

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+ WRIT PETITION No.40818 OF 2015

% 19.03.2019

T.V. Rao, S/o. Veeraswamy,
Aged about 73 years, Occ: Business,
R/o. Hyderabad and others .. Petitioners

Vs.

\$ State of Telangana, rep., by its
Principal Secretary to Government,
Department of Women and Child
Development, Secretariat Buildings,
Saifabad, Hyderabad and others .. Respondents

! Counsel for the petitioner : Sri P. S. Rajashekar

Counsel for the Respondents 1 & 2: Learned Government Pleader
for Women and child Welfare

Counsel for Respondent No.3 : Learned Government Pleader
for Home

Counsel for Respondent No. 4 : Smt. S.Nanda

<Gist :

>Head Note:

? Cases referred:

(1998) 8 SCC 1
2013 (14) SCALE 448
(2016) 11 SCC 774
2010 CrI. L.J. 2462
2011 (4) SCC 813
2011 (14) SCC 770
(1985) 4 SCC 337
2007 Delhi H.C.
(2005) 13 SCC 89

**IN THE HIGH COURT FOR THE STATE OF
TELANGANA**

WRIT PETITION No.40818 OF 2015

Between :

T.V. Rao, S/o. Veeraswamy,
Aged about 73 years, Occ: Business,
R/o. Hyderabad and others

.. Petitioners

And

State of Telangana, rep., by its
Principal Secretary to Government,
Department of Women and Child
Development, Secretariat Buildings,
Saifabad, Hyderabad and others

.. Respondents

JUDGMENT PRONOUNCED ON : 19.3.2019

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may :
Be allowed to see the Judgments ? : YES
2. Whether the copies of judgment may be marked : YES
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to :
See fair Copy of the Judgment ? : No

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.40818 OF 2015****ORDER:**

Heard learned counsel for the petitioners, learned Government Pleader for Women and Child Welfare appearing for respondents 1 and 2, learned Government Pleader for Home appearing for respondent No.3 and Smt. S. Nanda, learned counsel appearing for respondent No.4.

2. This Writ Petition is filed challenging the order of IV Metropolitan Magistrate (Traffic Mobile Court), Hyderabad, dated 27.11.2015 made in CrI.M.P.No.203 of 2015 in D.V.C.No.57 of 2013, whereunder he has set aside order dismissing the DVC for non prosecution and restored the D.V.C.

3. The facts relevant to consider the issue are as under:

Petitioners 1 and 2 are parents of husband of respondent no.4, and petitioner No.3 is daughter of petitioners 1 and 2. Petitioners are accused in C.C.No.375 of 2012 on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad, alleging committing of crime under Section 498-A of I.P.C. With the assistance of Protection Officer, respondent No.4 filed complaint dated 28.01.2013 with respondent No.2 under 'the Protection of Women From Domestic Violence Act, 2005' (for short, 'the Act') alleging domestic violence. On the same day, the Protection Officer referred the complaint to IV Metropolitan Magistrate (Traffic Mobile Court), Hyderabad. With the assistance and verification of

protection officer, she filed application in Form II under Rule 6(1) praying to grant reliefs under various provisions of the Act. The learned Magistrate has taken the same on file and registered as D.V.C.No.57 of 2013 under Section 12 of the Act for reliefs under Sections 18, 19 and 20 of the Act. Petitioners in the Writ Petition are arrayed as respondents 2 to 4. The said D.V.C. was dismissed for non-prosecution on 08.07.2014. Respondent No.4 filed Crl.M.P.No.203 of 2015 praying to restore the D.V.C. and to hear the same on merits. By the order impugned, the learned Magistrate allowed the petition and restored D.V.C.

4. The issue for consideration is, whether the decision of learned Magistrate to allow the petition filed by respondent No.4 for restoration of D.V.C., dismissed for non-prosecution is valid ?

