

*** THE HON'BLE SRI JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL REVISION CASE No.2888 OF 2016

% 09.02.2017

J.Shyam Babu

....Appellant

Vs.

\$ The State of Telangana, rep. by Public Prosecutor,

High Court at Hyderabad and others

.... Respondents

!Counsel for the Appellants : SRI VUPPALAPATI SREENIVASA RAO

Counsel for the Respondent: PUBLIC PROSECUTOR
SRI VEDULA SRINIVAS

<Gist :

>Head Note:

? Cases referred:

1. 2015(1) ALD (CRL) 19 (SC)
2. (2013)6 ALT 543 DB
3. (1999) SC 38
4. (2001) 3 SCC 537

THE HON'BLE DR JUSTICE B.SIVA SANKARA RAO**CRIMINAL REVISION CASE No. 2888 OF 2016****ORDER:**

The Revision Petitioner, J.Shyam Babu, is the respondent in D.V.C.No.24 of 2015 on the file of the Court of XXIII Metropolitan Magistrate, Cyberabad at Rajendranagar filed against him by his wife, J.Rajini Kumari.

2. It is the case of the petitioner that during pendency of said D.V.C., the revision petitioner filed CrI.M.P.No.1121 of 2015 stating therein that said case started in the year 2014 and it came for his cross-examination after 21 months and he made total payments of Rs.1,50,000/-; that his wife occupied his flat at Manikonda and she created a poisonous atmosphere between her younger brother and himself, which resulted in his brother filing a false case against him; that she also got filed a false case against him through her sister and also instigated the land owners to file consumer case; that the behaviour of his wife caused him acute mental cruelty, resulting in deterioration of his health and he was thrown to financial crisis; that he is borrowing amounts to pay maintenance to the children and that the DVC filed by her is not at all maintainable. It is the further case of the petitioner that in the cross-examination of the DVC petitioner (respondent to this application supra) on 01.12.2014, it was stated by her that she was abandoned by him by sending her

out in February, 2012 and the DVC filed by her is in January, 2014, which is two years later to it, and there is no domestic relationship subsisting for the two years to accrue cause of action and thereby the DVC is not maintainable and the same is labile to be dismissed. It is also further averment of the petitioner that the respondent looted away his hard earned money and utensils and that they lived for four years before going to Saudi and seven years after coming from Saudi; that she made him to incur Rs.15 lakhs for her illegal desires; and that he is ready to take welfare of his sons.

3. The said petition was opposed by the DVC Petitioner as respondent to this petition by filing a counter stating that the DVC respondent is prolonging the litigation by filing petition after petition and not even paying regular interim maintenance; that the DVC was originally numbered in the year 2013 fixing the appearance of the DVC respondent in January, 2014; that the DVC respondent filed his chief affidavit in November, 2014 after the evidence of DVC petitioner and but for his evidence, he did not appear before the DVC Court and he has fallen due an amount of Rs.80,000/- out of the maintenance claim; that the petition is frivolous and vexatious with no any valid grounds and hence to dismiss the DVC Petition.

4. The learned XXII Metropolitan Magistrate, Cyberabad at Rajendranagar dismissed the petition by order dated

15.03.2016 observing that the relationship between the parties is covered by domestic relationship under Section 2(f) r/w 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Act"), and the same cannot be disputed for admittedly she is his wife and the children are his sons in the wedlock. It was further held that even from the decision of Delhi High Court in *Vijay Verma v. State NCT of Delhi and another in Crl.M.C.No.3878 of 2009 dated 13.08.2010* what it says is that if out of the domestic relationship any violence is taking place, the DVC is maintainable, so also from the other decision of the Delhi High Court in *Nagesh Malik v. Payal Malik in Crl.Rev.P.No.252 of 2010 and batch dated 29.07.2010* and another decision of *Sejal Dharmesh Ved v. State of Maharashtra and others in Crl.A.No.160 of 2011 dated 07.03.2013* and thereby, the petition questioning maintainability of the DVC No.24 of 2015 has no legs to stand and accordingly dismissed the petition.

5. It is impugning the same, petitioner maintained appeal and went unsuccessful in D.V.C.Appeal No.336 of 2916 vide impugned order dated 01.09.2016 of the learned Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar. It was observed by the lower appellate court that the petitioner is dragging on the matter as can be seen from the trial court docket orders, his contention that there is no domestic relationship between them is untenable from a reading of

Section 2(f) of the Act and that there are no grounds to interfere with the dismissal order of the learned trial Magistrate.

