

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-58023-2023 (O&M)

Date of Decision: 30.11.2023

GAUTAM SINGAL

.....PETITIONER

Vs.

ANUJ SINGAL

.....RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Ms. Promila Nain and Ms. Harveen Mehta, Advocates,
for the petitioner.

Mr. Nitin Jain, Advocate, for the respondent.

HARPREET KAUR JEEWAN J.

1. A preliminary question requires determination in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short '*the Code*') which is as under:-

“Whether an order passed in an appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005, arising out of an order passed under Section 23 of the Act in a proceeding under Section 12 of the Act, can be challenged under Section 482 of the Code.?”

BRIEF FACTS

2. The present petition has been filed for quashing of the impugned orders dated 15.10.2022 (Annexure P-1) passed by learned Additional Chief Judicial Magistrate, SAS Nagar, Mohali in a Complaint No. COMA-25-2020 and the order dated 14.09.2023 (Annexure P-2), passed by learned Additional Sessions Judge, SAS Nagar, Mohali, whereby

the appeal filed by the petitioner-Husband against the impugned order (Annexure P-1) was dismissed upholding the grant of interim maintenance @ ₹14,000/- per month to the minor son and @ ₹20,000/- per month to the daughter of the petitioner and @ ₹30,000/- per month to the respondent-wife.

3. The respondents-wife filed a complaint under Sections 12 read with Sections 17, 18, 19, 20, 21 and 22 of the *Protection of Women from Domestic Violence Act, 2005* (hereinafter referred as “the DV Act”) against the petitioner-husband, regarding a matrimonial dispute. The marriage between the parties having been solemnized on 11.11.2001 and birth of a daughter and a son out of the said wedlock, who were of the age of 16 years and 13 years, respectively at the time of filing of the said complaint is not disputed. The said complaint is being contested by the petitioner on various grounds.

3.1 The respondent also filed an application for grant of interim relief under section 23 of the DV Act, which was allowed by the learned Additional Chief Judicial Magistrate by passing the impugned order dated 15.10.2022 (Annexure P-1) directing the petitioner- husband to pay ₹30,000/- per month to the respondent-wife, ₹14,000/- per month to his minor son, and ₹20,000/- per month to his minor daughter as interim maintenance.

3.2 Both the parties have challenged the said order by way of filing separate appeals under Section 29 of the DV Act, which were disposed of by the learned Additional Sessions Judge, SAS Nagar, Mohali, by common impugned order dated 14.09.2023 (Annexure P-2) whereby the

appeal filed by the petitioner-husband was partly allowed to the extent that he would be liable to pay arrears of maintenance for his daughter only till she attains 18 years of age. However the appeal filed by the respondent-wife seeking enhancement of the interim maintenance amount was dismissed.

4. As per the order of this Court dated 22.11.2023, the petition was fixed for addressing arguments on the maintainability of the petition under Section 482 of the Code, in view of the judgment passed by the co-ordinate Bench of this Court in **CRM-M-19553 of 2023**, titled **Jaspal Kaur alias Pinki and others vs. State of Punjab and another** in which the challenge under Section 482 Cr.P.C. was made to issuance of the notice to the petitioner in a complaint under Section 12 of DV Act. The petition was held not maintainable under Section 482 Cr.P.C. assailing a notice issued under Section 13 of the DV Act in a complaint under Section 12 of the DV Act. However, the petitioner was relegated to seek his remedy before the Magistrate qua maintainability of jurisdiction officious of the said notice. While holding so, the Bench placed reliance upon the decision of the Hon'ble Apex Court in **Kamatchi vs. Lakshmi Narayanan** 2022 (2) RCR (Criminal) 751, the decision of the Hon'ble Apex Court in **Kunapareddy @ Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari and another** 2016 (11) SCC 774 and the decision of the Full Bench of Madras High Court in **Arul Daniel and others vs. Suganya** 2022 (4) PLR 34.

