

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 4379 of 2022

With

CRAN 1 of 2023

Birendra Krishna Nag

Versus

Sushmita Nag Chatterjee & Another

For the Petitioner : Mr. Sayan De, Adv.
Mr. Sayan Kanjilal, Adv.

For the Respondent No. 1/Opposite Party No. 1
: Mr. Neil Basu, Adv.
Mr. S. De, Adv.
Mr. Sankha Biswas, Adv.

For the State : Mr. Mr. N.P. Agarwal, Adv.
Mr. Pratick Bose, Adv.

Heard on : 29.01.2024

Judgment on : 20.03.2024

Ajay Kumar Gupta, J:

1. The petitioner being the husband of opposite party no. 1 has filed this application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 seeking quashing of the proceeding being A.C. 2391 of 2022 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'PWDV Act') presently pending before the Court of Learned 5th Magistrate, Alipore and also praying for setting aside the orders passed therein in connection with the aforesaid proceeding.

2. The factual matrix of the instant case for filing this Criminal Revisional application is as under: -

2a. The petitioner and opposite party no. 1 were the husband and wife and their marriage was held on 17.04.2009 according to the provision of Special Marriage Act, 1954. After marriage, they started residing at matrimonial home and one female child was born on 20th May, 2010. The disputes arose between the parties from the very inception of the marriage over trivial issues. The opposite party no. 1 alleged that the petitioner being a habitual drunkard used to abuse and insult the opposite party no. 1 and her family members and further denied basic necessities such as food as a result her health condition deteriorated.

2b. It is further alleged that she was forced to undergo abortion in spite of refusal by the opposite party no. 1. She was driven out on 08.02.2011 upon provocation by his mother with a single cloth along with her minor daughter. As she is unable to maintain herself and her minor daughter, she filed an application under Section 12 of PWDV Act on 24.08.2022 with a prayer for maintenance of Rs. 20,000/- for herself and Rs. 20,000/- for her minor daughter together with prayer for relief and protection under Sections 18, 19 and 22 of the PWDV Act, 2005. Upon receipt of the application, petitioner appeared before the learned Court below with a contention that the entire case is completely different and opposite party no.1/wife made the baseless allegations. She herself left her matrimonial home and started residing in her parental house with her minor daughter according to her own volition. Several efforts were made by the petitioner to resolve the disputes but opposite party no. 1/wife was so adamant and refused to reside under the same roof with her parents-in-law and demanded a separate residence. Petitioner herein further failed to convince her due to her arrogant behaviour.

2c. Having no other alternative, petitioner had instituted a suit for divorce as per the provisions of Section 27 of the Special Marriage Act, 1954 and same was registered as MAT Suit No. 560 of 2017

before the Learned District Judge, Paschim Medinipur and subsequently transferred before the Learned 7th Judge, Paschim Medinipur for its disposal. Even after notice to the opposite party no. 1, she refused to appear and contested the MAT Suit before the Learned 7th Judge, Paschim Medinipur. As a result, the learned Judge allowed the said MAT Suit and finally awarded decree of divorce in favour of the petitioner ex parte by an order dated 11.12.2018 but surprisingly the opposite party no. 1, even after passing such ex parte order almost 4 years thereafter, filed the application under the PWDV Act claiming financial assistance as maintenance for her as well as for her minor daughter though she did not contact the petitioner since long and refuse to come back to lead conjugal life. Petitioner denied all baseless allegations made by her and stated about the fact that the decree of divorce had already been granted by the learned 7th Judge, Paschim Medinipur. Upon receiving of the letter of the petitioner, the opposite party no. 1, with an oblique motive of wreaking vengeance upon the petitioner, made an allegation against the petitioner though she filed an application under Order 9 Rule 13 for setting aside the ex parte decree order dated 11.12.2018 and the same is pending for disposal before the learned Judge. The application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 after a period of almost expiry of 4 years

from the date of a Decree of Divorce and after leaving matrimonial home long back on 08.02.2011 is not at all maintainable as there was no domestic relation with the Opposite Party No. 1/wife since 08.2.2011 as such said proceeding is liable to be quashed as not maintainable.