6. Impugning the said concurrent dismissal orders the contentions in the grounds of Revision *vis-à-vis* from the oral submissions of his learned counsel that the DVC claim is barred by limitation for filing the complaint after accrual of cause of action having waited for 22 months and under Section 468 of the Code of Criminal Procedure, 1973 (for short, "Code"), it could have been filed within one year and according to the respondent she left his company in February, 2012 and the DVC admittedly was filed on 01.11.2013, which is more than a year, and thereby it is barred by limitation to entertain beyond one year after accrual of cause of action. It is further stated that this Court in CrI.P.No.8935 of 2014 by order dated 19.01.2014 dismissed a DVC filed beyond one year after accrual of cause of action as barred by limitation referring to a Supreme Court Judgment and thereby the DVC is liable to be dismissed saying that the Act, particularly, Section 28 of the Act read with Rule 15 of the Rules, 2006 of the said Act speaks all proceedings including Sections 12, 18 to 23, 31, 32 are governed by the Code and thereby the limitation provided by Section 468 of the Code equally to apply.

7. Whereas it is the submission of the learned counsel for the DVC petitioner/respondent herein that against the concurrent findings of the courts below, there is nothing to interfere but for dismissal of the revision petition which is nothing but groundless.

8. Heard both sides at length.

9. The core issue (leave about as a new point cannot be raised in the revision impugning the dismissal order questioning maintainability of the DVC otherwise for alleged domestic relationship is lacking) is whether the limitation provided under Section 468 of the Code is applicable to the Protection Orders, complaining Domestic Violence, under Sections 18 to 23 of the Act?

10. This Court in *Gaddameedi Nagamani vs. State of Telangana and others in Crl.P.(SR).No.22371 of 2015 and batch*, by a common order dated 17.07.2015 dealt with the issue of cognizance for the reliefs and remedy of appeal and not on limitation issue.

11. In deciding the issue supra, it is necessary to consider the relevant provisions of the Code and the Act:

a) While Section 2(f) defines 'Domestic Relationship', which must exist under Section 12 of the Act, to make any claim for reliefs under any of the Sections 18 to 23 of the Act:

b) Section (2)(i) of the Act defines, “Magistrate”, which means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

c) As per Section 2(m) of the Act, “prescribed” means prescribed by rules made under this Act;

d) As per Section 2(q) of the Act, “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;

12. Before considering the reliefs and procedure for obtaining orders or reliefs provided in Chapter-IV of the Act, of which Sections 12 to 29 are also relevant it is also relevant to refer Sections 31 & 32 of the Chapter-V-Miscellaneous relating to protection officers, penalty for breach of protection order by respondent and its cognizance. Sections 31 and 32 read as follows:

Sec.[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.

Sec.32: Cognizance and proof:—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

12 (a) Among which Section 32(i) referred supra speaks of the offence provided by Section 31 is a cognizable and non-bailable offence, notwithstanding anything contained in the Cr.P.C. (which mean including Schedule-II as Schedule-I deals with I.P.C. offences and Schedule II covered the offences under any other enactments). It is to say, Section 32 is worded with non-obstante clause.

12(b) To understand the emphasis, before going to the scope of Sections 26 to 29 of the Act, it is essential to read Sections 4(2) and 5 of Cr.P.C. and also Section 190 Cr.P.C. Section 190 Cr.P.C. speaks of cognizance of offence by the Magistrate in three ways, viz., upon receiving a complaint of facts, upon a police report or upon information received from

any person other than a police officer or upon his own knowledge

13. Cognizance is not defined in the Code of Criminal Procedure. 'Victim' is defined in 2(w)(a). Cognizance to mean application of judicial mind to the facts on hand. It is to say even taking on file of a case as can be seen from wording of Section 190 of the Code supra is taking of cognizance of the offence or the case as it may be of other matter covered by the Code.