5.1. According to learned counsel for petitioner, the petition for restoration is moved under Section 25(2) of the Act. The said Section is not applicable for restoration of case dismissed for non-prosecution. It only deals with duration and alteration of orders already made. According to learned counsel, against a decision in D.V.C. an appeal is maintainable under Section 29 of the Act to the Court of Sessions within 30 days. Respondent No.4 failed to avail the remedy provided by Section 29 of the Act and statutory period expired long ago and therefore the petition filed before the Magistrate's Court was not maintainable. After expiry of the limitation period available to prefer appeal, no such petition could have been entertained. Learned counsel would submit that with reference to adjudication of matters arising under the Act, provisions of Code of Criminal Procedure are applicable. According

to Section 362 of Code of Criminal Procedure, once final order is passed disposing of a case, the Court cannot alter or review the decision except clerical or arithmetical error. As this provision is applicable to the cases under the Act, once a decision is made, the Court becomes *functus officio* and has no competence to deal with the application including petition for restoration. In support of the said contention, he has placed reliance on provision in Section 28 of the Act.

5.2. According to learned counsel, respondent No.4 did not approach IV Metropolitan Magistrate with clean hands. The reasons assigned in support of the petition to restore the case are not germane to genuine circumstances in which respondent No.4 could not attend to the Court when the case was dismissed, assuming that the learned Magistrate has competence to deal with such petition. According to learned counsel, only reason assigned in paragraph No.3 of the affidavit filed in support of the petition that respondent No.4 was in great mental trauma and suffering, as she was not keeping good health for the past two years and was driven out of the home by the petitioners was false and a concocted story. The further averment in paragraph No.4 of the said affidavit that she did not note down the date of hearing of the case was incorrect statement.

5.3. He would submit that during the same period, respondent No.4 filed Tr.Crl.M.P.No.1142 of 2014 before the Hon'ble Metropolitan Sessions Judge, Hyderabad, stating that she has no faith or trust in the Presiding Officer of IV Metropolitan Magistrate's Court (Traffic Mobile Court), Hyderabad. He would submit that

respondent No.4 was simultaneously prosecuting other remedies during the same period, whereas these facts were not disclosed before the learned Magistrate. By referring to the docket proceedings, he would submit that on several occasions earlier also, respondent No.4 did not appear. Therefore, the order dismissing the D.V.C. by holding that respondent No.4 had no interest in prosecuting her case was valid, no case was made out for accepting the plea of respondent No.4 and restoring the petition.

5.4. He would submit that respondent No.4 is indulging in false complaints and harassing and humiliating the petitioners. At the advanced age, petitioners 1 and 2 are subjected to unnecessary harassment and suffering without any justification and restoration of the application and taking up the matter would only result in further harassment and suffering of the petitioners.

6.1. Learned counsel Ms. Nanda appearing for 4th respondent raised preliminary objection on maintainability of the Writ Petition by contending that Section 29 vests right on the aggrieved person to prefer appeal and if the petitioners were aggrieved by the order of the Court, they ought to have preferred appeal to the Court of Sessions and when an effective and efficacious remedy is available under the statute governing the issue, Writ Petition is not maintainable.

6.2. Learned counsel, defended the decision of the learned Magistrate in allowing the petition for restoration. She would submit that the provisions of Code of Criminal Procedure are not applicable *mutatis mutandis* to all the proceedings before the Court

dealing with the D.V.C. cases under the Act. By referring to provision in Section 28 of the Act and few other provisions, she would submit that the provisions of Code of Criminal Procedure are applicable to the limited extent mentioned therein. According to learned counsel, the proceedings under the Act are civil in nature and therefore the provision in Section 362 of Code of Criminal Procedure is not applicable to the Court dealing with these matters. She would submit that as the whole gamut of Code of Criminal Procedure is not applicable to the Court dealing with these matters, the Court has inherent power to recall a decision made earlier and the said power is validly exercised.

6.3. She would submit that even assuming Section 25 (2) is not attracted as the Court has inherent power to restore the petition, the decision cannot vitiate on that ground. By placing reliance on several precedent decisions of Supreme Court, this Court and other High Courts, she emphasized that the proceedings under the Act are civil in nature and therefore the provisions of Cr.P.C. are not attracted and that competent Court has inherent power to recall its earlier order. Alternatively, she would submit that Section 362 of Code of Criminal Procedure, even if it is applicable to the proceedings under the Act, the same is not attracted to the case on hand. The earlier decision was not on merits and not a judgment and can therefore be restored.

