

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

CRL. PETN. No. 77 of 2014.

Smt. Sumitra Debnath,
wife of Shri Ratan Debnath,
D/O- Shri Santi Debnath,
resident of Chandinamura, P.O.
Ramnagar, P.S. West Agartala,
District – West Tripura.

..... **Petitioner**

- V e r s u s -

Shri Ratan Debnath,
son of late Harilal Debnath,
resident of Narshingar, 70
Coloney, P.O. Bimangarh, P.S.
Airport, District – West Tripura.

..... **Respondent**

The State of Tripura,
represented by the Secretary
to the Government of Tripura,
Home Department

..... **Proforma respondent**

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioner : Mr. S. Mahajan, Advocate.

For the respondent : Mr. Samarjit Bhattacharji, Advocate.

Date of hearing : 04.02.2015

Date of delivery
of Judgment & Order : **20.03.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

By the judgment and order dated 25.11.2014 delivered
in Criminal Appeal No.01 of 2014 the Sessions Judge, West Tripura,
Agartala has observed that :

"I have gone through the impugned order and in that connection, the order passed by the learned Court below in C.R. 237 of 2011 on 22.08.2012 granting various reliefs to the petitioner. In that order, learned Court below referring to Section 18 sub section 8 of the Act passed the direction to the respondent herein to return the stridhans including the cash amount of Rs.1,00,000/- to the appellant. It is obvious that due to an inadvertent error learned Court below referred sub section 8 of Section 18 of the Act which ought to have been sub section 8 of Section 19 of the Act firstly because there is no existence of any sub section under Section 18 of the Act and secondly, it is sub section 8 of Section 19 of the Act which empowers the Magistrate to direct the respondent to return the stridhans to the aggrieved person. Now, turning to Section 31 of the Act, it provides for penalty for breach of protection order passed in favour of the aggrieved person. The Section specifically mentions that a breach of any protection order or interim protection order by the respondent shall be punishable with imprisonment. It is thus evident that it is only the protection order passed under Section 18 of the Act that would come within the scope of Section 31 of the Act. Learned Court below in the impugned order has very nicely drove her point home giving reference to various citations.

I have gone through the citations referred by leaned Counsel for the appellant which were in fact also referred before the learned Court below. In none of the three citations the matter in controversy in this case was addressed not being the subject matter of dispute in any of the cases. So, the citations are not at all applicable. On the other hand, the citation referred by the learned Counsel for the respondent fortifies the conclusion arrived at by the learned Court below and so also by this Court."

[2] Having held so, the appeal preferred by the revisional petitioner under Section 29 of the Protection of Women from Domestic Violence Act, 2005, hereinafter referred to as the DV Act on questioning the legality of the order dated 20.12.2013 delivered in CR. 11 of 2013 by the Judicial Magistrate, First Class, Agartala, West Tripura, No.4 has been dismissed. The complaint filed under Section 31 of the Act has been held to be not maintainable by the

said order dated 20.12.2013 as the complaint did not disclose breach of either the protection order or the interim protection order.

[3] Being aggrieved by the judgment and order dated 25.11.2014, this petition filed under Section 482 of the Cr.P.C. has been set in motion. According to the revisional petitioner, both the courts below appreciated the records wrongly and mis-constructed the provisions of Section 31 of the DV Act inasmuch as the order granting relief passed by the Magistrate has been passed under Section 18(e) of the DV Act and hence, breach of such order is amenable to the provision of Section 31 of the DV Act.

[4] Mr. S. Mahajan, learned counsel appearing for the petitioner has submitted that the petitioner, the legally married wife of the respondent, who is a Government employee and is posted as the Lower Divisional Clerk in the office of the Director General of Police Agartala, was denied the conjugal rights. When the petitioner took initiative to normalize the relation, she was subjected to mental and physical assault. Even for the mental stress, she was admitted for treatment in the IGM hospital, Agartala. The respondent even did not take any care while she was ill and hospitalized. Persuaded by the circumstances, she filed a petition under Sections 18,19 and 22 of the DV Act for passing the appropriate order in the circumstances. On consideration of the evidence led by the petitioner and the respondent, the Magistrate passed the directions which reads as under:

"In the result, the respondent namely Sri Ratan Debnath is hereby restrained from causing any short of domestic violence to the aggrieved petitioner in view of Section 18 from the enjoyment of amenities of life, food, shelter and clothing.