5. Today, Mr. Nitin Jain, Advocate, appeared on behalf of the respondent and filed his Memorandum of Appearance in Court, which is taken on record.

ARGUMENTS ON BEHALF OF THE PETITIONER:

6. Learned counsel for the petitioner contends that the petition under Section 482 of the Code is maintainable on the following grounds:-

(I) As per the provisions of Section 28 of the DV Act, all proceedings under Sections 12 read with Sections 17, 18, 19, 20, 21 and 22 and the offences under Section 31 are governed by the provisions of the Code of Criminal Procedure, as such, the petition under Section 482 of the Code is maintainable.

(II) As per the provisions of Section 26 of the DV Act, any relief available under Sections 18, 19, 20, 21 and 22 can be claimed under the DV Act irrespective of the fact if such a relief has been claimed and proceedings have been initiated before Civil Court, Family Court or Criminal Court. The provisions of Section 26 provides that a consolidated remedy can be claimed under the DV Act, seeking such a relief which can be granted either by Civil, Criminal or a Family Court, as such, the provisions of the Code are applicable. Hence, the petition under Section 482 of the Code is maintainable.

(III) The impugned order dated 15.10.2022 (Annexure P-1) was passed by the learned Additional Chief Judicial Magistrate and the impugned order dated 14.09.2023 (Annexure P-2), passed by the Additional Sessions Judge, while invoking their criminal

jurisdiction, as such the legality can be challenged under Section 482 of the Code.

6.1 The Counsel for the petitioner also placed reliance upon the decision of the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad, in **Dhananjay Mohan Zombade and others vs. Prachi** in Criminal Application No. 312 of 2023 decided on 16.02.2023, wherein, it was held that a petition under Section 482 Cr.P.C. for quashing of the proceedings under the DV Act is maintainable.

6.2 Reliance was also placed upon the decision of the Hon'ble the Full Bench of the Bombay High Court in **Nandkishor Pralhad Vyawahare vs. Mangala** (Criminal Application (appeal) No. 578 of 2011, decided on 03.05.2018, wherein it was held that the powers under Section 482 Cr.P.C. is capable of being used either by the aggrieved person or by the respondent-man for quashing of the proceedings under Section 12 of the DV Act. If this power is removed from Section 28 of the Act, the affected woman may as well or equally get adversely hit and the object to the DV Act may yet defeated.

6.3 Reliance was also placed on the decision of Hon'ble the Supreme Court in **Shyamlal Devda and others vs. Parimala** (Criminal Appeal No. 141 of 2020), decided on 22.01.2020, whereby the petitioner filed a petition under Section 482 of the Code before the High Court seeking quashing of the entire proceedings initiated in a complaint filed under Sections 18, 19 and 20 of the DV Act. The petition was dismissed by the High Court holding that in the complaint filed by the respondent various substances of domestic violence at different places, i.e. Chennai, Rajasthan and Gujarat are narrated by the respondent. Therefore, the

complaint filed in Bengaluru is maintainable under Section 27 of the DV Act. Being aggrieved, the appellant preferred the appeal before Hon'ble the Apex Court wherein the appeal was partly allowed holding that the Additional Metropolitan Magistrate at Bengaluru is having the jurisdiction and would continue with the proceedings in accordance with law.

6.4 The learned Counsel for the petitioner, referring to the decision of the Hon'ble Apex Court in **Kamatchi (Supra)**, submitted that in the said case, there was a limited question before the Hon'ble Apex Court regarding the period of limitation and the decision was not on merits. It was further contended that no findings have been given by the Apex Court in the said case as well in the decision in **Kunapareddy @ Nookala Shanka Balaji (supra)** that petition under Section 482 of the Code is not maintainable against an order passed under the DV Act, as such the said decisions are not applicable to this case.

ARGUMENTS ON BEHALF OF THE RESPONDENT

7. *Per contra*, counsel for the respondent submitted that the present petition is not maintainable under Section 482 of the Code and placed reliance upon the decisions of Hon'ble the Apex Court in **Kamatchi's**, **Kunapareddy @ Nookala Shanka Balaji's** and **Arul Daniel's** cases (*supra*) and a co-ordinate Bench of this Court in **Jaspal Kaur alias Pinki's** case (*supra*).