Hence, the revisional application has come up before this Court for its disposal.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned Advocate appearing on behalf of the Petitioner submitted that she left the matrimonial home for her own volition along with minor daughter. She did not contact and bother to return back to the matrimonial home to lead conjugal life in spite of repeated request by the petitioner and his family members. She filed an application under Section 12 of the PWDV Act on 24.08.2022 after getting information of ex parte decree of divorce. It is admitted fact that she is residing at her parental home along with her minor daughter on and from 08.02.2011. This fact has been mentioned in an application filed by the opposite party no. 1 in paragraph 13 of the application filed under Section 12 of the PWDV Act, 2005 and there was no domestic relation between the petitioner and the opposite party no. 1 on and from 08.02.2011. As such, the proceeding filed by

the opposite party no. 1 after expiry of more than 11 years is not at all maintainable and all allegations against the petitioner and his family members are totally false and fabricated only to harass the petitioner and to get financial benefits though decree of divorce had already been passed by the Civil Court. She is well aware about the decree of divorce and on retaliation and on counter blast of decree of divorce, she has filed this application under Section 12 of the PWDV Act against the Petitioner, is totally bad in law and liable to be quashed. He further placed a reliance of three judgments to bolster his contentions. Those judgments are as under: -

1. **Inderjit Singh Grewal Versus State of Punjab and Another¹**
2. **Amit Agarwal and Others Versus Sanjay Aggarwal and Others²**
3. **Sadhana Versus Hemant³**

SUBMISSION ON BEHALF OF THE RESPONDENT/OPPOSITE

PARTY NO. 1:

4. Per contra, learned counsel appearing on behalf of the opposite party no. 1/ wife objected the contentions and submission made on behalf of the Petitioner and further submitted that the

¹ (2011) 12 Supreme Court Cases 588;

² 2016 SCC OnLine P&H 4200 : (2016) 3 RCR (Cri) 356 : 2017 Cri LJ 3570 : (2016) 3 HLR 372 : (2016) 3 DMC 97;

³ 2019 SCC OnLine Bom 659 : (2019) 2 HLR 358 : (2019) 3 AIR Bom R (Cri) (NOC 75) 24 : (2019) 3 DMC 142 : (2019) 3 Bom CR (Cri) 542.

application filed under Section 12 of the PWDV Act, 2005 seeking relief under Sections 18 to 23 even after obtaining divorce is maintainable, if the wife lived together with her husband and share household with her husband through relationship in the nature of marriage. Act of domestic violence once committed, subsequently decree of divorce, would not absolve husband from his liability for offence of domestic violence and maintenance. She had made a written complaint against the petitioner and others under Sections 498A/34 of the Indian penal Code and same is still pending for disposal. Furthermore, the said ex-parte decree of divorce is challenged before the learned Court under Order 9 Rule 13 of the Code of Civil Procedure and same is still pending. Accordingly, the application filed under the PWDV Act is well maintainable as such the criminal revisional application is liable to be dismissed at the threshold with exemplary costs. In support of his contention, Ld. Advocate for the opposite party no. 1/wife placed a reliance of a judgment report in ***Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori and Another***⁴.

⁴ (2014) 10 Supreme Court Cases 736; 2014 SCC Online SC 796.

SUBMISSION ON BEHALF OF THE STATE:

5. Learned counsel appearing on behalf of the State, on the other hand, submitted and further supported the contention of the opposite party no. 1/wife that the application filed under the PWDV Act is well maintainable, as such the instant revisional application is liable to be dismissed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

6. Heard the rival submissions of the parties and on perusal of the record and annexure thereto, it appears the petitioner has filed this revisional application for quashing of the proceeding being A.C. 2391 of 2022 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 on the ground that there was no domestic relation between the petitioner and opposite party no. 1 on and from 08.02.2011 as such seeking reliefs under Sections 18 to 23 of the PWDV Act, 2005 after expiry of several years is not at all maintainable. She filed the said application on 24th August, 2022 after more than 11 years of living separately from the matrimonial home.