In view of sub section (8) of section 18 the respondent is directed to return to the possession of the aggrieved person her stridhans namely, khat, alna, sofa set, freeze, dressing table, TV, tea table and other utensils Tama, Kasa, bedding and other wearing apparel such as sari and other things, one ring, two pairs ear ring and one VIP Suitcase and cash of Rs.1,00,000/- (Rupees one lakh) as given by the father of the petitioner for purchasing MIS certificates to the aggrieved petitioner within 1 month from the passing of this order i.e. from 22.08.2012.

In connection with this the aggrieved petitioner is directed to purchase MIS certificate of this Rs.1,00,000/- (Rupees one lakh) as given by her father and submit proof before this Court regarding the purchase of her MIS certificate to ensure financial stability of her life.

In respect of the petition of the petitioner claiming residence order U/S 19. The respondent is direct to secure same level of alternate accommodation for the aggrieved person and thus he is directed to pay a rent of Rs.1,000/- (Rupees one thousand) per month being the house rent w.e.f. 06.08.2012.

In regard the petitioner claiming maintenance U/S 20 the respondent failed to rebut the claim of the aggrieved petitioner that she is entitled to get maintenance for herself and as such she is entitled to get relief U/s 20. So, the respondent is directed to a pay a monthly maintenance allowance of Rs.1,500/- (Rupees one thousand five hundred) per month to the aggrieved petitioner w.e.f. 06.08.2012 and the same shall be deposited in the Bank account which shall be intimated by the aggrieved petitioner within 10th day of every month for the preceding month.

OC West Agartala PS is hereby directed to cause supervision of the observance of this order by the respondent twice in a month."

[5] Since the direction was not complied by the respondent herein, initially the petitioner sought the intervention of the

protection officer by filing an application on 07.11.2012. The similar applications were also made on 07.11.2012 and 08.11.2012 expressing her apprehension that her properties as catalogued in the said order dated 22.08.2012 might be destroyed or damaged by the respondent. However, she has admitted that the monthly maintenance allowance and the monthly rent as per direction of the Magistrate was being paid by the respondent for two months and the respondent defaulted in making payment of the monthly maintenance allowance for one month as that amount was not remitted to her before the 10th day of the relevant month. Accordingly, a complaint has been lodged under Section 31 of the DV Act in the court of the Judicial Magistrate, Court No.1 being case Misc. 11 of 2011 by the petitioner where however it has been categorically stated that the respondent has returned 'stridhans' namely, khat, alna(cloth-rake), sofa set, fridge, dressing table, TV, tea table, utensils, made of copper and brass, bedding rolls and other wearing apparels, one finger ring, two pair of ear rings, one suitcase. But the cash of Rs.1,00,000/- was not paid to the aggrieved person, the petitioner herein, which was given to the respondent for subscribing MIS in the name of the petitioner. Even in the complaint, it has been urged for passing the appropriate order under Section 20 of the DV Act. It has been stated that the petitioner has been threatened by the respondent. But the complaint was filed for breach of the direction to pay the said amount of Rs.1,00,000/-.

[6] The Judicial Magistrate by the order dated 20.12.2013 has held that the jurisdiction of the court under Section 31 of the DV Act is restricted to the protection order only. Thus, the orders passed under Section 18 of the DV are only amenable to Section 31 of the DV Act. It has been clearly observed that the monetary reliefs defined under Section 2(K) of the DV Act cannot be enforced or breach thereof cannot be made amenable to the jurisdiction provided under Section 31 of the DV Act. That can only be enforced under Section 20(6) of the DV Act. The Magistrate has further observed that for such enforcement, provisions of Section 28 of the DV Act would be applicable. For purpose of reference, Section 28 of the DV Act is extracted hereunder:

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.

[7] According to the Magistrate, the direction to return the sum of Rs.1,00,000/- is a monetary relief given by the Magistrate and the said order is not an order under Section 18 of the DV Act, but in order under Section 20 of the DV Act. Since the order passed under Section 18 of the DV Act is amenable to the jurisdiction provided by Section 31 of the DV Act, no cognizance was taken of the breach alleged to have been committed by the respondent.

