



IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL CONTEMPT PETITION NO. 1 OF 2025

Mrs. B M Suman
D/o Late Mune Gowda
Aged 46 years, Service
House No.26/70,
The Gomanthak Ayakar Employees
Housing Society Ltd,
Carambolim, Tiswadi Taluka,
Old Goa, Goa – 403110.
Sumanbm1@gmail.com

....Petitioner

Versus

Mr. Shashikant Bhagavan,
S/o Y N Bhagavan
Aged 47 years, Businessman
Office Address – M/s Arka Enterprises,
No.19, Nagineni Mansion, 8th Cross,
13th Main, HMT Layout, Gokula, 1st
Stage, 1st Phase Bangalore - 560054.
House Address – R/o No. A1-109
RMV Clusters Phase 1, Devinagar,
Lotetgollahalli, Bangalore – 560094.
sbhagavan@gmail.com

....Respondent/
Contemnor

Petitioner in person.

Ms. Apeksha Kalokhe, Advocate for the Respondent/Contemnor.

Mr. Deepak Gaonkar, Advocate to assist Court.

CORAM : VALMIKI MENEZES, J.

RESERVED ON : 14th August, 2025.

PRONOUNCED ON: 21st August, 2025.

JUDGMENT:

1. Registry to waive objections and register the matter.
2. This Contempt Petition under Section 10 of the Contempt of Courts Act, 1971 seeks detention of the Respondent in a civil prison, for wilful disobedience of order dated 08.07.2019 passed by the Judicial Magistrate First Class at Mapusa in Criminal Case No. 27/DVA/2019/E, directing the Respondent to pay a sum of ₹30,000/- per month from the date of the order, as interim monetary relief to the Petitioner, under Section 23 of the Protection of Women from Domestic Violence Act, 2005. The contempt petition also seeks to invoke the provisions of Order 39 Rule 11 CPC to strike off the defence of the Respondent in the pending DVA case, that is to strike off reply dated 13.12.2019 in Criminal Case No. 27/DVA/2019/E.
3. The main contention of the Petitioner is that though the Magistrate has directed the Respondent to pay a monthly maintenance to the Petitioner of ₹30,000/-, and this order has

attained finality, the Respondent has till date deposited or paid only an amount of ₹9,21,000/- and there is an outstanding amount yet to be paid by the Respondent to the Petitioner of ₹12,69,000/-. That though the Petitioner has sought enforcement of the aforesaid order before the Magistrate, the Magistrate is unable to enforce its own order due to the recalcitrant attitude of the Respondent, hence she has approached this Court with the present contempt petition, claiming that the Respondent is in contempt of the order of the Magistrate dated 08.07.2019 by persistently and wilfully disobeying this order.

4. The contempt petition has been opposed by the Respondent on several grounds raised by learned Advocate Ms. Apeksha Kalokhe; the first ground is that the Petitioner has other remedies under the DV Act and the same is not maintainable under the Contempt of Courts Act. It was further contended that the J.M.F.C., in an application filed by the Petitioner under Sub-Section 6 of Section 20 of the DV Act read with Section 125(3) and 128 of the Cr.P.C. had, by an order of 14.06.2024 issued a warrant of attachment of movable properties (two motorcycles) belonging to the Respondent, for recovery of the amount of ₹9,72,000/-, till then due under order dated 08.07.2019 of the Magistrate; this order came to be challenged before the Sessions Court in CRIA 198/2027 by the Respondent. The Petitioner also

challenged this order in CRIA 286/2024 to the extent that the Magistrate has refused to issue a warrant of arrest against the Respondent and for adopting all measures under Section 125 r/w Section 128 Cr.P.C. and under Section 20(6) of the DV Act to enforce its order dated 08.07.2019. On both these Appeals, the Sessions Court, by its order dated 07.12.2024 has set aside the order dated 14.06.2024 passed by the Magistrate and has remanded the matter back, directing the Magistrate to decide whether the application for enforcement of the order dated 08.07.2019 by seeking recourse to the powers vested in the Magistrate under Sub-Section 6 of Section 20 of the DV Act r/w Section 125(3) and Section 128 Cr.P.C. was maintainable. Consequently, the matter is now before the Magistrate to decide upon the maintainability of the Petitioner's application for enforcement of the Magistrate's order dated 08.07.2019, and therefore this petition, according to the Respondent ought not to be entertained. Reliance was also placed on a Judgment of this Court in *XX v. XX dated 16.03.2023 in Criminal Revision Application 233/2018* to contend that an order granting maintenance under the DV Act cannot be enforced under Section 125 Cr.P.C. or any other provision of the Code, nor could orders of attachment of salary of the Respondent be passed by the Magistrate, in pursuance of powers vested under Sub-Section 6 of

Section 20 of the DV Act. Learned Advocate for the Respondent also relied on the following judgments in support of her case:

- (i) *Akshay Thakur v. State of Himachal Pradesh & Ors.*, Cr. MMO No. 1079 of 2024, decided on 25.04.2025, High Court of Himachal Pradesh, Shimla.
- (ii) *Anish Pramod Patel v. Kiran Jyot Maini*, CRL.M.C. 1951 of 2023, decided on 01.12.2023, High Court of Delhi.

5. Learned Advocate Mr. Deepak Gaonkar, who was requested by this Court vide its order dated 09.06.2025 to provide assistance on the question as to the mode and manner of executing an order granting maintenance under the DV Act, made the following submissions:

- A. It was submitted that the procedure to be followed, in all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and for offences under Section 31 of the DV Act is the one provided under CrPC. Section 28 of the Act specifically provides for such procedure. Where orders under Section 20 of the DV Act granting a monetary relief are passed, and where there is a failure on the part of the Respondent to make payment in terms of the order,

the Magistrate may direct the employer to directly pay to the aggrieved person or to deposit such sum with the Court, from out of the wages or salary due to the Respondent.

- B. It was further submitted that the grant of monetary relief under Sections 18 or 20 of the DV Act may include an amount granted for maintenance, and non-payment of such maintenance would constitute a breach of a protection order, for which penalty provisions may be invoked under Section 31 of the Act rendering the Respondent punishable with imprisonment.
- C. It was then submitted that enforcement of a maintenance order under the DV Act can be through an application for execution filed under Section 20(6) of the DV Act r/w. Section 125 (3) of the CrPC, before the concerned Magistrate, and in terms of sub-Section 3 of Section 125 of CrPC such amount can be recovered in the manner provided in the CrPC for recovery of fines, which may include award of imprisonment for a term which may extend to one month, or until payment is actually made. The order of maintenance under the DV Act or under the Hindu Marriage Act r/w. Family Court's Act, or under

Section 125 of the CrPC are all enforceable under Section 128 of the CrPC.