6a. It further appears she has filed the application under PWDV Act stating therein in paragraph 13 of the said application that the opposite party no. 1/wife is residing at her parental home along with

her minor daughter on and from 08.02.2011. It is admitted fact that a decree of divorce was passed in favour of the petitioner ex parte vide order dated 11.12.2018 by the learned 7th Judge, Paschim Medinipur under Section 27 of the Special Marriage Act, 1954 in a Matrimonial Suit No. 560/2017. It is further admitted fact that one application for setting aside the said ex parte order under Order 9 Rule 13 of the CPC has been filed by the opposite party no. 1/wife is pending before the said Court for disposal. In spite of aforesaid facts, the opposite party no. 1/wife has filed the application under PWDV Act after expiry of a period of almost four years from the date of decree of divorce passed in favour of the petitioner and expiry of more than 11 years of residing separately from the matrimonial home.

6b. Under such circumstances, the contention of the petitioner is that the application filed under the PWDV Act, 2005 is not maintainable after a decree of divorce as she has suppressed the facts that there was no domestic relation between the petitioner/husband and opposite party no. 1/wife since long and she suppressed the entire facts with an ill and ulterior motive to harass the petitioner.

7. On the contrary, learned advocates appearing on behalf of the State as well as on behalf of the opposite party no. 1/wife

contended the application filed under Domestic Violence Act is well-maintainable as the Act of Domestic Violence once committed, subsequently decree of divorce would not absolve the husband from his liability for such domestic violence. The wife had made a written complaint against the petitioner and others under Sections 498A/34 of the IPC and the same is still pending.

8. In view of the contentions of the parties, a moot question arises in this case as under:

1. Whether the wife can file a complaint under the Protection of Women from Domestic Violence Act when the relationship has come to end after decree of divorce and/or she is residing separately in her parental house more than 11 years prior to filing of application under Section 12 of PWDV Act?

9. Before deciding aforesaid issue, this Court would like to refer the judgments which were placed reliance by the parties one by one.

10. In the first referred judgment by the petitioner, the Hon'ble Supreme Court has held that the complaint filed under the PWDV Act should and could be filed only within a period of one year from the date of incident and that incident seems to be preponderance in view of the provisions of Sections 28 and 32 of the said Act of 2005 read

with Rule 15(6) of the PWDV Rules 2016 which make the provision of CrPC applicable. Same view was also taken by the Hon'ble Supreme Court in ***Japani Sahoo Vs. Chandra Sekhar Mohanty, AIR 2007 SC 2762 and Noida Entrepreneurs Association Vs. Noida & Ors., (2011) 6 SCC 508***. Therefore, there is a limitation to file application under the provisions of Section 468 of the Cr.PC. If not filed within the said period, permitting the Magistrate to proceed further with the complaint under the provision of Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the provisions amount to abuse of process of Court and finally the Hon'ble Supreme Court held for interests of justice, warrants quashing of the same. However, the Hon'ble Supreme Court clarifies that the petitioner can proceed with the other cases in accordance with law without being influenced by the observation made in the said Judgment delivered by the Hon'ble Supreme Court.

11. In the second referred judgment, the Hon'ble High Court of Punjab and Haryana at Chandigarh in paragraphs 13 to 16 and 18 to 28 discussed thoroughly and observed as follows:

“13. The Apex Court, in the case of **Kailash Chandra Agarwal & Anr. Vs State of U.P. & Ors., reported in 2014 AIR (SCW) 6152** noticed that the complaint did not attribute specific role to the

relatives of the husband and it was quashed, by referring to the judgment in the case of **Kans Raj Vs. State of Punjab & Ors. ((2000) 5 SCC 207)**, which reads thus:

"5.....A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case."