Being aggrieved by that order dated 20.12.2013, the petitioner preferred an appeal under Section 29 of the DV Act in the court of the Sessions Judge, West Tripura, Agartala being Criminal Appeal No. 01 of 2014 and the said appeal has been dismissed by the impugned order.

[8] Mr. S. Mahajan, learned counsel appearing for the petitioner emphatically submitted that both the courts below have committed serious illegality while determining the ambit and scope of Section 31 of the DV Act in the perspective of the fact of the case in hand. He has submitted that the protection order has been defined in Section 2(o) of the DV Act as under:

" 'Protection order' means an order made in terms of Section 18;"

[9] Therefore, all orders passed under Section 18 are to be designated as the protection order. For reference, Section 18 of the DV Act may be reproduced hereunder:

"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."

[10] According to Mr. Mahajan, learned counsel the order directing the respondent to return the sum of Rs.1,00,000/- which has been determined to be stridhan gifted by her parents at the time of marriage, falls within Section 18(e) of the DV Act. He further submits that by such direction alienation of the said sum has been protected. He has further expanded his submission by stating that Section 20 of the DV Act which deals with the monetary reliefs cannot have any application in the fact as stated. Section 20 of the DV Act authorizes the Magistrate while disposing of an application under Section 12 to grant monetary reliefs 'to meet the expenses incurred or 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 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 (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 enforced'. This monetary relief does not have any linkage with stridhan. In the statute, stridhan has only been dealt with in Section 18(e) of the DV Act. In support of his contention, he has relied on **VD Bhanot vs. Savita Bhanot**, reported in **AIR 2012 SC 965**. But it appears from a kin scrutiny that the said decision has no manner of application in the present controversy.

[11] From the other side, Mr. Samarjit Bhattacharji, learned counsel appearing for the respondent has submitted that unless the order of the Magistrate falls within the meaning of the protection order, the Judicial Magistrate will have no jurisdiction to take cognizance of breach of the order. The said jurisdiction is restricted for breach of the protection order. He has referred a decision of the Kerala High Court in **Kanaka Raj vs. State of Kerala and another**, notes of which has been reported in **AIR 2010 (NOC) 190 Kerala**. However, this Court has been submitted a full version of the said judgment. In **Kanaka Raj vs. State of Kerala and another**, the Kerala High Court has elaborately examined the issue and thereafter has culled out the law as under:

"6. Only those orders as provided in Clauses (a) to (g) of Section 18, would be a protection order as defined in Section 2(o) of the Act.

Section 19 provides for residence order and Section 20 provides for monetary reliefs.

7. Section 31 provides penalty for breach of protection order or an interim protection order by the respondent. It reads:

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

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

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

Section 32 of the Act provides that notwithstanding anything contained in the Criminal Procedure Code the offence under Sub-section (1) of Section 31 shall be cognizable and non-bailable. Section 28(1) provides that except as provided under the Act, all proceedings for the offences under Section 31 shall be governed by the provisions of Code of Criminal Procedure.

8. Under Sub-section (1) of Section 31, if the respondent breaches a protection order or an interim protection order, he shall be punishable for the sentence provided therein. Under Sub-section (2) the offences, as far as practicable, shall be tried by the Magistrate, who passed the order, the breach of which has been alleged to have been caused by the accused. The offences under Sub-section (1) of Section 31 is cognizable and non-bailable.

9. It is thus clear that an offence under Section 31 of the Act is only for breach of either a protection order or an interim protection order passed under Section 18 and as defined under Section 2(o) of the Act. All other orders passed either under Sections 19, 20, 21 or 22 could only be executed as provided in the Code of Criminal

Procedure in view of the mandate under Section 28 of the Act as Section 28 provides that except as provided under the 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 Code of Criminal Procedure. Therefore only if the order passed by the Magistrate is a protection order or an interim protection order, the Magistrate can direct registration of the case and investigate the case under Section 31 of the Act."