6. Mr. Gaonkar relied on the following judgments to substantiate his arguments:

- (i) *Sagar Sudhakar Shendge v. Mrs. Naina Sagar Shendge & Ors.*, 2013 ALL MR (Cri) 2572
- (ii) *Sachin Suresh Bodhale v. Sushma Sachin Bodhale*, 2015 ALL MR (Cri) 3128.
- (iii) *Surya Prakash v. Rachna*, 2017 SCC OnLine MP 2380.
- (iv) *Pramodini Vijay Fernandes v. Vijay Fernandes*, 2010 SCC OnLine Bom 2382
- (v) *S. Amalraj v. State*, 2023 SCC OnLine Mad 8337.
- (vi) *Kanaka Raj v. State of Kerala*, 2009 SCC OnLine Ker 2822.
- (vii) *Smt. Kanchan v. Vikramjeet Setiya*, 2012 SCC OnLine Raj 3614.
- (viii) *Vincent Shanthakumar v. Christina Geetha Rani & Ors.*, 2014 SCC OnLine Kar 12409.
- (ix) *Neelam Goel v. State of NCT of Delhi*, 2023 SCC OnLine Del 5225.

- (x) *Shantha alias Ushadevi & Anr. v. B. G. Shivananjappa*, (2005) 4 SCC 468.
- (xi) *Rajnish v. Neha & Anr.*, (2021) 2 SCC 324.

7. The Petitioner appears in person and has argued the matter after declining assistance, including through legal aid, from an Advocate. The Petitioner has approached this Court, essentially to enforce the orders of the Magistrate dated 08.07.2019, under which the Respondent has been directed to pay maintenance, and is in default, by refusing to pay an outstanding amount of at least ₹9,49,000/- as on the date of the last order of the Magistrate, and as of 22.05.2024, as submitted in a calculation sheet placed before the Court by the Petitioner, an amount of ₹12,69,000/-. It is also an admitted position that the Petitioner has two minor children of her marriage with the Respondent. The parties also do not dispute that the Sessions Court has now set aside the order dated 14.06.2024 of the Magistrate attaching certain movable assets of the Respondent in execution of its order of maintenance and directed the Magistrate to first consider whether the Petitioner's application for execution of the order dated 08.07.2019, was at all maintainable in terms of Sub-Section 6 of Section 20 or even if read with Sub-Section 3 of Section 125 and Section 128 of the Cr.P.C. It is in the light of these facts, and the refusal of the Sessions Court to exercise its appellate jurisdiction to decide this

issue, that I am constrained to also examine the legality of order dated 07.12.2024 of the Sessions Court in exercise of supervisory powers of this Court under Article 227 of the Constitution of India r/w inherent powers under Section 482 of Cr.P.C.

8. To examine the legality of the order dated 07.12.2024 of the Sessions Court passed in Criminal Appeal No.198/2024 and Criminal Appeal No.286/2024, the core issue before me is as to what would be the manner, and under which provisions could the Magistrate exercise powers, under the DV Act and/or under the Code of Criminal Procedure to execute its own order (order dated 08.07.2019) granting maintenance to the complainant.

9. To answer the issue formulated above, the history of the various proceedings and orders passed from the time of the filing of the DV proceedings in the year 2019, by the Petitioner would have to be referred to.

10. The original Domestic Violence proceeding was instituted by the Petitioner(wife) against the Respondent (husband) before the JMFC Mapusa, registered as Criminal Case No.27/DVA/2019/F. Though the Respondent was served with a notice therein, he neither filed a reply nor appeared before the Magistrate. An interim order came to be passed on 08.07.2019 by the Magistrate, who on

considering the material placed by the Petitioner with regard to the fact that there were two minor children, one of whom required medical treatment for which expenses were incurred by the Petitioner, the Respondent was restrained from entering the living quarters of the Petitioner; further directions in the order, direct the Respondent to pay a sum of ₹30,000/- per month from the date of the order, as interim monetary relief, by the 5th of every month, to pay a sum of ₹23,000/- towards the medical expenses of their daughter and to pay the expenses towards the surgery of the daughter which may be scheduled in future.

11. Interim order dated 08.07.2019 passed by the Magistrate was assailed in Criminal Appeal No.122 of 2023 before the Additional Sessions Judge which was ultimately dismissed on 29.05.2023, confirming the order dated 08.07.2019. In Criminal Revision Application No.18 of 2024 filed by the Respondent before this Court, there was no interference with the finding recorded by the Magistrate in its order dated 08.07.2019 nor any infirmity found with the appellate order of the Sessions Court dated 29.05.2023. This Court however, on recording the submissions for the Respondent at paragraphs 3 and 4 of its order, disposed of the application granting the Respondent liberty to approach the Magistrate with an application for modification of interim order dated 08.07.2019, by placing necessary documents

therewith. Thus, the interim order of the Magistrate dated 08.07.2019 became final and was not interfered with by this Court. The Respondent was also directed to deposit 25% of the arrears due under the interim order of the Magistrate.

12. The Respondent then filed an application dated 23.05.2024, supported by extract of the Bank Accounts of the Respondent for the period 01.03.2013 to 16.11.2019, statements dated 04.11.2019 to 09.08.2021 and Income Tax Returns wherein he had returned income from business and profession, before the Magistrate, for modification of interim order dated 08.07.2019. The Magistrate dismissed the application vide order dated 14.06.2024, making reference to the documents produced, and after considering the provisions of sub-Section 2 of Section 25 of the DV Act concluded that there was no change in circumstances contained in the application, necessitating or justifying a modification of the terms granting interim relief. It considered the material and concluded that there was actually no material on record to show that the Respondent had no source of income or that he had lost employment or that there was any change in income of the Respondent.

13. The Respondent filed Criminal Appeal No.197 of 2024 before the Sessions Court to challenge the order dated 14.06.2024

of the Magistrate rejecting the application for modification of its interim order, which came to be dismissed on 06.12.2024. The Respondent also filed Criminal Appeal No.198 of 2024 before the Sessions Court to challenge another order of the same date passed by the Magistrate in an application by the Petitioner under Section 20 of the DV Act for enforcement of the interim order dated 08.07.2019, under which two vehicles of the Respondent were attached for ensuring recovery/arrears of maintenance. On 11.10.2024, the Petitioner filed Criminal Appeal No. 286/2024 before the Sessions Court, challenging another Order dated 14.06.2024 passed by the Magistrate on an application dated 30.11.2023 filed by the Petitioner under Order 39 rule 11 and Order 39 rule 2A of CPC and Section 12 of the Contempt of Courts Act. By Common Judgement dated 07.12.2024, both these appeals (Criminal Appeal No.198 of 2024 and Criminal Appeal No. 286/2024) were allowed by the Sessions Court which quashed and set aside the orders dated 14.06.2024 and directed the Magistrate to decide application dated 15.12.2022 for enforcement, afresh. Whist allowing these appeals, the Sessions Court has held that since the Magistrate, in its order dated 14.06.2024 did not decide whether the application at Exh.28 before it, was maintainable under Section 20 of the PWDVA r/w. Section 128 and Section 125(3) of the CrPC, the order passed by

the Magistrate was perverse and illegal for want of consideration of the question of maintainability. It was on this basis that the appeals were allowed and the Magistrate was directed to decide Exh.28 afresh and first render a decision on its maintainability. Though this order was not challenged further, for reasons stated in paragraph 7 above, the legality of this order of 07.12.2024 of the Sessions Court has been considered by me herein.