DISCUSSION AND REASONS:

8. As per the facts on record, the respondent had filed a complaint dated 23.06.2020 (Annexure P-3), under Section 12 read with Sections 17, 18, 19, 20, 21 and 22 of the DV Act in which an application for grant of interim relief was filed by the respondent under Section 23 of

the DV Act. The order for grant of interim maintenance under Section 23 of the DV Act (Annexure P-1), was challenged by way of filing an appeal before the Additional Sessions Judge. The petitioner had filed a written reply dated 24.03.2022 (Annexure P-6) to the main complaint and after hearing the counsel for the parties and considering their respective contentions, the interim monetary relief was granted by way of awarding interim maintenance to the respondent and their children. The aforesaid order granting the interim maintenance under Section 23 of the DV Act and the dismissal of the appeal under Section 29 of the DV Act have been challenged by way of filing the present petition under Section 482 of the Code.

[LEGAL PROVISIONS]

8.1 Section 23 of the DV Act provides the power to the Magistrate to grant interim and *ex parte* orders, which reads as under:-

“Section 23 in The Protection of Women from Domestic Violence Act, 2005

23. Power to grant interim and ex parte orders.—

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

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

8.1.1 Section 29 of the DV Act provides for remedy to challenge the Order passed by the Magistrate by way of an appeal. The said section reads as under:

“29. Appeal.—There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.”

8.1.2 Section 31 of the Act provides for penalty for breach of protection order by respondent. The said Section reads as under:-

“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.”

8.1.3 The powers under Section 482 of the Code is in the nature of inherent powers of this Court to pass any order “to prevent abuse of the process of any Court” or “otherwise to secure the ends of justice.” For exercising such power under Section 482 of the Code, the matter should be

criminal in nature.

9. In the present case, a petition was filed under the DV Act mentioning various sections, including section 12 and 20. However, the impugned order was passed under Section 23 of the DV Act, whereby the only interim relief has been granted directing the petitioner to pay interim maintenance to the respondent-wife and to the minor children during the pendency of the main petition.

10. The first question in the present matter arises as to:

whether the respondent has been granted any such relief, which amounts to an order against the petitioner which is criminal in nature?

11. The main petition under the DV Act was filed under Sections 12, 17, 18, 19, 20, 21 and 22. Section 12 of the DV Act prescribes a procedure for making an application to the Magistrate for obtaining an order for grant of relief and Section 12 (2) provides that order for payment of compensation or damages with regard to the injuries caused by an act of domestic violence can be sought as one of the relief. Section 17 of the DV Act provides "Right to reside in a shared household". Under Section 18 of the DV Act, a protection order can be passed in favour of the aggrieved person by way of issuing prohibitions to the respondents from committing an act of domestic violence, entering the place of employment of the aggrieved person and alienating any assets etc. Under Section 19 of the DV Act, various orders regarding residence, shared household can be passed. Under Section 20 of the DV Act, the monetary relief can be granted to an aggrieved person. Whereas Section 21 deals with the custody order pertaining to the child or children of the aggrieved person and Section 22

pertains to compensation orders which could be passed in favour of an aggrieved person. Section 23 of the DV Act provides for grant of an interim order which can be passed *ex parte* in favour of an aggrieved person during the pendency of a petition under Sections 18, 19, 20, 21 or 22 against the respondents.

12. The remedy under Section 23 of the DV Act which has been provided to the respondent by way of grant of interim maintenance is merely an attempt to restore the “civil rights” to wife and children of the petitioner. By way of awarding interim maintenance during the pendency of a petition under the DV Act, neither any criminal process has been initiated nor any such order has been passed which can be termed criminal in nature.

13. Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (*supra*) while giving a reference of the scheme of the DV Act, highlighting the *Statement of Objects and Reasons of the said Act* and the *Objects* which were intended to be achieved by the Act, has observed that *the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person*. The relevant portion of the said judgment reads as under:-

“13. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of

domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the Scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality. In order to demonstrate it, we may reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the said Act, as follows:

"INTRODUCTION.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain.

The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section [498A](#) of the Indian Penal Code. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the protection of Women from Domestic Violence Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human Right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General

Recommendation NO. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially the occurring within the family.

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

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

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

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

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence”.

13.1 Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (*supra*) categorically held that the DV Act provides that in the first instance, the order that would be passed by the Magistrate, would be

of civil nature and if the said order is violated, it assumes the character of criminality. It was also held that monetary relief which can be granted by the Magistrate under Section 20 of the DV Act includes giving of relief in respect of loss of earning, medical expenses etc. and Section 23 of the DV Act vests the Magistrate with the power to grant interim *ex parte* order. It was held that such reliefs that can be granted by the Magistrate under section 12 to 22 of the DV Act are of civil nature.

13.2 Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (*supra*) has further clarified the distinction between the orders of “civil nature” and “criminal nature” which could be passed under the DV Act. While referring to the provisions under Sections 12 to 23 of the DV Act, it was observed by Hon'ble the Apex Court that the relief under the said sections which could be granted to the aggrieved person are of civil in nature. However, when there is a breach of such orders passed by the Magistrate then such a breach is a punishable offence under Section 31 of the Act. The relevant observations in paragraph No. 14 by Hon'ble the Apex Court reads as under:-

“14. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from

entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence.” (emphasis supplied).

14. The nature of the relief being predominantly civil under the DV Act and the distinction between the various reliefs which can be granted to an aggrieved person under Sections 12 to 23 being civil in nature and the relief under Section 31 of the DV Act being criminal in nature is further clarified by Hon'ble the Apex Court in **Kamatchi's** case (*supra*). Though Hon'ble the Apex Court was dealing with the question of limitation in filing an application under Sections 12, 17 and 18 of the DV Act. However, Hon'ble the Apex Court considered the various provisions under Sections 12, 28, 31 and 32 of the DV Act in paragraph No. 10 of the judgment in order to ascertain as to whether the Bar under Section 468 of

the Code for taking cognizance after the lapse of period of limitation under the Code would be applicable in a complaint which was filed under Sections 12, 17 and 18 of the DV Act. Hon'ble the Apex Court observed the special features with regard to an application under Section 12 of the DV Act, which were noticed by the Single Judge of the Madras High Court in **Dr. P. Pathmanathan and others vs. Smt. V. Monica** 2021 (1) Crimes 281 and categorically observed in paragraph No. 20 that the High Court had wrongly equated filing of an application under Section 12 of the DV Act to lodging of a complaint or initiation of prosecution. The observations by the Madras High Court in **Dr. P. Pathmanathan's** case (*supra*), with regard to the special features of an application under Section 12 of the DV Act were noticed by Hon'ble the Apex Court. The relevant paragraph Nos. 19 and 20 of the said judgment read as under:-

“19. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in Dr. P. Padmanathan & Ors.2 as under:

"19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a "complaint" as contemplated under the D.V. Act and the D.V. Rules is not the same as a "complaint" under Cr.P.C. A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under section 2(d) of the Cr.P.C., 1973 is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown

has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under section 2(d) of the Cr.P.C., 1973 the procedure for cognizance set out under Section 190(1) (a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under section 2(d) of Cr.P.C., 1973 given to a Magistrate and not to an application under Section 12 of the Act."

20. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence."