[Emphasis added]

[12] Mr. Bhattacharji, learned counsel has also relied on a decision of the High Court of Rajasthan in **Kanchan (Smt.) vs. Vikramjeet Setiya**, reported in **2013 Cri.L.J. 85**. A similar view has been taken by the Rajasthan High Court but in that judgment some relevant elaboration has been made in the following terms:

"7. A perusal of Section 20 of the Act of 2005 reveals that exhaustive procedure for the execution of monetary relief has not been laid down in this Section because sub-Sections (4) and (5) of Section 20 provide the consequences to an order of monetary relief. Sub-Section (6) of Section 20 of the Act of 2005 entitles the Magistrate to direct the employer or debtor of the respondent to directly pay to the aggrieved person or to deposit with the Court a portion of wages or salaries or debt due or accrued to the creditor of the respondent towards the monetary relief payable by the respondent. However, this provision is limited to the person who may have accrued credit or is a salaried person, but in case of a self-employed person, this provision would be of no help to the claimant.

9. Resultantly, this Court is of the opinion that the provisions of the Code of Criminal Procedure in relation to execution of the order under Sec. 125 Cr.P.C. have to be resorted to by the Court below for giving force to the order of monetary relief.

10. Looking to the nature of the Legislation and the purpose for which the same was enacted, it is hereby directed that henceforth all the orders of monetary relief under the provisions of the Act of 2005 shall be executed in the manner provided under Sec. 125 Cr.P.C. but with the modification that no formal application shall be required for such an execution and as soon as

the order is passed under Sec. 12 or 23 of the Act of 2005 for directing the monetary relief, the Court, after the period provided for appeal is over, shall *suo motu* issue warrant of recovery for recovery of the monetary relief directed to be paid and in the event of warrant for recovery not being satisfied then the consequence of sending the respondent to civil jail, as per the procedure provided under Sec.125 Cr.P.C., shall be resorted to."

[Emphasis added]

[13] In another decision in **Shahul Hameed vs. Nabeesa Beevi** in Crl.MC.3829 of 2009, Kerala High Court by the order dated 15.02.2010 has shed further light as under:

"7. The breach of order under S.17 does not come within the ambit of Section 31 at all. This aspect has been considered in the decision reported in **Velayudhan Nair vs. Chimminikkara Karthiyani** : 2009 (3) KHC 377, wherein it was held as follows:

'Protection Order is defined under sub-section 9(o) of Section 2 as an order made in terms of Section 18. Therefore, only if an order, which is allegedly broken by the petitioner, is a protection order as defined under Section 2(o), cognizance could be taken under Section 31 of the Act. Such an order should be made in terms of Section 18. An order under Sections 19 or 20 is not an order made in terms of Section 18 and hence, cannot be CR MC 3829/09 a protection order. The order itself shows that directions given were under Sections 19 and 20 of the Act and not under Section 18. As the order passed under Sections 19 and 20 cannot be an order passed in terms of Section 18, as defined under Section 2(o), the Magistrate cannot take cognizance under Section 31 if there is breach of an order passed under Sections 19 and 20. Section 28 provides that provisions of Code of Criminal Procedure applies to an order passed under Sections 12,18,19,20,21 and 22 of the Act, Magistrate is entitled to take action against the respondent as provided under the Code of Criminal Procedure.'

A reading of the above decision would clearly shows that S.31 does not take within its ambit, an order under S.17 of the Act."

This decision has been returned in the perspective that whether any breach of the residence order delivered under Section 19 of the DV Act can be taken into cognizance under Section 31 of the DV Act or not. Kerala High Court answered in the negative.

[14] For appreciating the rival contentions in the backdrop of the challenge to the order refusing to take cognizance and the order dismissing the appeal by the Sessions Judge, it would be apposite to find out the nature of the order alleged to have been breached by the respondent. If it is found that the order alleged to have been breached falls within the categories of the orders referred in Section 18 of the DV Act, there would be no space for any controversy but if it is found that the order cannot be deemed to have been passed under Section 18 of the DV Act then whether such order can be brought within the ambit of Section 31 of the DV Act, when it is breached.

[15] Before the said exercise is taken, it is required to be clarified that the contention of Mr. Mahajan, learned counsel even though on the first blush appears in conformity to the statute but he has omitted to mention that Section 19(8) of the DV Act also provides as under:

"The Magistrate may direct the respondent to return to the possession of the aggrieved person for her stridhan or any other property or valuable security in which she is entitled to."

