife decide to reside at different locations. Even in a case where the woman in a domestic relationship is residing elsewhere on account of a reasonable cause, she has the right to reside in a shared household. Also a woman who is, or has been, in a domestic relationship has the right to reside not only in the house of her husband, if it is located in another place which is also a shared household but also in the shared household which may be in a different location in which the family of her husband resides.

32. If a woman in a domestic relationship seeks to enforce her right to reside in a shared household, irrespective of whether she has resided therein at all or not, then the said right can be enforced under Sub-Section (1) of Section 17 of the D.V. Act. If her right to reside in a shared household is resisted or restrained by the respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. In other words, the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household.

Thus, a woman cannot be excluded from the shared household even if she has not actually resided therein that is why the expression 'shall not be evicted or excluded from the shared household' has been intentionally used in Sub- Section (2) of Section 17. This means if a woman in a domestic relationship is an aggrieved person and she is actually residing in the shared household, she cannot be evicted except in accordance with the procedure established by law.

Similarly, a woman in a domestic relationship who is an aggrieved person cannot be excluded from her right to reside in the shared household except in accordance with the procedure established by law. Therefore, the expression 'right to reside in the shared household' would include not only actual residence but also constructive residence in the shared household

i.e., right to reside therein which cannot be excluded vis-à-vis an aggrieved person except in accordance with the procedure established by law. If a woman is sought to be evicted or excluded from the shared household she would be an aggrieved person in which event Sub-Section (2) of Section 17 would apply.

52. In view of the above discussion, the three questions raised in this appeal are answered as under:

“(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?”

It is held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the D.V. Act. It is clarified that even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the D.V. Act.

“(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?”

It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.”

24. In view of the authoritative pronouncement of Hon’ble Apex Court as noticed above, what would be relevant is the right to reside and once it is asserted that the woman who is being subjected to domestic violence had such right then the factum of actual residence at the time of lodging of the complaint becomes irrelevant. Since, in the present case, the opposite party no. 2 has alleged that she had a right to live in the shared household and she has been dislodged and thrown out, thus, the issue becomes a subject matter of adjudication.

25. Plainly and simply, on the face of the allegations made in the complaint by the opposite party no. 2 against the applicant herein it

cannot be said that prima facie they are frivolous. Indeed, they are subject matter of adjudication in the proceedings and it would be travesty of justice to throttle the proceedings at this stage particularly when only notices have been issued to the applicant and no orders have been passed under Chapter IV of the 2005 Act.

26. Moreover, the Hon'ble Apex Court in **Criminal Appeal No. 2688 of 2025 (Shaurabh Kumar Tripathi Vs. Vidhi Rawal)** decided on 19.05.2025 had the occasion to consider the extent of intervention in the matters where complaint under Section 12 of the DV Act, 2005 was challenged in the proceedings under Section 482 of the Cr.P.C., the following was observed.-

"...35. When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated.

39. To conclude, the view taken in the impugned order of the High Court that a petition under Section 482 of the CrPC for challenging the proceedings emanating from Section 12(1) of the DV Act, 2005 is not maintainable, is not the correct view. We hold that High Courts can exercise power under Section 482 of CrPC (Section 528 of the BNSS) for quashing the proceedings emanating from the application under Section 12(1) of the DV Act, 2005, pending before the Court of the learned Magistrate. However, considering the object of the DV Act, 2005, the High Courts should exercise caution and circumspection when dealing with an application under Section 12(1). Normally, interference under Section 482 is warranted only in the case of gross illegality or injustice."

27. Cumulatively analysing the case from the four corners of law, this Court is of the firm opinion that no interference is required at this stage in the present proceedings when only notice has been issued to the applicant and he has already put in appearance before the court below while filing their response. It would be appropriate for the applicant to contest the matter on merits and, in case, any order are passed then to challenge the same in accordance with law.

28. With the above observations, the application stands **disposed of**.

29. Needless to point out that this Court has not entered into the merits of the matter and it shall be open for the parties to raise legal and factual grounds and this Court has no reason to disbelieve that the same shall be decided strictly in accordance with law.

Order Date :- 27.05.2025

Rajesh