14. This question has been examined in number cases. **The Apex Court in Ashish Dixit and others Vs. State of U.P. and another** had quashed the proceedings under the Domestic Violence Act in a petition filed under Section 482 Cr.P.C. This High Court in **Jasvir Kaur and another Vs. Manpreet Kaur in CRM No.M-29792 of 2011** allowed the petition filed under Section 482 Cr.P.C. seeking quashing of the complaint filed under the Domestic Violence Act. The Karnataka High Court in **Smt. Nagarathnamma Vs. M.S. Vanithashree in Cr, P.**

No.5246/2010 had allowed the petition filed under Section 482 Cr.P.C. Thus, a complaint can be quashed in the petition filed under Section 482 Cr.P.C. if it is found that the complaint was an abuse of the process of the Court or has filed only with a view to harass the other side.

15. The complaint had filed by the brother. An objection was taken that no authority had been given to the complainant to lodge a complaint. It is necessary to notice Section 12 of the Domestic Violence Act. It reads as under: -

**Section 12 in The Protection of Women
from Domestic Violence Act, 2005**

12. Application to Magistrate. --

(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act: Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider

.....

...

16. A perusal of the above would show that a complaint can be filed by an aggrieved person or a

Protection Officer or any other person on 7 of 13 behalf of the aggrieved person and there is no bar and the other person on behalf of the aggrieved person can file a complaint.

18. The next question is does the aggrieved person even mean a 'divorced woman'. Answer to the question lies in the definition provided in Section 2 (a), it defines the aggrieved person as under: -

"2(a) **"aggrieved person"** means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent"

19. The use of the word is any woman 'who is' or 'has been'. Both the expressions are in the present tense. The legislature has not used the word 'who was' or 'had been'. This means the domestic relationship has to be in the present and not in the past. The definition requires that on the date Act come into force, the woman should be in domestic relationship.

20. The definition of domestic relationship given under Section 2 (f) further supports the view that the requirement under D.V.Act is that the relationship which is the basis of invoking the jurisdiction under

D.V.Act has to be in the present. Section 2 (f) of the D.V. Act reads as under:

(f) "Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

21. The definition clearly speaks of a domestic relationship between two persons who live or have at any point of time lived together in a shared household and are related by marriage or through a relationship in the nature of marriage. This definition also speaks about the existence of a relationship by marriage or a relationship in the nature of marriage at the time. The expression used is 'are related' by marriage. The expression by the legislature is not 'were related'. From the bare reading of these two provisions, it is apparent that the intention of the legislature is to protect those women who are living in a domestic relationship.

22. The contention of the respondent was that when the wife can move the jurisdiction of the court under Section 125 Cr.P.C., nothing prevents her from invoking the jurisdiction of the court under

D.V. Act. It was further contended that the expression used under Section 2 (f) 'at any point of time lived together' also includes a divorced wife.

23. This issue has been examined in **(2010) DLT 67 titled Harbans Lal Malik vs. Payal Malik** wherein it had been held:

"11. It is apparent that in order to make a person as respondent in a petition under Section 12, there must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act. Domestic relationship is defined under Section 2 (f) of the Act and is as under:

"Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

24. It is apparent that domestic relationship arises between the two persons, who have lived together in a shared household and when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. The definition speaks of living together at any point of time however it does not speak of having relation at any point of time. Thus, if the domestic relationship continued and if the parties have lived together at any point of time in a shared household, the person can be a respondent but if the relationship does not continue and the relationship had been in the past and is not in the present, a person cannot be made respondent on the ground of a past relationship. The domestic relationship between the aggrieved person and the respondent must be present and alive at the time when the complaint under Domestic Violence Act is filed.