6.4. She would further submit that non-appearance of respondent No.4 on the dates mentioned in the order dismissing the D.V.C. were for genuine reasons. Respondent No.4 was subjected to lot of trauma and suffering as she was thrown out of her in-law's home

and had to take care of minor child. Those were the compelling circumstances in which respondent No.4 could not attend to the Court when the case was listed. It was neither intentional nor deliberate. Unless the petition is restored and considered on merits, grave prejudice would be caused to respondent No.4.

7. In reply, learned counsel for the petitioners would submit that the decisions relied upon by respondent No.4 have no relevance to the case on hand. He would submit that decisions relied upon are referable to proceedings under Sections 482 and 125 of Cr.P.C. and not in the context of D.V.C. or Section 362 of Code of Criminal Procedure. He would submit that the fact that respondent No.4 did not disclose filing petition before the Metropolitan Sessions Judge expressing no confidence in the Magistrate and requesting for transfer of the case during the same period would show lack of *bona fides* and therefore no indulgence can be shown to such person by this Court. He would submit that as the order under challenge is without jurisdiction, Writ Petition is maintainable under Article 226 of the Constitution of India. Learned counsel placed reliance on a decision of the Supreme Court in **Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai and others**¹.

8. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue and serious deterrent to development. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women

¹ (1998) 8 SCC 1

(C E D A W) in its General Recommendation No. XII (1989) has recommended that State Parties should act to protect women against violence of any kind especially that occurring within the family. In India 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 IPC. The Civil Law does not address this phenomenon in its entirety.

9. Taking due note of rising domestic violence and lack of legal protection to address the grievances of persons subjected to domestic violence and to provide effective deterrence against such victimization, Indian Parliament enacted, 'the Protection of Women From Domestic Violence Act, 2005'.

10. It is a special enactment dealing with domestic violence and provides protections and safeguards to the women from domestic violence. The Act recognizes that only protection available to a woman was on cruelty by her husband or her relatives punishable under Section 498-A of I.P.C.; that domestic violence is not reported properly; there is no mechanism to look into the grievances of the victims and remedies are not provided under civil law. This Act enables wife or a female living in a relationship in the nature of marriage, a victim of domestic violence, to file a complaint against any relative of the husband or the male partner. The expression "Domestic Violence" includes actual abuse or threat of abuse be it physical, sexual, verbal, emotional or economic. It extends to harassment meted out to a woman or her relatives for unlawful dowry demand. It provides a woman to secure housing, a

right to reside in her matrimonial home or shared household even if she has no title or right in such home or shared household. The Act also envisages appointment of Protection Officers and registration of non-governmental organizations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter etc.

11. The Act is a self-contained code; deals with what constitutes 'domestic violence' and the remedies available to the victims and the protection that is required to be provided from such violence. Unlike ordinary civil litigation, occurrence of domestic violence or imminent violence can be reported by any one and based on such report case can be registered and proceedings would commence. The aggrieved person can enforce the rights flowing out of the said Act by availing the remedies provided under the Act. The Act empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondents before the Court from aiding or committing an act of domestic violence or any other specified act, entering a work place or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

12. As per Section 28 of the Act, for matters arising under Sections 12 and 18 to 23 and offences under Section 31 of the Act, Code of Criminal Procedure would apply. Section 12 of the Act deals with submission of application to Magistrate by which the Magistrate takes note of the complaint and adjudicates the

grievance. Section 18 of the Act deals with protection orders; Section 19 deals with residence orders; Section 20 deals with monetary reliefs; Section 21 deals with custody orders; Section 22 deals with compensation orders; Section 23 deals with power to grant interim and *ex parte* orders; and Section 31 deals with penalty for breach of protection order by the respondent. However, it is apparent that entire gamut of the Code of Criminal Procedure is not extended *mutatis mutandis*. At this stage, going back to the objective for bringing about this Act, it is apparent that Act intends to provide legal remedy, not addressed in codified civil law, against the phenomenon of domestic violence. In other words, the Indian Parliament was conscious that women needed to be provided safeguards under the Act and remedies in addition to the remedies available under the Indian Penal Code, and to fill the vacuum in civil law. Thus, merely because for some of the provisions of the Act, the Code of Criminal Procedure is made applicable would not mean that the orders/decisions made under the Act are governed by the Code of Criminal Procedure. Further, though Magistrate Court is vested with jurisdiction to adjudicate cases of domestic violence, but is not constrained by the Code of Criminal Procedure while adjudicating cases under the Act and has the liberty to lay down its own procedure.