14. Thereafter the Respondent challenged the order dated 06.12.2024 passed by the Sessions Court, dismissing Criminal Appeal No.197 of 2024 and order dated 14.06.2024 passed by the Magistrate, rejecting modification application dated 23.05.2024 filed by the Respondent, in this Court in Writ Petition (Criminal) 34 of 2025 (F) which came to be dismissed by this Court by order dated 07.02.2025.

15. As can be seen from these facts, a maintenance order dated 08.07.2019 granting interim monetary relief to the Petitioner under Section 20(3) of the DV Act of ₹.30,000/- per month, has attained finality and is now sought to be enforced through Exh.28. It is not in dispute that the Respondent owes the Petitioner, by his own calculation, an amount of more than ₹9,00,000/-. The Petitioner claims that the amount due under the interim monetary relief as on 08.07.2025 is ₹12,69,000/-. In these circumstances, it

is expected that the Magistrates, and all Courts dealing with such cases give full effect to their orders by enforcing them within the shortest possible time span. In this case, the enforcement of an order of 2019 is still pending, with the Respondent owing the Petitioner ₹30,000/- for every month that passes by. Considering that the DV Act is a beneficial piece of legislation for the protection of women, including, for ensuring that economic abuse is arrested and does not continue, Courts, including those of the Magistrate and the Sessions Court exercising appellate or revisional jurisdiction, must endeavour to have their orders enforced in the shortest possible time.

16. In the present case, the Petitioner has filed Exh.28 seeking recovery of the arrears of interim monetary relief due under order of 08.07.2019. The Petitioner appears before the Magistrate in person, and apart from seeking recovery of arrears of ₹9,83,000/- has also prayed for striking of the defence of the Respondent, and for issuance of a warrant of arrest against the Respondent and for an order to sentence the Respondent to an imprisonment terms, until payment is made. The language used in the application dated 15.12.2022 (Exh.28) is not of importance, but what is essentially sought is the enforcement of the recovery of the arrears of interim monetary compensation under order of the Magistrate of 08.07.2019. It would therefore be the duty of all Courts in the

hierarchy to ensure that all available powers, vested in the Magistrate dealing with the application, are exercised to ensure enforcement of the order.

17. Before the Magistrate, a preliminary objection was raised in reply under Exh.D-31 that the application was not maintainable under Section 125(3) and 128 of CrPC and the execution of the order would only lie under Section 20(6) of the DV Act; the application was further opposed on the ground that the Petitioner cannot seek execution of the interim monetary relief under DV Act, and simultaneously under the CrPC. Before the Appellate Court, in Criminal Appeal No. 198 of 2024, it was contended that the Magistrate has not given any reasons to conclude that it had jurisdiction to proceed to attach movable and immovable properties of the defaulter to recover the monetary relief, in terms of Section 125(3) of the CrPC. This contention was accepted by the Sessions Court, holding that it was incumbent upon the Magistrate to first decide upon its jurisdiction and maintainability of the application, and consequently, allowing the Respondent's appeal, the execution (Exh.28) was sent back to the Magistrate to first decide whether it could enforce its order.

In my opinion, considering the beneficial intent of the DV Act as a legislation, no purpose would be served in remanding the

application for execution back to the Magistrate to decide on jurisdiction, and it was incumbent upon the Sessions Court to have exercised appellate jurisdiction vested in it, and decide on its own whether the Magistrate had the powers to proceed in executing its orders in terms of Section 125 of the CrPC, and whether the objection of the Respondent as to jurisdiction could be sustained.

18. For this purpose, reference is made to some of the provisions of the DV Act to understand its scheme and intent.

All applications for various types of orders, including protection orders under Section 18, residence order under Section 19, monetary reliefs under Section 20, custody order under Section 21 and compensation orders under Section 22 are required to be filed by an application to a Magistrate in accordance with the procedure prescribed under Section 12 of the Act. Power to grant interim and ex-parte orders in the nature of any of the order contemplated under Section 18 to 22 are vested in the Magistrate under Section 23 of the Act.

19. Under Section 20, which empowers a Magistrate to grant monetary relief or an interim monetary relief, sub-section 5 thereof mandates that the Respondent shall pay such monetary relief

granted by the Magistrate to the aggrieved person within the period specified in the order under sub-section (1) of Section 20.

Sub-section 6 of section 20 empowers the Magistrate, upon the failure of the Respondent to make such payment to direct the employer or debtor of the Respondent to directly make such payment to the aggrieved person or to deposit the same in the Court. This sub-section would apply when the Respondent is employed and earns wages or salary or where debtors owe the Respondent money.

20. Section 28 of the DV Act provides that all proceedings under Sections 12 and 18 to 23, shall be governed by the provisions of the Code of Criminal Procedure, 1973. The procedure under the Code would equally apply to proceedings to impose penalty for breach of protection orders under Section 31 of the Act. Thus, the provisions of the Code apply in all vigour to the manner of enforcement of the provisions of the DV Act and for enforcement of orders passed under various provisions of the Act.

21. Section 37 of the DV Act empowers the Central Government to make rules for carrying out the provisions of the Act, in terms of which The Protection of Women from Domestic Violence Rule, 2006 have been enacted. Rule 6 provides for a

procedure for filing applications under Section 12 of the Act of which sub-rule 5 requires that every application under Section 12 shall be dealt with, and the orders **enforced** in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973.

In terms of the scheme of the DV Act and the Rules framed thereunder the enforcement of orders are to be done in terms of Section 125 of the Code; in other words, orders granting interim monetary relief, which may be in the form of maintenance are to be enforced in terms of Section 125 of the Code.

22. Sub-section 3 of Section 125 stipulates that if a person ordered to pay maintenance under Sub-section 1 thereof, without sufficient cause, the Magistrate, may, for every breach of the order issue a warrant for levying the amount due in the manner provided for levying fines.

Any fine levied under the Code may be recovered by taking action in terms of Section 421 thereof which reads as under:

421. Warrant for levy of fine-

1. When an offender has been sentenced to pay a fine the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may

(a) Issue a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender;

(b) Issue a warrant to the collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter;

Provided that, if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the whole of such imprisonment in default, no Court shall issue such warrant unless, for special reasons to be recorded in writing, it considers it necessary so to do, or unless it has made an order for the payment of expenses or compensation out of the fine under section 357.