25. It has been held in **Harbans Lal Malik (supra)** that definition of 'wife' as available in Section 125 Cr.PC cannot be merged into Domestic Violence Act. Section 125 specifically provides that the wife means 'divorced wife'. Explanation under Section 125 (1) (b) reads as under:

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;

26. The court had further observed as under:

19. I, also consider that the definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denials

of these rights do not amount to domestic violence.

20. This definition pre supposes that the woman is living with the person who committed violence and domestic relationship is not dead buried or severed. This does not speak of past violence which a woman suffered before grant of divorce."

27. It is apparent that the provisions under the D.V. Act can be invoked only when the domestic relationship is in existence. Where the domestic relationship ceases, the provisions under the D.V. Act cannot be invoked.

28. In the present case, a decree of divorce had been passed. Though it was an ex parte decree but it has not been set aside by the competent Court. Once the domestic relationship came to an end after the decree of divorce the complaint under the Domestic Violence Act could not have been filed. It is necessary to refer to the observations made in **Inderjit Singh Grewal's case (supra):-**

"24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Cr.P.C., that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view

of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this court in **Japani Sahoo v. Chandra Sekhar Mohanty, AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida & Ors., (2011) 6 SCC 508.**

“25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.”

Ultimately, the Hon'ble High Court decided the revisional application with an observation that the application is an abuse of process of Court. The domestic relation had come to an end; the complainant had impleaded reliefs who are not living in the shared house. The complaint and the proceeding therein quashed.

12. In the third referred judgment by the petitioner, the Hon'ble High Court of Bombay in paragraphs 5 to 12 discussed thoroughly and observed as follows:

“5. Smt. Ghonge, learned Counsel for the applicant, has submitted that the applicant is entitled for the relief even though she is divorcee. In support of her submission, she has placed heavy reliance on the judgment of Hon'ble Apex Court in the case of **Juveria Abdul Majid Patni.v. Atif Iqbal Mansoori and another (reported in 2014 (1) SCC, 736)**. In the case of **Inderjit Singh Grewal.v. State of Punjab and another (reported in 2011(9) SCALE, 295)**, the apex Court has considered the judgment of **Juveria Abdul Majid Patni.v. Atif Iqbal Mansoori and another (cited supra)** and recorded its findings in para 29 that domestic violence took place between January, 2006 and 06.09.2007 on which date FIR under Sections 498-A and 406 of the Indian Penal Code was lodged by the wife against her husband and his relatives. It is in this context, the apex Court

has observed that even if it is accepted that during the pendency of the SLP, the wife has obtained *exparte* "khula" (divorce) under the Muslim Personal Law from the Mufti on 09.05.2008, the petition under Section 12 of the DV Act is maintainable.

6. In the present case, the applicant is not the wife from the date of decree of divorce i.e. from 30th June, 2008 and, therefore, there is no relationship as husband and wife between them at the time of filing of the application. The judgment in the case of **Juveria Abdul Majid Patni .v. Atif Iqbal Mansoori and another (cited supra)** is considered by the apex Court in the case of **Inderjit Singh Grewal .v. State of Punjab and another (cited supra)**, in which, it is observed that, "in the facts and circumstances of the case, the submission made on behalf of respondent No.2 that the judgment of decree of Civil Court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by respondent No.2 to declare the said judgment and decree dated 30.03.2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the Civil Court subsists. On the similar footing, the contention

advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore, the complaint under the Act 2005 is maintainable, is not worth acceptance at this stage."

7. The Hon'ble Apex Court has held that to entertain the petition under the DV Act, there must be relationship as husband and wife. In the present case, the applicant/wife is no more wife from the date of judgment of family Court dated 30 th June, 2008. During the pendency of petition under DV Act (Petition No. 1087 of 2009), learned trial Court had granted interim maintenance of Rs.1,000/- per month. The said order was challenged before the Sessions Court. The main issue before the Sessions Court as to whether the divorcee can claim relief under the DV Act. Learned Sessions Judge in Criminal Appeal held that there was no domestic relationship between the parties on the date of filing of the petition and accordingly set aside the order of interim maintenance. The order of Sessions Judge was not challenged and, therefore, it attained finality.