14. Now coming to Sections 4 and 5 of the Code, Section 4(1) deals with offences under Indian Penal Code whereas Section 4(2) deals with other offences. Section 4(2) reads that all offences under any other law shall be investigated, enquired into, tried and otherwise dealt with according to the same provisions(of the Code), but subject to any enactment for the time being in force regulating the matter or place of investigating, inquiring into, trying or otherwise dealing with such offence. Section 5 'Saving' clause speaks that nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

15. It is to say from the combined reading of Section 4(ii) r/w Sections 5 of the Code and 32(i) of the Act, that offence

defined in Section 31 is a cognizable and non-bailable, irrespective of what is contained in the Code from the non-obstante clause that is saved and for other areas, the Code applies. In addition to that, the same is confirmed by the wording of Section 26 of the Act, which reads that (1) any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person against the respondent, whether such proceeding was initiated before or after the commencement of this Act. (2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

16. It is to say Domestic Violence Act provisions are available but not the only forum for the aggrieved to choose, as instead of coming to criminal Court by invoking doors of the provisions of this Act can invoke other provisions, Procedural Law with any other substantive law and also can invoke substantial civil remedy by invoking Code of Civil Procedure. Further, even there is no specific provision under the Act for interim relief in appeal including in Section 29 of

the Act, once the Code applies for any interim relief Section 389 of the Code can be invoked by virtue of Sections 26 and 28 of the Act r/w Sections 4 and 5 of the Code. It is the sum and substance of Section 26 of the Act. In the expression in **Shabe Oza v. M.Oza**¹, there is no finding or observation and no reference made to Sections 26 to 29 of the Act. It is *in fact* held therein even a statute not provided for interim relief specifically, general provisions of law can be invoked.

17. Section 27 of the Act deals with jurisdiction in continuation of Section 2(i) which defines Magistrate of the area is having jurisdiction. Section 28 is the procedure which says save as otherwise provided in this Act, all proceedings under Sections 12, 18 to 23 and offences under Section 31 shall be governed by provisions of the Code. Nothing in sub-section (i) shall prevent the Court for adopting its own procedure for disposal of an application under Section (2) Section 23(2) of the Act. It is clear from the wording of Section 28(i) that Section 31 is a penal section defined as offence and Sections 12, 18 to 23 are not the penal provisions but for to get reliefs defined as proceedings. It is to say the procedure provided by Sections 126 to 128 of the Code can be applied to the proceedings under the Act to get reliefs under Sections 12, 18 to 23 if there is no special provision or special procedure or specific rule made there under. The law is very

¹ 2015(1) ALD (CRIMINAL) 19 (SC)

clear on this aspect from several expressions of the Constitutional Courts.

18. No doubt, as per Section 6 of the Code r/w Section 26 and Section 2(i) of the Act, High Court is also a criminal Court from the wording that; besides the High Court, other criminal Courts of five kinds are defined. Section 482 is an inherent power which inheres on the very constitution of the High Court that is saved, but for to say if there is any other specific provision either under the Code or any other law, Section 482 cannot be invoked as a matter of course, nor can be exercised by the Court by invoking it on its own as a matter of routine. It is an inherent provision to meet the exceptional contingencies as defined in Section 482 of the Code of three kinds viz., to implement the orders of any Court or to prevent any abuse of process and or to meet the ends of justice.

19. From this background, the question, in view of the contention of the learned counsel for the petitioner, is as to whether Section 468 of the Code is applicable or not to the cases covered by the Act?

20. Section 28 of the Act deals with the procedure and sub-section (i) provides 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 Code and sub-section (2) thereof provides that nothing in

sub-section (i) shall prevent the court from laying down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act. To mean from the provisions referred supra and also from Sections 27 of the Act, that Section 31 is a penal section and Sections 12, 18 to 23 are not penal sections but are defined as proceedings under the Act. That is why, as observed supra, the procedure in Sections 125 to 128 of the Code to the extent necessary can be adopted in the proceedings covered by Sections, 12, 18 to 23 of the Act.

21. Here, the present proceedings are under Sections 18 to 23 r/w 2(f) of the Act. When such is the case, definitely the orders to be passed are either providing shared residence or any amount for separate residence to bear the rent or for any domestic violence prohibitory orders or for compensation or for maintenance as part of the compensation to be awarded or the like. At the cost of repetition, it is to say that Section 31 is a penal provision, which arises for non compliance of the order passed under Sections 18 to 23 and not otherwise if it is a penal provision, which provides for punishment. So far as Sections 26 to 28 of the Act referred supra have no penal consequences to get reliefs, but for if reliefs granted not complied, to complain for taking cognizance as offence under Section 31 of the Act. Thus cognizance of offence is different from cognizance of other proceedings. Merely because

cognizance taken, it does not amount to cognizance of offence but only as other proceedings. For that where there are special provisions under the Act, the general provisions of the Code apply.