2. The State Government may make rules regulating the manner in which warrants under clause (a) of Sub-Section (1) are to be executed, and for the summary determination of any claims made by any person other than the offender in respect of any property attached in execution of such warrant.

3. Where the Court issues a warrant to the Collector under clause (b) of Sub-Section (1), the Collector shall realise the amount in accordance with the law relating to recovery of arrears of land revenue, as if such warrant were a certificate issued under such law; Provided that no such warrant shall be executed by the arrest or detention in prison of the offender.

23. A Magistrate, may, in execution of its interim order directing payment of monetary relief, issue a warrant for levy of the amount under fine by attachment and sale of movable property belonging to the offender, or may in addition also issue a warrant to the

Collector of the district, authorising him to realise the amount of fine as arrears of land revenue from the movable or even immovable properties of the defaulter. These are powers vested in the Magistrate to enforce its order passed under Section 20 of the DV Act.

24. In **Rajnesh**(supra), though the Supreme Court was considering a criminal Appeal arising out of an application for interim maintenance in a Petition under Section 125 CrPC, it has examined the inter play amongst various enactments in the nature of beneficial legislations which provide for maintenance or monetary reliefs to women. Amongst these legislations, it considered the statutory provision of the Sections 36 and 37 of the Special Marriage Act; Sections 24 and 25 of the Hindu Marriage Act, 1955; Section 18 of the Hindu Adoptions and Maintenance Act, 1956; Section 125 of CrPc and Section 20 of the DV Act, all of which empower either a Civil Court, Family Court or a Magistrate to grant interim relief which may be monetary in nature or in the nature of maintenance.

On the issue of overlapping jurisdiction of various Fora, the Supreme Court, after considering a catena of judgments, has given certain directions to all Courts where such overlapping

proceedings or jurisdictions have been invoked, which are referred to below:

38. Proceedings under Section 125 CrPC are summary in nature. In Bhuwan Mohan Singh v. Meena this Court held that Section 125 CrPC was conceived to ameliorate the agony, anguish, financial suffering of a woman who had left her matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children. Since it is the sacrosanct duty of the husband to provide financial support to the wife and minor children, the husband was required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation, except on any legally permissible ground mentioned in the statute.

40. The law presumes in

(e) Protection of Women from Domestic Violence Act, 2005("the DV Act")

41. The DV Act stands on a separate footing from the laws discussed hereinabove. The DV Act provides relief to an aggrieved woman who is subjected to "domestic violence". The "aggrieved person" has been defined by Section 2(a) to mean any woman who is, or has been, in a domestic relationship with the respondent, and alleges to have been subjected to any act of domestic violence. Section 2(f) defines "domestic relationship" to include 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.

48. Section 20 provides for monetary relief to the aggrieved woman:

"20. Monetary reliefs-(1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and such relief may include, but is not limited to-

(a) the loss of earnings:

(b) the medical expenses:

(c) the loss caused due to destruction, damage or removal of any c property from the control of the aggrieved person, and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure. 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate. fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require."

(emphasis supplied)

Section 20(1)(d) provides that maintenance granted under the DV Act to an aggrieved woman and children, would be given effect to, in addition to an order of maintenance awarded under Section 125 CrPC, or any other law in force. Under sub-section (6) of Section 20, the Magistrate may direct the employer or debtor of the respondent, to directly pay the aggrieved person, or deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

51. Section 36 provides that the DV Act shall be in addition to, and not in derogation of the provisions of any other law for the time being in force.

2. Conflicting judgments on overlapping jurisdiction

54. On the other hand, the Bombay and Delhi High Courts, have held that in case of parallel proceedings, adjustment or set-off must take place. The Bombay High Court in a well-reasoned judgment delivered in Vishal v. Aparna, has taken the correct view. The Court was considering the issue whether interim monthly maintenance awarded under Section 23 read with Section 20(1) (d) of the DV Act could be adjusted against the maintenance awarded under Section 125 CrPC. The Family Court held that the order passed under the DV Act and the CrPC were both independent proceedings, and adjustment was not permissible. The Bombay High Court set aside the judgment of the Family Court, and held that Section 20(1) (d) of the DV Act makes it clear that the maintenance

granted under this Act, would be in addition to an order of maintenance under Section 125 CrPC, and any other law for the time being in force. Sub-section (3) of Section 26 of the DV Act enjoins upon the aggrieved person to inform the Magistrate, if she has obtained any relief available under Sections 18, 19, 20, 21 and 22, in any other legal proceeding filed by her, whether before a civil court, Family Court, or criminal court. The object being that while granting relief under the DV Act, the Magistrate shall take into account and consider if any similar relief has been obtained by the aggrieved person. Even though proceedings under the DV Act may be an independent proceeding, the Magistrate cannot ignore the maintenance awarded in any other legal proceedings, while determining whether over and above the maintenance already awarded, any further amount was required to be granted for reasons to be recorded in writing. The Court observed: (Vishal case 31, SCC OnLine Bom para 18)

"18. What I intend to emphasise is the fact that the adjustment is permissible and the adjustment can be allowed of the lower amount against the higher amount. Though the wife can simultaneously claim maintenance under the different enactments, it does not in any way mean that the husband can be made liable to pay the maintenance awarded in each of the said proceedings."

(emphasis supplied)

It was held that while determining the quantum of maintenance awarded under Section

125 CrPC, the Magistrate would take into consideration the interim maintenance awarded to the aggrieved woman under the DV Act.

II. Payment of Interim Maintenance

62. The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24-9-2001), and the third proviso to Section 125 CrPC (inserted vide Act 50 of 2001 w.e.f. 24-9-2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of 'within 60 days from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that applications remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.

V. Enforcement of orders of maintenance

114. Enforcement of the order of maintenance is the most challenging issues which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in Sush Viresh Chhadva v.

Viresh Nagshi Chhadva held that: (SCC OnLine Bom para 7)

"7.... The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and... the law takes care that nobody is disabled from prosecuting or c defending the matrimonial case by starvation or lack of funds. "

115. An application for execution of an order of maintenance can be filed under the following provisions:

(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing d an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 CrPC before the Magistrate's Court

116. Section 18 of the Family Courts Act, 1984 provides that orders passed by the Family Court shall be executable in accordance with the CPC/CrPC

117. Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Striking off the Defence

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In Kaushalya v. Mukesh Jain 43, the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

119. The Punjab and Haryana High Court in Rani v. Parkash Singh was considering a case where the husband failed to comply with the maintenance order, despite several notices, for a period of over two years. The Court taking note of the power to strike off the defence of the respondent, held that: (SCC OnLine P&H para7)

"7.... Law is not that powerless as not to bring the husband to book. If the husband has failed to make payment of maintenance and litigation expenses to wife, his defence be struck out.,

123. The Punjab and Haryana High Court in Gurvinder Singh v. Murti was considering a case where the trial court struck off the defence of the husband for non-payment of ad interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided under Section 125(3) or Section 421 CrPC the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim

maintenance, but rather prolonged the litigation between the parties.