15. I have considered the submissions raised on behalf of the petitioner that there is no direct finding in **Kamatchi's** case (*supra*) regarding maintainability of a petition under section 482 of the code. The said submissions are not having much force. Though the question of

maintainability of a petition under Section 482 of the Code in an order passed under Section 23 of the DV Act was not directly under consideration in **Kamatchi's** case (*supra*). However, Hon'ble the Apex Court while noticing the fact that the complaint filed under the DV Act in pursuance to Rule 2-B of the Protection of Women from Domestic Violence Rules 2006, is not a criminal complaint as defined under Section 2 (d) of the Code. The appeal was allowed by setting aside the view taken by High Court i.e. an application under the DV Act should have been filed within one year of the incident while quashing the proceedings arising out of an application preferred by the appellant under Sections 12, 17 and 18 of the DV Act. Hon'ble the Apex Court refuted the submissions made on behalf of the respondent regarding the applicability of the decision in **Adalat Prasad vs. Rooplal Jindal** (2004) 7 SCC 338.

15.1 In **Adalat Prasad's** case (*supra*), it was held by Hon'ble the Apex Court that if a Magistrate takes cognizance of an offence, issues process without there being any allegations against the accused or any material implicating the accused, the order of the Magistrate cannot be vitiated by invoking Section 203 of the Code because the Court does not contemplate a review order. It was held that in the absence of any review power or inherent powers with the sub-ordinate criminal Court, the remedy lies invoking Section 482 of the Code. Hon'ble the Apex Court categorically observed in **Kamatchi's** case (*supra*) in paragraph No. 22 that the ratio in **Adalat Prasad's** case (*supra*) would be applicable, only where a Magistrate takes cognizance of an offence and issues process, in such cases, instead of going back to the Magistrate, the remedy lies in filing a petition under Section 482 of the Code. However, the scope of a

notice under Section 12 of the DV Act is to call for a response from the respondent in terms of the statute, as such, the matter stands on a different footing and dictum in **Adalat Prasad's** case (*supra*) and would not get attracted at a stage when a notice is issued under Section 12 of the DV Act.

16. I have also considered the submissions made on behalf of the petitioner regarding Section 28 of the DV Act, having a reference of applicability of the Code of Criminal Procedure to some of the sections of the DV Act.

16.1 Hon'ble the Apex Court noticed the special features and different scheme under the DV Act in **Kamatchi's** case (*supra*) in the decision dated 13.04.2022, while noticing the observations by the Single Judge of the Madras High Court in **Dr. P. Pathmanathan's** case (*supra*). Thereafter, Hon'ble the Full Bench of the Madras High Court in a decision held on 17.11.2022 in **Arul Daniel's** case (*supra*) further elaborated the provisions of the DV Act and its salient features while answering two questions, which are read as under:-

“(a) "Whether a proceeding under Section 12 of the D.V. Act can be challenged under Article 227 of the Constitution or under Section 482 of Cr.P.C.?”

(b) Whether the aforesaid remedy is available to an aggrieved person before approaching the learned Magistrate and, if necessary, the Court of Sessions by way of an appeal under Section 29 of the D.V. Act?”

16.2. While deciding the said questions, the observations by Hon'ble the Full Bench of Madras High Court in **Arul Daniel's case** (*supra*) observed the salient features of the DV act and held that the *legislature has envisaged a completely different scheme for entertaining applications and*

granting reliefs under the D.V. Act. The relevant observations in paragraph No.4 are as under:-

“4. Having carefully examined the scheme and the provisions of the D.V. Act, we find that the legislature has envisaged a completely different scheme for entertaining applications and granting reliefs under the D.V. Act. The salient features that are discernible are:

- a. Section 12 of the D.V. Act contemplates an application being made to a Magistrate for grant of civil reliefs and not for taking cognizance of an offence.*
- b. As has been pointed out in Pathmanathan, supra, an application is made under Section 12 in terms of Rule 6(1) of the D.V. Rules, 2006, and not by way of a complaint as defined in Section 2(d) of the Cr.P.C. Consequently, an application, not being a complaint under the Cr.P.C., the procedure for cognizance set out under Section 190(1)(a) Cr.P.C. followed by the procedure set out in Chapter XV of the Cr.P.C. for taking cognizance, will have no application to a proceeding under the D.V. Act.*
- c. Since the respondents before the Court are not accused of any offence, Section 13 of the D.V. Act and Rule 12 of the Rules expressly provide that the Magistrate shall issue "a notice" fixing a date of hearing as prescribed in Form VII appended to the D.V. Rules, and not a summons under Section 61, Cr.P.C.*
- d. Section 14 of the D.V. Act empowers the Magistrate to direct the parties to undergo counselling at any stage of the proceeding, which is something that an ordinary Criminal Court can never do while trying an offence.*
- e. More importantly, the jurisdiction of the Magistrate is statutorily prescribed by Sections 2(i) and 27 of the Act. The succeeding Section, viz., Section 28, sets out the procedure for exercise of jurisdiction by the*