13. In ***Indra Sarma v. V.K.V. Sarma***², the Supreme Court examined the scope of D.V. Act.

“14. The D.V. Act has been ***enacted to provide a remedy in Civil Law*** for protection of women from being victims of domestic violence and to prevent occurrence of domestic

² 2013 (14) SCALE 448

violence in the society. The D.V. Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

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17. Section 26 of the D.V. Act provides that 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 and the respondent whether such proceeding was initiated before or after the commencement of this Act. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if 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.” (emphasis supplied)

14. In ***Kunapareddy v. Kunapareddy Swarna Kumari***³, the Supreme Court considered the nature of proceedings under the D.V. Act and scope of Section 28(2), and held:

“Whereas proceedings under certain sections of the D.V. Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub – Section (2) as well which ***empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the D.V. Act.*** This provision has been incorporated by the Legislature keeping a definite purpose in mind.”

(emphasis supplied)

³ (2016) 11 SCC 774

15. At this stage, it is apt to note pertinent observations of Gujarat High Court in ***Jaydipsinh Prabhatsinh Jhala v. State of Gujarat***⁴ as under:

“In other words, though procedure to be followed in the said proceedings is that provided under the Code of Criminal Procedure, the Magistrate can still lay down his own procedure while dealing with the applications under sub-section (1) of section 12 or while considering grant of interim or ex-parte ad-interim relief orders under sub-section (2) of Section 23 of the Act. ***Thus whole purpose of this legislation appears to be to provide for a smooth machinery to ensure justice to oppressed women by cutting through legal red-tapism and passing such orders as may be found necessary in the interest of justice in the facts of the case.***

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23. In view of the nature of the proceedings before the Magistrate and in view of the procedural flexibility provided by the legislature to the Magistrate in deciding the applications under Section 12(1) of the Act, it cannot be stated that the Magistrate is bound by the straight jacket formula or procedure laid down under the Code of Criminal Procedure. In a given case, it would be open for the Magistrate to make deviation therefrom as may be found necessary in the interest of Justice.”

(emphasis supplied)

16. From the scheme of the Act, it is apparent that Section 362 of the Code of Criminal Procedure is not attracted to the orders/decisions made in an application/petition filed under the Act and the bar imposed therein does not operate to the decision made by the competent Court under the Act.

⁴ 2010 CrL L.J. 2462

17. Even assuming that Section 362 of Code of Criminal Procedure is applicable to cases under the Act, the decision to dismiss D.V.C. on the ground of non-prosecution by the petitioner therein is not a final judgment rendered on consideration of the rival claims and therefore the prohibition imposed by Section 362 of the Code of Criminal Procedure is not attracted.

18. In **Vishnu Agarwal v. State of Uttar Pradesh**⁵, the Supreme Court considered the scope of Section 362 of Code of Civil Procedure. The Supreme Court held:

“6. In our opinion, Section 362 cannot be considered in a rigid and over technical manner to defeat the ends of justice. As Brahaspati has observed :

"Kevalam Shastram Ashritya Na Kartavyo Vinirnayah
Yuktiheeney Vichare tu Dharmahaani Prajayate"

which means:

"The Court should not give its decision based only on the letter of the law. For if the decision is wholly unreasonable, injustice will follow."

7. Apart from the above, we are of the opinion that the application filed by the respondent was an application for recall of the Order dated 2.9.2003 and not for review. In *Asit Kumar Vs. State of West Bengal and Ors.* 2009(1) SCR 469, this Court made a distinction between recall and review which is as under:-

6. "There is a distinction between a review petition and a recall petition. While in a review petition, the Court considers on merits whether there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party."