124. The issue whether defence can be struck off in proceedings under Section 125 CrPC came up before the Madhya Pradesh High Court Venkateshwar Dwivedi v. Ruchi Dwivedi.. The Court held that neither Section 125(3) CrPC nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence does not exist in a proceeding under Section 125 CrPC. Such power cannot be presumed to exist as an inherent or implied power. The Court placed reliance on the judgment of the Kerala High Court in Davis v. Thomas, and held that the Magistrate does not possess the power to strike off the defence for failure to pay interim maintenance.

Discussion and Directions on Enforcement of orders of Maintenance

125. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

126. Striking off the defence of the respondent is an order which ought to be passed in the last resort, if the courts find default to be wilful and contumacious, particularly to a dependent unemployed wife, and minor children. Contempt

proceedings for wilful disobedience may be initiated before the appropriate d court.

VI. Final Directions

127. In view of the foregoing discussion as contained in Part B - I to V of this judgment, we deem it appropriate to pass the following directions in exercise of our powers under Article 142 of the Constitution of India.

(a) Issue of overlapping jurisdiction

128. To overcome the issue of overlapping jurisdiction, and avoid conflicting orders being passed in different proceedings, it has become necessary to issue directions in this regard, so that there is uniformity in the practice followed by the Family Courts/District Courts/Magistrate Courts throughout the country. We direct that:

128.1(i) Where successive claims for maintenance are made by a party under different statutes, the court would consider an adjustment or set-off, of the amount awarded in the previous proceeding(s), while determining whether any further amount is to be awarded in the subsequent proceeding

128.2. (ii) It is made mandatory for the applicant to disclose the previous proceeding and the orders passed therein, in the subsequent proceeding

128.3. (iii) If the order passed in the previous proceeding(s) requires any modification or variation, it would be required to be done, in the same proceeding.

(b) Payment of Interim Maintenance

129. The Affidavit of Disclosure of Assets and Liabilities annexed as Enclosures I, II and III of this judgment, as may be applicable, shall be filed by both parties in all maintenance proceedings, including pending proceedings before the Family Court/District Court/Magistrates Court concerned, as the case may be, throughout the country.

(d) Date from which maintenance is to be awarded

131. We make it clear that maintenance in all cases will be awarded from c the date of filing the application for maintenance, as held in Part B - IV above.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955 Section 20(6) of the DV Act, and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC. more particularly Sections 51, 55, 58, 60 read with Order 21.

25. The Bombay High Court, in ***Sagar Shendge*** (supra) dealing with a case of enforcement of an interim order granting maintenance under Section 20 of the DV Act has considered the procedure to be followed, and the powers vested in the Magistrate to enforce such orders. The relevant portions of the judgment wherein these considerations were recorded are quoted below:

3. Counsel on behalf of the Petitioner has contended that the learned Magistrate has no powers to issue NBW under the DV Act.

4. The learned Special Public Prosecutor (Spl PP) has drawn my attention to Rule 6 of the DV Rules, which relates to applications U/s. 12 of the DV Act. Section 12 of the DV Act runs thus:

(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:

5. The wife in this case applied for reliefs under Sections 17 to 23 of the DV Act. The learned Magistrate granted order U s.20 That is an order of maintenance. The relevant part of Rule 6 (5) runs thus:

6. Application to the Magistrate. –

(5) The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

6. Consequently under Rule 6(5) the order passed U/s.20 upon an application made U/s 12 would have to be enforced in the manner laid down in the Section 125 of the CrPC

7. Further the Magistrate would have to follow the procedure U/s. 28 (1) of the DV Act to which my attention has been drawn by the learned Spl PP. Section 28(1) of the DV Act runs thus:

28. Procedure.-

(1) Save as otherwise provided in this Act, all proceedings under Sections 12,18,19,20,21,22 & 23

and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

8. The provisions in the CrPC lay down that the Section 125 is to be r/w. along with Form 19 followed by Form 18

The relevant part of Section 125 (3) runs thus

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

9. Under sub section 3 upon failure to pay maintenance and committing breach of the order of maintenance the Magistrate will be entitled to issue an warrant... The warrant would be for levying the amount as a fine.

17. In this case the learned Magistrate has issued NBW against the husband. It is contended by counsel on behalf of the Petitioner husband that the learned Magistrate has not followed procedure under CrPC which is required to be followed U/s. 28 (1) of the DV Act. It is contended by the counsel on behalf of the husband that for application under Section 12 in which relief U/s.20

is granted, Section 125 (3) under Rule 6 of the DV Rules becomes applicable.

19. Hence it is contended that at present the simplicitor issue of order of NBW is not in accordance with the complete procedure laid down under the DV Act r/w. 125 (3) of the CrPC.

21. Thus the aforesaid argument becomes academic. The provisions of the CrPC relating to maintenance as also the DV Act which are beneficial legislations for protection of women such as the Respondent wife in this case are required to be construed such as to benefit those persons for whom they are enacted.

22. The Magistrate issuing NBW, therefore, seems to have followed the Special Procedure for the arrest of the husband for non-payment of the maintenance ordered to be paid. Such procedure and such procedural order is within the framework of Section 28(2) of the DV Act and hence cannot be faulted as it is not seen to be illegal.

23. Hence the NBW is confirmed. The Writ Petition is dismissed. The NBW shall be executed unless the husband pays off the entire arrears now due and payable.

Thus, what has been held in ***Sagar Shendge*** (supra) is that the Magistrate would apply all provisions of Section 125, 421 and any other provision of the Code, including by issuing a non-bailable warrant of arrest to the Respondent who has been directed to pay any amount to the Applicant under the DV Act, and to

take all steps necessary and permissible under the Code to ensure enforcement of the order.

26. In a later judgment of this Court in *Sachin Suresh Bodhale (supra)*, this Court considered not only the procedure of issuing a warrant or levy of fine, where an amount ordered as interim maintenance was outstanding but also under the provision of Section 421, the Magistrate was empowered to sentence a defaulter to term of imprisonment. The relevant paras of the judgment are quoted below:

5. Therefore, it is abundantly clear that basically the learned Magistrate has to follow the procedure laid down in the Code of Criminal Procedure for recovery of maintenance either final or interim. Sub-section (2) of Section 28 of the Protection of Women from Domestic Violence Act, 2005 can be pressed into service when there is no provision available for implementing a particular order passed under the Protection of Women from Domestic Violence Act, 2005. If the procedure is available in Code of Criminal Procedure, that is necessarily to be followed.