22. In relation to period of limitation, it cannot be ignored that Chapter XXXVI of the Code applies to the extent what it provides. In fact this chapter provides of limitation only for taking cognizance of certain offences. This chapter thereby did not provide limitation for taking cognizance of other proceedings like for maintenance claims under Sections 125 to 128 of the Code.

23. For more clarity it is just to refer the Chapter XXXVI of the Code which contains Sections 467 to 473 of which, Sections 467 & 468 are relevant to reproduce which reads as follows:

“467:- Definitions:- For the purposes of this Chapter, unless the context otherwise, requires, “period of limitation” means the period specified in section 468 for taking cognizance of an offence.

468:- Bar to taking cognizance after lapse of the period of limitation: - 1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) for the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.”

24. Section 471 speaks of exclusion of date on which the court is closed. Section 470 deals with exclusion of time in certain cases where consent or sanction of the Government or any other authority required etc., and the period taken for that to exclude etc. Section 469 prescribes that the period of limitation in relation to an offence shall commence on the date of offence; or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier. In computing the said period, the day from which such period is to be computed shall be excluded. These are the general sections. Section 472 of the Code speaks about Continuing Offence for which a fresh period of limitation shall begin to run at every moment of time during which the

offence continues. Section 473 of the Code speaks of extension of period of limitation in certain cases irrespective of what is stated in Section 468, any Court may take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice. It speaks of two limits to condone the delay even not filed within limitation period provided to take cognizance of an offence even after expiry of the period if delay is properly explained by considering the explanation or even otherwise irrespective of delay explained or not, where court feels necessary to condone the delay in the interest of justice. Thus interest of justice is paramount and even there is absence of application or explanation to enable the court to condone the delay arisen in filing a case punishable for an offence beyond the limitation period, to take cognizance. Thus, it is a pre-cognizance stage. Once cognizance is taken it is deemed for all purposes, even not filed within time any application to condone delay. If any objection is raised even after summons are served , not belatedly after lapse of time having allowed the proceedings to commence and by participation, it is thus not open to question the cognizance order.

25. In the case on hand, the evidence of the DVC respondent is in progress. Once such is the case having

allowed the proceedings to continue for although, he cannot raise this objection at this stage from the waiver and by doctrine of estoppel having not even taken such objection on limitation in the courts below but for first time in the revision.

26. Therefore, it is crystal clear that the period of limitation applicable is only to take cognizance of an offence and not for any proceedings other than for an offence. It is because from perusal of the wording of Sections 2 r/w 12 r/w 18 to 23 among Sections 1 to 29 of the Act, none of the provisions speak any relief to be granted is for any offence much less by way of punishment or by saying as a deemed offence. It is only where such relief granted not complied constitutes offence and for that and in such event, to take penal recourse the limitation provided in the Chapter XXXVI of the Code that applies:

27. It clarifies the above position further from the relevant provisions viz., Section 2(n) of the Code defines 'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under Section 20 of the Cattle-Trespass Act, 1871. So to make an offence from that definition the act or omission must be punishable by any law without which it cannot be called as an offence and without

which the questions of applying limitation for proceedings (which no way an offence) does not arise.

28. Section 2(y) of the Code also speaks that the words and expressions used herein and not defined but defined in the IPC, have the meanings respectively assigned to them in that code. Thus, when the Code is silent for anything, then IPC definitions have to be looked into. At the cost of repetition, in none of the sections for granting reliefs under Sections 18 to 23, any relief is within the meaning of granting the relief by punishment much less for any offence, from the reading of even Sections 2(y) with 2(n) of the Code.

29. In this regard, coming to IPC provisions, which define punishments, Section 53 of IPC is important as a guiding factor. In chapter III IPC, it speaks of six kinds of punishments viz., first-death penalty; second-imprisonment for life; third-solitary confinement is omitted; fourth-imprisonment either rigorous i.e., with hard labour or simple; fifth-forfeiture of property; and sixth-fine. In this context, it is important to say awarding of compensation is not defined as part of punishments under IPC. Further, it is also necessary to refer to Sections 421 and 431 of the Code. Section 421 prescribes Warrant for levy of fine and how to recover including to undergo the default sentence for non-payment of fine and the power of the court to impose default sentence. As per Section 29 of the Code r/w Section 2(i) of the Act what

sentences which Magistrate may pass i.e., Magistrate of First Class in not exceeding three years or of fine not exceeding Rs.10,000/- or both. Leave about the lesser powers of II Class Magistrate and so far as Metropolitan Magistrate, Chief Metropolitan Magistrate, shall have the same powers of the Chief Judicial Magistrate and other Metropolitan Magistrates as Judicial Magistrate of First Class. Insofar as Chief Judicial Magistrate and Chief Metropolitan Magistrate concerned, they can impose any sentence authorized by law except sentence of death or sentence of law or the term exceeding seven years.