Magistrate under the D.V. Act.

f. Section 29 provides for a right of appeal against an order of the Magistrate. This was obviously necessary since Chapter XXIX of the Cr.P.C. has no application since it deals with appeals arising out of trials for offences and against orders passed under Chapter VIII of the Code.”

16.3. It was also observed in Arul Daniel's case (*supra*) that the legal position is no longer *res integra*, in view of the decision of Hon'ble the Supreme Court in Kunapareddy @ Nookala Shanka Balaji's case (*supra*), wherein it has been held that the various reliefs under Sections 17 to 23 of the DV Act, which can be granted by the Magistrate are civil in nature. It is only upon the breach of an interim protection order or a protection order that an offence in terms of Section 31 of the DV Act is committed. The breach is punishable. As such, it was observed by Hon'ble the Full Bench in Arul Daniel's case (*supra*), that at the stage of consideration of an application under Section 12 of the DV Act, the Magistrate does not perform his conventional role of trying an offence and is merely considering an application for grant of civil relief under the DV Act. In paragraph No. 12, Hon'ble the Apex Court has further observed that an application under Section 12 of the DV Act does not lead to the imposition of any sentence. The observations by Hon'ble the Apex Court in Kamatchi (*supra*), that at the stage of an application under Section 12 of the DV Act, there is no offence at all that was highlighted. Paragraph 12 reads as under:-

“12. As to what constitutes a "criminal proceeding", the Supreme Court, in Ram Kishan Fauji v. State of Haryana (2017) 5 SCC 533, has laid down the following test:

"As far as criminal proceeding is

concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order."

An application under Section 12 of the D.V. Act does not lead to the imposition of any sentence. In fact, as has been pointed out by the Supreme Court in *Kamatchi, supra*, at the stage of an application under Section 12 of the D.V. Act, there is no offence at all. The enquiry under Section 12 may culminate with the granting of one or more of the civil reliefs set out in Sections 17-23, and does not lead to the imposition of any sentence. Nor can such a proceeding be characterised as one to prevent an apprehended breach of peace which is governed by Chapter VIII of the Code. Thus, by applying the aforesaid test, it is clear that the character of the proceeding before the Court in an application under Section 12 of the D.V. Act is civil and not criminal in nature."

16.4. In the light of the aforesaid discussion, Hon'ble the Full Bench considered the provisions of Section 28 of the DV Act and observed that the legislature was conscious of the fact that the Magistrate was required to grant civil reliefs under Sections 18 to 22 of the D.V. Act. A wholesale application of the provisions of the Code would have been unworkable and therefore, a special procedure was devised.

16.5 In view of the above, the argument raised by the learned counsel for the petitioner are not having much force.

17. The view taken in **Dr. P. Pathmanathan case** (*supra*) which was referred by Hon'ble the Apex Court in **Kamatchi's case** (*supra*) was upheld by Hon'ble the Full Bench in **Arul Daniel's** case (*supra*) while making a holding that *a petition under Section 482 Cr.P.C. is not maintainable*

to challenge a proceeding under Chapter IV of the D.V. Act. The observations by the Hon'ble Full Bench in paragraph Nos. 32 and 33, reads as under:-

“32. We are, therefore, of the considered opinion that in a proceeding under Chapter IV of the D.V. Act, a Magistrate exercises civil jurisdiction to grant one or more civil reliefs under Sections 18-23 of that Act. Consequently, we affirm the view of N. Anand Venkatesh, J. in Pathmanathan, supra, that a Magistrate exercising jurisdiction under Section 12 of the D.V. Act, is not a Criminal Court for the purpose of Chapter IV of the said Act.