6. In my considered opinion, the procedure laid down under Section 125(3) of the Code of Criminal Procedure for getting compliance of the orders passed by the Magistrate under Section 125(1) of the Code will have to be followed for executing the orders passed by the Magistrate under Section 20 (Monetary Reliefs) of the Protection of Women from Domestic Violence Act, 2005. The

reliefs available under Section 125(1)(a) of the Code of Criminal Procedure are analogous to the reliefs available under Section 20 of the Protection of Women from Domestic Violence Act, 2005. The procedure for getting compliance of the order passed under Section 125(1) of the Code of Criminal Procedure is available under Section 125(3) of the Code of Criminal Procedure, which runs as under :-

"125(3). If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's (allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be,) remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

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

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

7. The procedure for levying of fines is available under Section 421 of the Code of Criminal Procedure as under :-

"421. Warrant for levy of fine - When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways, that is to say, it may -

(a) issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender,

(b) issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter:"

8. Thus there is absolutely clear provision under the Code of Criminal Procedure, which lays down as to how the amount of maintenance, final or interim, is to be recovered. The Magistrate, in my opinion, could not have issued non-bailable warrant directly. He should have followed the procedure laid down in sub-section (3) of Section 125 and Section 421 of the Code of Criminal Procedure. In the scheme of Code of Criminal Procedure, in the first place, the Magistrate was under obligation to issue a warrant for levy of the amount by attachment and sale of any movable property. The other remedy available was to issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter. The Magistrate could have sentenced the petitioner for the whole or any part of each month's allowance for

the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which might extend to one month or until payment if sooner made.

9.As such the first option available to the Magistrate was to issue a warrant for levying fine. If whole of the amount was recovered by adopting the procedure under Section 421 of the Code of Criminal Procedure, the question of putting the defaulter in prison did not arise. In case amount was not recovered or part of it was recovered and part of it was not recovered, then the question would have arisen as to how much sentence should be imposed on the defaulter as per the provision - laid down in the Code of Criminal Procedure. The stage of issuing warrant comes only after sentencing and not before that.

27. The Madhya Pradesh High Court, in ***Surya Prakash*** (supra) has examined whether non-payment of maintenance under the DV Act can be treated as breach of a “protection order” or “interim protection order” and whether the provisions of Section 31 of the DV Act can be invoked for breach of such orders. The questions formulated and to be answered in the judgment are quoted below:

1. *The present petition has been placed before this Bench in view of the reference made by the learned Single*

Bench on 11.09.2015 for the opinion on the following questions:-

"(i) Whether non-payment of maintenance allowance can be treated to be a breach of 'protection order' or 'interim protection order'? If it is not a breach of said orders, whether Section 31 of the DV Act can be invoked?

(ii) Whether any other breach of any provision of the DV Act, which does not fall within the ambit of 'protection order' or 'interim protection order, can be a basis to Invoke Section 31 of the Act?

(iii) Whether the order passed in Sunil Sonu v. Sarita Chawla (Smt.), (2009) 5 MPHT 319, Is in accordance with the scheme of DV Act?"

It then considers the provision of Section 20 of the Act and concludes that non-payment of maintenance directed under Section 20 of the Act amounts to a breach of a protection order and therefore renders the defaulter open to action in the form of penalty under Section 31. This question has been dealt with in the following paragraphs:

19. Section 20 of the Act deals with grant of monetary relief to meet the expenses incurred and the losses suffered by aggrieved person and any child of the aggrieved person as a result of domestic violence. Such provision enlarges the scope of domestic violence as defined in Section 3 of the Act. In terms of Section 3

of the Act, the "economic abuse" includes deprivation of all or any economic or financial resources, payment of rental related to shared household and maintenance. Whereas Section 20 includes a loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property as also the maintenance. The grant of monetary relief under Section 20 does not exclude the amount of maintenance which can be awarded in terms of Section 18 of the Act as part of affirmative order in respect of the domestic violence as defined in Section 3 of the Act. Therefore, we find that non-payment of maintenance is a breach of protection order; therefore, Section 31 of the Act can be Invoked. Therefore, in respect of first question, it is held that non-payment of maintenance allowance is a breach of protection order for which proceedings under Section 31 of the Act can be invoked.

20. The second question is required to be examined in the light of definition of Section 3 of the Act. If there is any instance of domestic violence, for which an affirmative or prohibitory order is passed under Section 18 of the Act, the provisions of Section 31 of the Act can be invoked.

For the reasons cited in paragraph 19 of the judgment, I am wholly in agreement with the view taken by the Madhya Pradesh High Court in ***Surya Prakash*** (supra) as a grant of monetary relief under Section 20 does not exclude the amount of maintenance which can be awarded under other provisions of the Act. Non-payment of interim monetary relief, would amount to a breach of

protection order as section 3 of the Act defines “economic abuse” which includes deprivation of all forms of economic and financial resources.

28. On a similar note, the Madras High Court, in *S. Amalraj (supra)*, was considering a question formulated in paragraph 1 of the judgment, which is quoted below:

1.

"Whether the non-payment of maintenance amount is a breach of protection order for which the law enforcing authority has jurisdiction to register the Criminal case under Section 31 of the Act?"

After considering the very same provisions of Sections 20 and 28 of the DV Act r/w. Section 125 (3) of the CrPC, it has recorded the following conclusions:

21. In the result this Court holds as follows:-

Section 31 of the DV Act is a key provision and heartbeat of the DV Act to regulate the violator of protection order passed under Section 18 of the DV Act. The question as to whether the law enforcing authority has jurisdiction to register the Criminal Case under Section 31 of the Act for non-payment of maintenance allowance which is deemed to be breach of protection order under Section 18 of the Act, is answered affirmatively and the law enforcing authority has jurisdiction to register the case and proceed in

accordance with law for every breach of order without any legal bar for the reason that each breach of order amounts to a continuing offence.

29. The Karnataka High Court in *Vincent Shanta Kumar* (supra) has formulated a similar question, namely

2. The Important and thought provoking point that arose for consideration of this Court in this case is:

"Whether the breach of an ex-parte interim maintenance order passed by the Court under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter called as 'DV Act') is an offence under Section 31 of the said Act so as to initiate Criminal Proceedings punishable under Section 31 of the said Act?"

This question has been considered and the reasoning for the consideration are quoted as below:

20. Bearing in mind, the above said golden principles, now this Court is bound to interpret the provisions of the Protection of Women from Domestic Violence Act in order to ascertain whether the Ex-parte Interim maintenance order passed u/s. 23 of the Act, In order to protect the women from economic violence is enforceable not only by executing the said order under other provisions of the Act but also punishable u/s 31 of the code.