8. Smt. Ghonge, learned Counsel for the applicant has pointed the decision of this Court in the case of **Aradhana Walkade .v. Chandrashekar Vaidya and another (reported in 2014 ALL MR (Cri), 1658)**.

Her Ladyship has held that, "both relationships between parties in existence as well as past relationship covered under definition of 'domestic relationship'. Hence, woman who is divorcee has remedy available to initiate proceedings under the Act." In the cited decision, there was divorce between husband and wife. Husband was paying amount of Rs.25, 000/- for the daughter who was residing with the wife. He was continuously paying amount of Rs.25, 000/- till August, 2011. Since then, he stopped paying the said amount. Therefore, it was contended by the wife (divorced wife) that as her child was deprived of maintenance, she thereby suffered economic abuse. Hence, it was held that the petition was maintainable even though it was filed by divorced wife. The facts in the cited decision are very much different and, therefore, it is not applicable in the case at hand.

9. In the case of **Dhananjay Ramkrishna Gaikwad and others.v. Sunanda Dhananjay Gaikwad and others (reported in 2016 ALL MR (Cri), 2291)**, there exists relationship as husband and wife. There was no divorce between them. Therefore, it was held that though she is residing separately, she can file application under the provisions of DV Act.

10. There is no dispute that the applicant/wife is no more wife from the decision of family Court in

Petition No. A-410/2004 dated 30th June, 2008. The said decision is not set aside by the appellate Court till date. Therefore, it is clear that at the time of filing of petition under the provisions of DV Act in the year 2009, the applicant was not the wife and, therefore, the petition itself was not maintainable. This Court, in the case of **Jayesh Uttamrao Khairnar and others.v. State of Maharashtra and others (reported in 2010(3) Mh.L.J., 305)**, has held that, "decree of divorce was already granted by the competent Court. During the relevant period of one year or before filing of the application under the Act, there was no conjugal relationship between the petitioner No.1-husband and the respondent No.2-wife. There was no question of giving protection to respondent No.2 when she was not residing with the petitioners. Case of respondent No.2 did not fall under Section 20(1) of the Act. In view of absence of domestic relationship of the respondent No.2 as on the date of filing of the complaint, proceedings under the Act were not maintainable and were filed with mala fide intention to harass the husband and his relatives. Proceedings quashed and set aside."

11. In the case of **Harbans Lal Malik.v. Payal Malik (Criminal Revision Petition No. 253 of 2010, dated 29.07.2010)**, Delhi High Court has held that, "it is apparent that in order to make a person as respondent in a petition under Section 12, there

must exist a domestic relationship between the respondent and the aggrieved person. If there is no domestic relationship between the aggrieved person and the respondent, the Court of MM cannot pass an order against such a person under the Act."

12. In the present case, there was no domestic relation on the date of filing of application under the DV Act and, therefore, the applicant/wife is not entitled for any protection under the said Act."

13. Last judgment referred by the opposite party no. 1/wife i.e. **Juveria Abdul Majid Patni (supra)**, the Hon'ble Supreme Court held in the said case that wife would be entitled to file a proceeding under Section 12 of the PWDV Act in respect of the past domestic violence. The observations from paragraph no. 30 are relevant as under:

"30. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, child custody under Section 21, compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005."

Upon perusal of the aforesaid observations made by the Hon'ble Supreme Court and different High Courts in the referred judgments, this Court finds the proceeding under Section 12 of the Protection of Women from Domestic Violence Act is maintainable even when domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to the aggrieved person who is entitled under the Protection of Women from Domestic Violence Act, 2005 provided the application must be filed within one year or within the limitation period as stipulated under Section 468 of the Cr.PC. In the present case, application under Section 12 of the PWDV Act has been filed after expiry of a period of almost 4 years from the date of a Decree of Divorce and after expiry of more than 11 years of domestic relationship.