33. As a sequitur, in view of the law laid down by the Supreme Court in Sujit Kumar Rana, supra, that a petition under Section 482 Cr.P.C. is maintainable only against the proceedings of a Criminal Court, we also affirm the view in Pathmanathan, supra, that a petition under Section 482 Cr.P.C. is not maintainable to challenge a proceeding under Chapter IV of the D.V. Act.”

18. The decision of Hon'ble the High Court of judicature at Bombay Nagpur Bench, in **Nandkishore Pralhad Vyawahare's** case (*supra*), which has been relied upon by the petitioner, was also considered by Hon'ble the Madras High Court in **Arul Daniel's** case (*supra*) and it was observed that Hon'ble the Full Bench has proceeded on the basis of the procedure prescribed in Section 28 of the D.V. Act that attracts the jurisdiction of the High Court under Section 482 Cr.P.C.

18.1 With due humanity and respect, it is observed that the decision by Hon'ble the Apex Court in **Shyam Lal Devda's** case (*supra*) upon which the reliance has been placed by learned counsel for the petitioner, the controversy was regarding the jurisdiction of a Court and the question of maintainability in a complaint under Section 482 of the Code in conflict to

an order passed in a complaint under Sections 12, 20 and 23 was not in question.

CONCLUSION

19. In view of the aforesaid discussion, the following conclusions are made:-

- (i) That Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** case (*supra*) has held that the relief granted under Sections 12 to 23 are of civil nature, however, whenever there is a breach of such an order passed by the Magistrate only then the breach is punishable as an offence under Section 31 of the DV Act.
- (ii) Hon'ble the Apex Court in **Kamatchi's case** (*supra*) has held that application under Section 12 of the DV Act cannot be equated with the complaint or initiation of prosecution.
- (iii) The Hon'ble Full Bench of Madras High Court in **Arul Daniel's** (*supra*) held that proceeding under Chapter IV of the D.V. Act cannot be challenged by invoking the provisions of Section 482 Cr.P.C. The Hon'ble Full Bench of Madras High Court gave the said observations by placing reliance upon the observations made by Hon'ble the Apex Court in **Kunapareddy @ Nookala Shanka Balaji's** and **Kamatchi's cases** (*supra*) and while distinguishing the previous observations made on 16.02.2023 by Hon'ble the Full Bench of the Bombay High Court in **Dhananjay Mohan Zombade's** case (*supra*).
- (iv) The Order passed under Section 23 and Section 29 of

the DV Act falls within the proceedings under Chapter IV of the D.V. Act and the relief granted to the respondents against the petitioners is civil in nature.

(v) The impugned order does not fall within Section 31 of the DV Act as it is not a penalty for breach of any order passed by the Magistrate under Chapter IV or breach of any interim protection order granted by the Magistrate under the said Chapter.

20. Consequent to the above discussion, it is held that the impugned orders passed under section 23 and 29 of the DV Act, which falls within Chapter IV of the DV Act are not criminal in nature and, as such, the petition under Section 482 of the Code is not maintainable, since this question is no longer *res integra* in view of the observations made by Hon'ble the Apex Court in Kunapareddy @ Nookala Shanka Balaji's and Kamatchi's cases (*supra*) and decision of Hon'ble the Full Bench of Madras High Court in Arul Daniel's (*supra*).

The question for determination is accordingly answered.

21. Resultantly, the petition stands dismissed being not maintainable under Section 482 Cr.P.C. with the liberty to the petitioner to avail remedy as per law. However, no observations have been made on merits of the petition.

22. Pending miscellaneous application (s), if any, shall also stand disposed of.

November 30, 2023

nitin

(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking

Whether reportable

Yes

Yes