30. Section 23 of the Act, in this connection empowers the court to grant interim and ex-parte orders, which reads thus:

"Sec 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 the 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 aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent. "

31. This particular provision empowers the court to grant interim order even ex-parte orders. The only rider is the Magistrate should satisfy himself that the respondent has committed an act of Domestic Violence or that there is likelihood that the respondent may commit an act of Domestic Violence, Magistrate can pass such orders as are necessary to prevent or protect the victim from the abuse by means of such Domestic Violence. The Magistrates also have great responsibility on them while considering the application for interim order u/s. 23 of the Act. Such power u/s 23 must instil in the mind of the Magistrate the concomitant degree of care and caution which is necessary before passing any such order. Before passing such an order, the Magistrate has to satisfy himself that the Domestic Violence has been committed as defined u/s 3 of the Act. So far as this

particular case is concerned, the Magistrate has passed an order ex-parte awarding interim maintenance in favour of the wife. Therefore, it goes without saying that the act or omission of the respondent deemed to have been caused Domestic Violence in exploiting wife by means of causing economic abuse or the economic violence on the wife. However, the aggrieved party can challenge the said order by means of an application u/s. 29 Until and unless the order passed u/s. 23 is set aside or modified, the

34. As I have already dealt with and discussed, the economic abuse as defined under Sec. 3 of the Domestic Violence Act amounts to a Domestic Violence as defined u/s. 3. In order to prevent or prohibit the commission, omission or such act is far from abusing the victim or from preventing her reaping of any maintenance amount as ordered by the court, it exactly falls under the definition of Domestic Violence, therefore the court can pass such orders u/s. 23 in order to prevent or prohibit the respondent from committing such Domestic Violence by directing him to pay such maintenance amount as necessary under the facts and circumstances of the case. Therefore, the order passed u/s. 23 though not specifically passed u/s. 18 of the Act, nevertheless, on harmonious reading of sections 3, 18 and 23. it gives such a meaning that the maintenance order passed u/s. 23 amounts to protecting the victim from Domestic Violence particularly from economic abuse Therefore, it can be safely held that the order passed u/s. 23 is also deemed to have been passed u/s. 18 of the Act for all practical purposes.

35. Having thus come to such conclusion that, the order passed by the Magistrate in this case awarding maintenance in favour of the respondent herein under Section 23 of the Act is enforceable under other provisions of this Act particularly for recovery.

36 .This particular provision empowers the court to invoke the procedures under Cr.P.C. for the purpose of implementing or enforcing the orders passed under Sections 12, 18, 19, 20, 21, 22, 23 and 31 of the Act. The second provision to subclause (2) of 20 also empowers the court irrespective of the procedures contained in Cr.P.C. the court itself can lay down its own procedure for disposal of the application u/s. 12 or Sec. 2 of section 23. The Intention of the legislature must be that, in order to protect the rights of the aggrieved women and to provide a speedy and real justice, the Magistrates are also to be given power to adopt their own procedure where no other procedure is contemplated in this act in spite of certain procedures are provided under Cr.P.C. but without violating the principles of natural justice. Therefore, it goes without saying that in order to implement the order passed u/S. 23, the court can have recourse to the Cr.P.C. virtually for the purpose of executing its order. It is in that manner it is to be understood. Sec. 125 of the Cr.P.C. can be invoked by the learned Magistrate for the purpose of enforcing the orders passed u/s. 23 of this particular Act, that means to say that the provisions contained u/s. 125(3) of Cr.P.C. are made applicable as far as possible only for enforcing the orders u/s. 23. Section 125(3) In fact reads as follows:

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

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

37. This particular provision dictates as to how the order of maintenance can be enforced. Though this provision cannot be called as a provision to punish the abuser, nevertheless, it contemplates some punishment if the amount in spite of granting opportunity is not properly paid to the victim.

38. Sec. 28 also provides and empowers the court to follow certain procedures in order to invoke or enforce the powers u/s. 31 of DV Act. This specific provision in my opinion is an additional provision provided to empower the court to follow such procedure in order to enforce its orders. It is only with reference to the procedural aspects, the court has to adopt those provisions under Cr.P.C. which are as far as applicable

in order to enforce the orders under this Act Though this remedy of enforcing the order passed u/s. 23 as contemplated u/s 125(3) of CrPC is available nevertheless, it is only a remedy for recovery of the amount Sec. 125(3) or any other provision under Cr.P.C. does not say the non-payment of the maintenance amount is an offence but the DV Act Introduced an independent separate provision which declares certain acts committed by the abuser under the Act which fall u/. 31 of the Act as offences. In this background, now let me see Sec. 31 of the Act which reads as follows:

"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 has 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 498-A of the Penal Code, 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.

41 Sec. 36 of the Act also plays a dominant role, for considering the other provisions under other laws for

the time being in force. As I have already noted, Section 125(3) of Cr.P.C. Is also a mode authorized under this Act In view of Sec. 28, to enforce the maintenance order for recovery. Merely because Sec. 125(3), Cr.P.C. is there, it cannot be said that Section 31 cannot be invoked. Therefore, in this background, Section 36 of the Act plays a dominant role which reads thus:

"36. Act not in derogation of any other law The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

43. Having discussed the above said different provisions of the Act, in view of my reasons given above, I am of the firm and considered. opinion that an order granting maintenance though u/S. 23 of the Act, If it is passed ex-parte or after hearing the parties to the proceedings and even after suffering that order, with knowledge of the order, if the respondent Intentionally violates or abuses such an order, it shall be taken as an order deemed to have been passed to prohibit the domestic violence and to protect the victim u/S. 18 of the Act, such violation is punishable u/S, 31 of the Act, as long as such an order is enforceable, unless such order is vacated or can celled by the competent court.

45. On perusal of the abovesaid provision, it clears out the doubt that the offence u/S. 31 of the DV Act is made non-bailable and cognizable one. Therefore, the Magistrate has to follow the procedures as contemplated under the Cr.P.C. while taking cognizance and issuing process that means to say, the Magistrate has to apply his mind while taking

cognizance u/s. 200, Cr.P.C to the provisions of section 190(1) (A) of Cr.P.C. The Magistrate must apply his judicious mind to ascertain whether there was any breach of any protection order, Interim order or any enforceable ex-parte order passed under this Act In order to take cognizance of the offence under the Act and thereafter, if necessary, the Magistrate can exercise powers u/S 202 of Cr.P.C. for the purpose of enquiring into the matter by himself or sending it for inquiry and report. It can be said that before a Magistrate takes cognizance of an offence, he must apply his mind for the purpose of satisfying himself with regard to the constitution of an offence u/s: 31 of the DV Act and then only he must take cognizance and proceed u/S 202 of CrPC If he finds sufficient material to issue process, then he has to issue process u/s. 204 of Cr.P.C. An order expressing his satisfaction with regard to the existence of a prima facie case u/s 31 of the Act to proceed against the accused is mandatory The power u/s 203 of Cr.P.C. to dismiss the complaint can also be exercised if the Magistrate is not satisfied with regard to the prima facie constitution of any offence u/s 31 of the Act.