(emphasis supplied)

⁵ 2011 (4) SCC 813

19. Yet again in ***State of Punjab v. Davinder Pal Singh Bhullar and others***⁶, this very issue was considered as under:

“46. If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or ***where the order has been pronounced without giving an opportunity of being heard to a party affected by*** it or where an order was obtained by abuse of the process of court which would really amount to its being without jurisdiction, ***inherent powers can be exercised to recall such order*** for the reason that in such an eventuality the order becomes a nullity and the provisions of Section 362 Cr.P.C. would not operate. In such eventuality, the judgment is manifestly contrary to the audialterampartem rule of natural justice. ***The power of recall is different from the power of altering/reviewing the judgment.*** However, the party seeking recall/alteration has to establish that it was not at fault. (Vide: Chitawan&Ors. v. MahboobIlahi, 1970 CrL.J. 378; Deepak ThanwardasBalwani v. State of Maharashtra &Anr., 1985 CrL.J.23; Habu v. State of Rajasthan, AIR 1987 Raj. 83 (F.B.); SwarthMahto&Anr. v. DharmdeoNarain Singh, AIR 1972 SC 1300; MakkapatiNagaswaraSastri v. S.S. Satyanarayan, AIR 1981 SC 1156; Asit Kumar Kar v. State of West Bengal &Ors., (2009) 2 SCC 703; and Vishnu Agarwal v. State of U.P. &Anr., AIR 2011 SC 1232).”

(emphasis supplied)

20. It is appropriate to note that Act does not impose specific bar on power to recall/ set aside order dismissing the DVC for non prosecution. Act also does not specify that Section 362 Criminal Procedure Code is applicable. The contentions are advanced based on the assumption that under Section 28 for considering matters under Sections 12, 18 to 23 and 31 provisions of Criminal Procedure Code are made applicable and a *fortiori* section 362 is

⁶ 2011 (14) SCC 770

also attracted. The said contention is not valid. In the absence of specific provision Magistrate has discretion to evolve his own procedure.

21. Section 25 of the Act reads as under:

“25. Duration and alteration of orders,- (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.”

22. At the first blush, the contention urged by learned counsel for the petitioners that Section 25 has no application to the case on hand is persuasive but on a closer scrutiny, it is clear that said contention has no merit.

23. A reading of the Section 25 makes it clear that it has two limbs. According to sub-section (1) thereof, a protection order made under Section 18 should be in force till the aggrieved person applies for discharge. According to sub-section (2) thereof, if an application is received by the Magistrate from an aggrieved person or the respondent and if he is satisfied that there is a change in the circumstances requiring alteration/modification or revocation of any order made under the Act, he may pass such order. A careful reading of Section 25 makes it clear that sub-section (1) deals only with time limit of an order made under Section 18, whereas the scope of sub-section (2) is far wider and it encompasses several other orders or decisions by the Magistrate and not restricted to the

order made under Section 18. As held in **Kunapareddy**, the Court dealing with domestic violence cases has the flexibility in observing procedures and unless specified otherwise, it can adopt its own procedure. There is no express bar on restoration of DVC dismissed for non-prosecution. Taking due note of objects of the Act, it is safe to assume that Magistrate is competent to entertain application to recall the order dismissing the DVC for non-prosecution.

24. While dealing with issue arising under Section 125 of Code of Criminal Procedure, the observations made in **Savitri v. Govind Singh Rawat**⁷ also apply to the Act. Supreme Court observed:

“6. ***In view of the foregoing it is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat*** the very object of the legislation. In the absence of any express prohibition, it is appropriate to construe the provisions in Chapter IX as conferring an implied power on the Magistrate to direct the person against whom an application is made under [section 125](#) of the Code to pay some reasonable sum by way of maintenance to the applicant pending final disposal of the application. It is quite common that applications made under [section 125](#) of the Code also take several months for being disposed of finally. In order to enjoy the fruits of the proceedings under [section 125](#), the applicant should be alive till the date of the final order and that the applicant can do in a large number of cases only if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim 'ubialiquidconceditur, concedituret id sine quo res ipsaesse non potest (Where anything is conceded, there is conceded also anything without which the thing itself