[16] If the order that has been passed by the Magistrate falls within the ambit of Section 19(8) of the DV Act then how to enforce such order is another ancillary question that would fall for response of this Court. Whether there is any provision for enforcement of such order passed under Section 19(8) of the DV Act or whether Section 28 of the DV Act has anything to do with enforcement of such order.

[17] Section 20 of the DV Act deals with the monetary relief as aforesaid. If any order passed under Section 20(1) of the DV Act is not complied with, the statute has made provision for its enforcement under sub Section 6 of Section 20 of the DV Act, which reads as under:

"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."

No such provision has however been made in the statute for enforcement of the order passed under Section 19(8) of the DV Act. Even Section 19(7) authorizes the Magistrate to 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. But there must be such direction from the Magistrate to the concerned Officer-in-Charge of the Police Station. From entire reading of the provisions as laid down under Section 19

of the DV Act it would appear that such assistance has been meant to be obtained by an appropriate order for purpose of immediate enforcement of the residence order. As such, enforcement of the residence order has been taken to some extent of, though not by expressed provisions. If such provision is not interpreted likewise, the provisions as laid down under Section 19(7) of the DV Act be rendered otiose. No interpretation can render any provision in the statute otiose.

[18] Before an inference is drawn, reference may be made to Rule 15 of the Protection of Women from Domestic Violence Rules, 2006, hereinafter referred to as the DV Rules for short. The said Rule provides as under:

"15. Breach of Protection Orders.—

(1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.

(2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.

(3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.

(4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.

(5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance, the protection officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

(6) When charges are framed under section 31 or in respect of offences under section 498A of the Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of the breach of Protection Order under section 31, in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(7) Any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act.

(8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under sections 31 and 32.

(9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the court, which may include—

(a) an order restraining the accused from threatening to commit or committing an act of domestic violence;

(b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person;

(c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit;

(d) an order prohibiting the possession or use of firearm or any other dangerous weapon;

(e) an order prohibiting the consumption of alcohol or other drugs;

(f) any other order required for protection, safety and adequate relief to the aggrieved person.”

[19] Rule 15(7) which has been framed in exercise of the powers so conferred by Section 37 of the DV Act by the Central Government categorically provides any resistance to the enforcement of the orders of the Court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or an interim protection order covered under the Act. Again Rule 15(8) provides that a breach of protection order or an interim protection order shall immediately be reported to the local police station having territorial jurisdiction and shall be dealt with as a cognizable offence as provided under Sections 31 and 32 of the DV Act. Section 31 of the DV Act does not provide the procedure how to take cognizance but it accommodates the penal provisions and the jurisdiction to take cognizance under Section 498-A of the I.P.C. or any other provision of the I.P.C. or the Dowry Prohibition Act as the case may be if the fact discloses the commission of offence under those provisions. It however, does not exclude the jurisdiction of the Magistrate to take cognizance otherwise than the police report or on its own motion inasmuch as Section 28 of the DV Act has expressly provided that for offences punishable under Section 31 of the DV Act, the procedure shall be governed by the provisions of the Cr.P.C. Hence, the power under Section 190 of the Cr.P.C. can well be exercised by the Magistrate for taking cognizance of offence punishable under Section 190 of the Cr.P.C. This aspect has neither

been agitated by the counsel for the parties nor has been dealt with by the Rajasthan High Court in **Kanchan (Smt.) vs. Vikramjeet Setiya** or by the Kerala High Court in **Kanaka Raj vs. State of Kerala**.

[20] The question now arises is that whether Rule 15(7) of the DV Rules, 2006 has referred about an order which is not covered by the definition provided by Section 2(O) of the DV Act, 2005. Let us revisit the deeming fiction implanted by the DV Rules, 2006 in Rule 15(7). It categorically provides that any resistance to the enforcement of the orders of the court under the Act by the respondent or any other person purportedly acting on his behalf shall be deemed to be a breach of protection order or interim protection order covered under the Act. There cannot be any amount of doubt that Rule 15 deals with breach of the protection order and as such, ordinarily the order if any referred under Rule 15 of the DV Rules would mean and imply the 'protection order' as defined. Apart that, Section 37 of the DV Act has created power for the Central Government to make rules but such power is not unbridled. This exercise must be confined to 'for carrying out provisions of this Act' or 'without prejudice to the generality' to such power the rules may provide or deal with all or any of the matters catalogued under sub Section 2 of Section 37 of the DV Act. It is evident that Section 37 of the DV Act is the power to frame rules for carrying out the provisions of the Act. Even though some dynamic interpretation of Rule 15(7) of the DV Rules might