30. No doubt, Sections 357-A to 357-C speaks of compensation including compensation to a victim leave about Section 358 compensation for ground less arrest, Section 431 of the Code speaks of recovery of compensation as if fine by invoking Section 421 of the Code. It is not even stated in any of the provisions including Sections 421 and 431 of the Code that compensation is part of fine but for saying compensation, if at all awarded, the recovery is as fine. A fine is different from fine as if fine is one of the modes of sentences which is definitely for an offence. So far as compensation is concerned it is otherwise and it is not for offence alone. It can be for any offence also where to compensate. Once compensation is provided to be awarded by following the procedure under the Code even, Section 468

also has no application at all for compensation is not an offence.

31. Once such is the case and these aspects when not covered in any expression rendered earlier either by this court or of the apex court, the same is hit by *sub silentio* including the expression of this court in *Crl.P.No.8935 of 2014* and the expression of the apex court in *Inderjit Singh Grewal vs. State of Punjab & Another in Crl.A.Nos.1635 of 2011* and it is not the case where that by referring all these provisions it was held by interpreting compensation as part of the fine or as one of the modes of sentence and thereby the limitation is applicable. This conclusion on the principle of *sub silentio* can be taken aid from the expression of the Division Bench of this Court in ***Gadda Balaiah vs. The Joint Collector, Ranga Reddy District***² which quoted with approval the expressions of the Apex Court in ***Municipal Corporation of Delhi vs. Gurnam Kaur***³ and ***A One Granites vs. State of U.P.***⁴ that a judgment *sub silentia* is not law declared within the meaning of Article 141 of the Constitution of India.

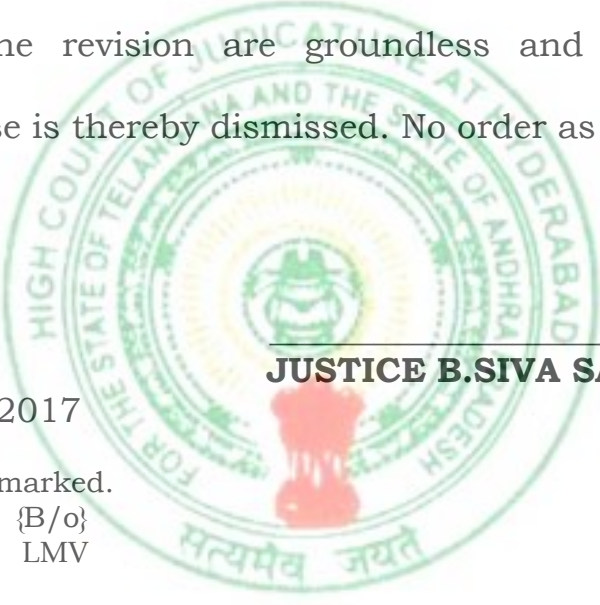
32. Accordingly and in the result, it is made clear by holding that to initiate proceedings and to take cognizance for the reliefs to be claimed outcome of domestic relationship under Sections 12 r/w 18 to 23 of the Act, the question of

² (2013)6 ALT 543 DB

³ (1999) SC 38

⁴ (2001) 3 SCC 537

application of period of limitation under Chapter XXXVI of the Code does not arise and the same have no application but for from what in the Act provided in case of non-payment of compensation awarded or for non-implementation of the orders passed under Sections 12, 18 to 23 of the Act, to enforce the same for such violation which tantamounts to an offence to cognizance of which the period of limitation provided by Chapter XXXVI of the Code arises and not otherwise. Having regard to the above all the contentions raised in the revision are groundless and the Criminal Revision Case is thereby dismissed. No order as to costs.



JUSTICE B.SIVA SANKARA RAO

February 9, 2017

Note:-

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