⁷ (1985) 4 SCC 337

cannot exist.) (Vide Earl Jowitt's Dictionary of English Law 1959 Edn. P.1797). ***Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorized in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed...***

(emphasis supplied)

25. A somewhat similar issue was considered by Delhi High Court in ***Maya Devi W/o. SH Hari Kishan Bhendwal Vs. State of NCT of Delhi***⁸. Delhi High Court observed:

“3. At the outset, it may be pointed out that the impugned order has been passed by the Ld. Magistrate under The Protection of Women from Domestic Violence Act, 2005. As per this Act, the Magistrate has got ample power to modify, alter or revoke any order made under it and further there is specific provision for filing of appeal to the Court of Session against the order of Magistrate under the Act. ...”

26. At this stage, I am reminded of observations of Supreme Court in ***Raparthi Pandu v. Raparthi Vajramma and others***⁹, “***it is settled law that the procedural aspects are handmaid of justice and are intended for advancement of justice and not to penalize the parties***” (paragraph-7).

27. Further, as per Section 36, provisions of the Act are in addition to and not in derogation of the provisions of any other law. A judge dealing with any civil dispute under Code of Civil Procedure

⁸ 2007 Delhi H.C.

⁹ (2005) 13 SCC 89

is competent to recall his earlier decision to dismiss a suit for non-prosecution and restore the suit for consideration on merits (Order IX Rule 9). The Magistrate while considering the D.V.C., is not denuded of this power. Thus, even if there is ambiguity in the provisions of the Act, as a Court has inherent power, subject to its satisfaction on bona fides of claim to allow such a prayer, the decision to restore DVC cannot be annulled by referring to Section 362 of Cr.P.C. Even otherwise, on careful reading of statement of objects and reasons to bring about this Act, the precedent decisions and the various provisions of the Act, the Court is also impelled to take the view that provisions of the Act require liberal construction. Thus, the Magistrate is competent to entertain a petition to restore D.V.C. dismissed for non-prosecution.

28. Domestic violence is a social evil and is crime against society, though victim is an individual. Having regard to illiteracy, lack of awareness, financial resources and societal constraints, a victim may be compelled to suffer such violence against her will and therefore may not report the incident/may not be in a position to seek appropriate legal remedy/may not have the means to resort to legal course. Ghastly incidents of such violence are increasing. Therefore, Section 4 enables any person to complain on instance of domestic violence to the concerned protection officer. According to Section 5 of the Act, Police Officer, Protection Officer, service provider or Magistrate, as the case may be, who receives complaint of domestic violence or who was otherwise present at the place of an incident of domestic violence or when the domestic violence is reported, should inform the aggrieved person of her right to make

an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order, which are all referable to the provisions contained in Sections 18 to 23, or more than one such order under this Act, the availability of services of service providers, protection officers, right to take free legal services under the Legal Services Authorities Act and right to file a complaint under Section 498-A I.P.C. Thus, a reading of Sections 4 and 5 of the Act would make it clear that unlike any civil litigation, the case can be registered and Magistrate can initiate proceedings under the Act even if an incident of occurrence of domestic violence/imminent violation is reported by a third party and it is not necessary that aggrieved person alone should lodge a complaint. The aggrieved person can seek further reliefs as per Sections 18 to 23 after cognizance is taken by the Magistrate.

29. Thus, the proceedings arising under the Act cannot be looked into as regular civil dispute between two rival claimants. This is a hybrid enactment which takes care of rights of a victim in civil law while extending Code of Criminal Procedure to certain aspects. It is a welfare legislation aiming to root out social menace. It is intended to protect a woman from social evil in the form of domestic violence. Thus, while considering an issue arising out of such enactment, technicalities cannot defeat overarching objective to redress the grievance of an aggrieved person who claims to be a victim of domestic violence. It must receive liberal construction.