14. In the case in hand, the petitioner is not remained as husband from the date of decree of divorce i.e. from 11.12.2018. There was no relationship as husband and wife between them at the time of filing of the application or even one year prior to the date of filing application under Section 12 of the PWDV Act, 2005. In addition, the opposite party no. 1 either left or driven out by the petitioner from the matrimonial home is the fact to be decided by competent Court but it is admitted facts that she is residing

separately on and from 08.02.2011 and there was no domestic relation between them after 08.02.2011 and the application filed on 24.08.2022 after expiry of more than 11 years, that is beyond the period of limitation as enumerated under Section 468 of the Cr.PC read with Sections 28 and 32 of the PWDV Act, 2005 read with Rule 15(6) of the PWDV Act, 2005 and their domestic relation as husband and wife detached/cut off since long i.e. 11 years ago. The Protection of Women from Domestic Violence Act, 2005 has been enacted because 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 a Bill was introduced in the Parliament. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged. 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 that occurring within the family. Furthermore, the enactment of this Act is squarely 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. The Act provides the reliefs only to the women. Therefore, this Act does not define the word 'wife'. It has been held in **Harbans Lal Malik's case (supra)** as under:

“Definition of 'wife' as available in Section 125 Cr.PC cannot be merged into Domestic Violence Act. Section 125 specifically provides that the wife means 'divorced wife'. Explanation under Section 125 (1) (b) reads as under:

(b) "Wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried;

The definition of "wife" as available under Section 125 Cr.P.C could not be imported into Domestic Violence Act. The Legislature was well aware of Section 125 Cr.P.C. and if Legislature intended, it would have defined "wife" as in Section 125 Cr.P.C in Domestic Violence Act as well. The purpose

and object of Domestic Violence and provision under Section 125 Cr.P.C. is different. While Domestic Violence Act has been enacted by the Parliament to prevent acts of domestic violence on women living in a shared household. Section 125 of Cr.P.C. is to prevent vagrancy where wife is left high and dry without maintenance. Law gives a right to claim maintenance under Civil Law as well as Section 125 Cr.P.C. even to a divorced wife, but an act of domestic violence cannot be committed on a divorced wife, who is not living with her husband or family and is free to live wherever she wants. She has a right to claim maintenance and enforce other rights as per law. She has a right to claim custody of children as per law but denials of these rights do not amount to domestic violence.”

15. In the light of above discussion and in view of judgments referred from the side of petitioner as well as the opposite party no. 1, this Court is of the considered view that the revisional application has sufficient merit as such proceedings being A.C. 2391 of 2022 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 presently pending before the Court of Learned 5th

Magistrate, Alipore after living separately from domestic relationship for 11 years and expiry of almost 4 years after the decree of divorce, is an abuse of process of law and required to be quashed. It is also required to setting aside the orders for issuing summons for appearance passed therein in connection with the aforesaid proceeding. However, this Court would like to make it clear that if she, so advised, can proceed with the other cases pending or may institute case for monetary reliefs on account of maintenance etc. in accordance with law without being influenced by the observations, whatsoever, made by this Court.

16. Accordingly, **CRR 4379 of 2022** is, thus, allowed without order as to costs. Proceeding being A.C. 2391 of 2022 filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is hereby quashed to secure the end of justice and orders, passed therein in connection with the said proceeding, are also set aside. Consequently, **CRAN 1 of 2023** is also, thus, disposed of.

17. Case Diary, if any, is to be returned to the learned Advocate for the State.

18. Let a copy of this judgment and order be sent to the learned Court below for information.

19. Interim order, if any, stands vacated.

20. Parties shall act on the server copies of this order uploaded on the website of this Court.

21. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)