emerge but that cannot be accepted by this Court for the reason that it may attract a situation which would demean the statutory design. The very ambit of the rule making power has been provided under Section 37 of the DV Act. Section 31 of the DV Act only speaks of the protection order and the protection order is well defined. Thus, for enforcement of any order passed under Section 19(8) of the DV Act by directing the respondents to return the 'stridhan' of the petitioner may not be covered by the provisions of Rule 15(7) of the DV Rules. The legislature while bringing the DV Act, 2005 has declared in its statement of object and reasons, *inter alia* that '*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 498A of the India Penal Code. The civil law does not however address this phenomenon in its entirety.*' It is, therefore, obvious that by enactment of the DV Act, 2005 the legislature intended to provide a speedy and efficacious remedy to the victim of the domestic violence. But they have not perhaps invested their concern with the required earnestness on the aspect of enforcement of the order passed by the Magistrate under Section 19(8) of the DV Act and that has created a vacuum and that has been sought to be filled up by those judgments of Rajasthan High Court and Kerala High Court. But the purpose of Section 28 of the DV Act is definitely not to provide a mechanism for enforcement of any order. Those are for purpose of

the procedure to be followed in the proceedings under Sections 12, 18,19,20,21,22 & 23 and for trial of the offence under Section 31 of the DV Act. However, that provision is subject to the authority of the Magistrate for laying down its own procedure for disposal of an application under Section 12 or under sub Section 2 of Section 23 of the said Act. There is no procedure thus available in the code for enforcement of the order passed under Section 19(8) of the DV Act. This Court is persuaded to observe on noticing this legislative silence that the appropriate mechanism for enforcement of the order passed under Section 19(8) of the DV Act be made part of the DV Act by way of amendment in the principal act with object to make the code comprehensive and self-contained and that exercise would be harmonious to the espoused object of enacting the DV Act. However, till such amendment or appropriate mechanism is placed in order, it is directed that the order in the nature of or passed under Section 19(8) of the DV Act may be enforced following the provisions of Section 128 of the Code of Cr.P.C., 1973 which provides as under:

Enforcement of order of maintenance : A copy of the order of [maintenance or interim maintenance and expenses of proceeding, as the case may be,] shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person [whom the allowance for the maintenance or the allowance for the interim maintenance and expenses of proceeding, as the case may be,] is to be paid; and such order may be enforced by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the

non-payment of the [allowance, or as the case may be, expenses, due].

[21] In Section 128 of the Cr.P.C., there is no reference to any order for returning the 'stridhan'. It exclusively deals with order of maintenance or interim maintenance and expenses of the proceeding. Therefore, the order or direction for returning 'stridhan' shall be read in this section. The order directing return of 'stridhan' can also be enforced in the manner provided under Section 128 of the Cr.P.C. read with Section 125(3) of the Cr.P.C. which provides the coercive measures in the following terms:

"(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made.

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing."

[22] For purpose of enforcing any order passed under Section 19(8) of the DV Act, in Section 125(3) of the Cr.P.C. 'in

place of' the amount due 'for the whole month of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,] remaining unpaid', 'the non-compliance of the direction of returning stridhan' shall be read. If any application could not be made within one year as prescribed by proviso to Section 125(3) of the Cr.P.C., that will not extinguish the right of the victim to recover her stridhan by approaching the Court of the competent jurisdiction for recovery as the DV Act is supplemental in nature. While applying the provisions of Section 128 read with section 125(3) of the Cr.P.C., the Magistrate shall apply those provisions with modification having regard to the speedy and substantive enforcement. Such devising is required for doing justice, not for circumventing it. This practice may continue till the legislative change as expected is made.

[23] Having held so, this petition stands disposed of.

A copy of this order be sent to the Secretary, Ministry of Law and Justice, Government of India for their notice of the observation made in this order in regard to necessity of the legislative change.

JUDGE

Sujay