30. Having regard to the special nature of cases of domestic violence and the objective of the Act, the Magistrate erred in

dismissing the D.V.C., in the first instance on the ground that complainant was not prosecuting the matter. If the complainant was not attending to the Court or the advocate was not cooperating with the Court, Magistrate ought to have taken steps to direct the jurisdictional protection officer to attend to the case and compel the counsel on record to assist the Court. I am of the considered opinion that cases arising under the Act cannot be dismissed in this manner but the issue has to be decided on its merits and wherever the allegation of domestic violence is proved, appropriate relief has to be granted to the victim.

31. Wherever, discretion is vested in the Court, Court has to consider objectively respective claims and by assigning reasons should make a decision. The petition to restore a case by setting aside the order dismissing the case for non prosecution is subject to satisfaction of the Court. As the Act is a special legislation to protect women against domestic violence such consideration also has to be liberal and rigors of satisfaction of the Court must be relaxed. However, in the case on hand, on elaborate consideration of respective claims, by assigning reasons in support of the decision, the learned Magistrate allowed the petition. It cannot be said he has not exercised his discretion properly for this Court to interdict the said order.

32. For all the aforesaid reasons, the Writ Petition fails and is accordingly dismissed. It is made clear that there is no expression of opinion on merits. Only issue considered is on scope of power of learned Magistrate to restore D.V.C., dismissed for non-prosecution. All the issues are left open. The Court has not

expressed opinion on availability of remedy of appeal to petitioners as urged by learned counsel Ms. Nanda.

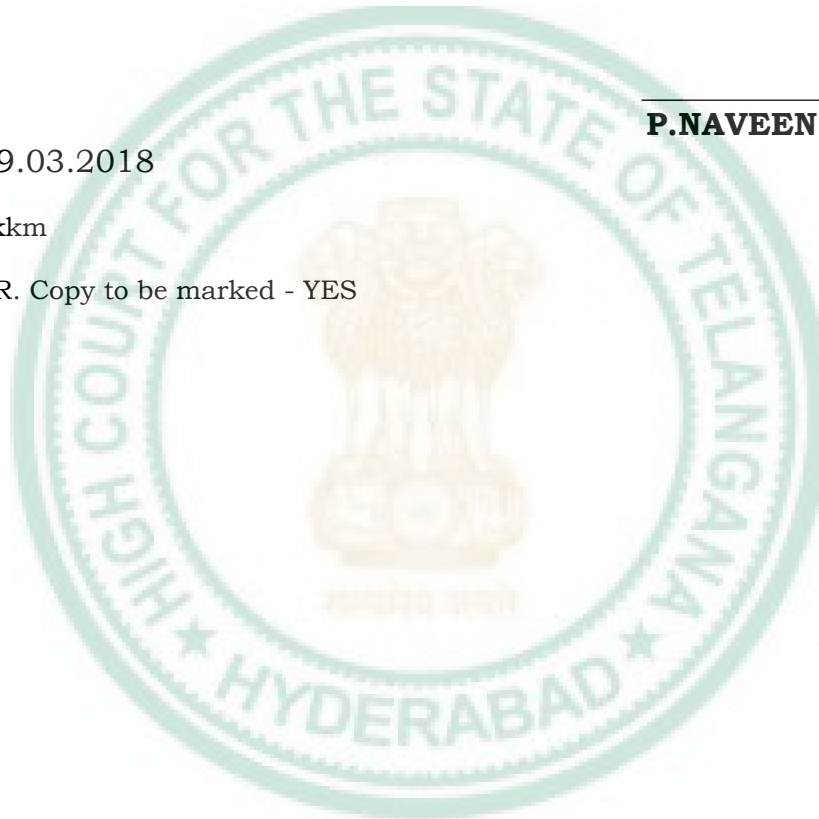
33. It is made clear that the DVC is pending since 2013 and petitioners 1 and 2 are senior citizens. Therefore, the learned Magistrate is requested to expedite the hearing and dispose of within two months from the date of receipt of copy of this order. The petitioners and 4th respondent shall cooperate for early disposal. Pending I A stands disposed of.

Date: 19.03.2018

kh/tvk/kkm

Note:- L.R. Copy to be marked - YES

P.NAVEEN RAO, J



THE HON'BLE SRI JUSTICE P. NAVEEN RAO



WRIT PETITION No.40818 OF 2015

Dated: 19.03.2019