30. Thus, as held in the aforementioned judgments, Section 31, which falls under the Miscellaneous Chapter V of the DV Act deems, a breach of protection order, or of an interim protection order, by the Respondent to be an offence under this Act, and makes it punishable with imprisonment for a term which may extent to one year or with a fine which may extent to ₹20,000/- or with both. As held above, breach or a refusal to pay interim

monetary relief or interim maintenance, amounts to a breach of an interim protection order, and attracts the penalty under Section 31 of the Act, for every breach committed. In other words, if the order passed by the Magistrate under Section 20, as in the present case, is to pay an interim monetary relief in the nature of maintenance of ₹30,000/- per month, for every month where there is refusal or neglect to pay, a penalty for breach of such order would be attracted under Section 31 of the Act. The Respondent, in these circumstances, and after being tried for such breach, may impose for each breach, the penalty prescribed.

31. Section 32 of the Act makes such offence under sub-section (1) of section 31 cognizable and non-bailable and allows for concluding that an offence of the said nature has been committed by the Accused upon sole testimony of the aggrieved person.

Sub-section (2) of Section 31 of the Act mandates that the offence under sub-section (1) thereof shall, as far as practicable, be tried by the Magistrate who has passed the order, the breach of which has been alleged to have caused by the Accused. This provision, is special to the DV Act, where the very Magistrate who passed the interim protection order is empowered and is under mandate of this provision to try an offence of breach of its own order, and the same need not be filed separately as a regular

criminal complaint under Section 200 of the CrPC and be registered and allotted in normal term to any other Magistrate.

Sub-section(3) of Section 31 also empowers the Magistrate who frames charge against the respondent for non-payment of interim monetary relief, to also frame a charge under Section 498A of the Indian Penal Code or any other provision of the Indian Penal Code or under the Dowry Prohibition Act, if the fact discloses the commission of an offence under those provisions. This again, is a special provision under the Act, which would empower the very same Magistrate taking cognizance of a complaint under Section 31 of a breach of its own order, if such complaint contains allegations of offences under IPC or Dowry Prohibition Act to consider all these offences under one charge and try the same in the same DV proceeding.

32. The upshot of what is discussed above, would mean that the Magistrate dealing with a DV case, does not have to insist on having a complaint or application alleging breach of a protection order to be registered and allotted in its turn to any other Magistrate, but as mandated by sub-section (2) of Section 31 of the Act, shall be entertained by the very Magistrate whose order has been alleged to have been breached.

33. In the present case, the Petitioner / Applicant has filed an application at Exh.28 before the Judicial Magistrate First Class, Mapusa seeking to enforce the interim order passed on 08.07.2019. that order grants interim Monetary relief under Section 20 of the DV Act in an application under Section 12 thereof, directing the Respondent to pay a sum of ₹30,000/- per month on or before the 5th of every month, into the account of the Applicant. The application at Exh.28 seeks enforcement of its order by the Magistrate to ensure payment of arrears due under the interim monetary relief of ₹9,83,000/- which are calculated as due up to 15.12.2022, and further amounts due subsequent to that date for each month, at the rate of ₹30,000/- per month.

34. The Judicial Magistrate First Class, Mapusa has proceeded to attach two vehicles belonging to the Respondent by order dated 14.06.2024 i.e. one Kawasaki Bajaj 2000 model motorcycle and one Yamaha RX-100, 1986 model . These are movable assets of the Respondent.

35. The Judicial Magistrate First Class, Mapusa is fully empowered to proceed to execute the interim order in terms of the provision of sub-section 3 of Section 125 r/w. section 128 of the CrPC and take all necessary steps, in which regard it is empowered under these provision to enforce its order of 08.07.2019, including

by treating the arrears outstanding under the order to be recovered as fine in terms of Section 421 of CrPC. The Magistrate may exercise all powers under Section 421 CrPC to identify movable and immovable assets of the Respondent and to ensure that they are applied to the recovery of the amount due in, every manner possible, including by issuing a warrant for the levy of the amount by attachment and sale of, both, movable property and immovable property belonging to the offender/Respondent. The Magistrate is also empowered, to, after identifying, both, the movable and immovable properties belonging to the Respondent, to issue a warrant to the Collector of the concerned district, authorising him to realise the amounts due under the order, as arrears of land revenue. In the event, such a warrant for levy of fine is issued to the Collector, the Collector shall execute this warrant as if it was a certificate issued under the Land Revenue Code; the Collector is empowered to recover these amounts as arrears of land revenue in terms of the provisions of the Goa Land Revenue Code, 1968.

36. In conclusion, and on considering the case law quoted above and for the reasons cited by me, in all matters pertaining to execution of an interim or final order granting monetary compensation, including one of maintenance, executions of such orders shall be in terms of sub-section 3 of Section 125 r/w. Section 128 and Section 421 CrPC; such orders shall also be

executed taking recourse to Section 20 of the DV Act r/w. Rule 6 of the DV Rules, and more specifically sub-Rule(5) thereof.

37. In any maintenance proceedings or application filed for monetary relief before the Magistrate and in all cases relating to execution of interim orders of monetary relief or interim maintenance the parties to the proceedings shall be directed to file their Affidavits of Disclosure of Assets and Liabilities to enable the Court to decide grant of maintenance or to decide the manner of executing interim orders of maintenance. The Magistrates shall ensure filing of such affidavits in terms of enclosure I found at the end of the judgment of the Supreme Court in ***Rajnesh*** (supra) after paragraph 134 thereof.

38. On an application or complaint filed before the Magistrate whose orders granting interim or final monetary compensation under Section 20 or breach of any protection order, the very Magistrate that has passed the order, shall, in the same proceedings take up such complaint under section 31 of the DV Act which is punishable with imprisonment up to 1 year or fine of up to ₹20,000/-, and adjudicate the complaint by following the procedure as laid down under section 200 of CrPC. The provisions of Section 31 of the DV Act are penal provisions and to be resorted to, independent of the provision of sub-section 3 of

Section 125 r/w. Section 128 and Section 421 CrPC, which are essentially for enforcement of its orders.

39. A Magistrate is not empowered by the provision of the DV Act to strike of the defence of the Respondent. This is a power vested only in a Civil Court or a Family Court, under Family Courts Act to which the provisions of the Civil Procedure Code will apply. The provisions which would be resorted to by the Civil Courts or Family Courts for striking of a defence are those under Order 39 Rule 11 CPC for non-payment of interim maintenance.

40. In the light of the observations made above, the remedy of the Petitioner herein to enforce the order dated 08.07.2019 of the Magistrate, does not lie in instituting contempt proceedings before this Court but shall be enforced in terms of the provisions of law discussed above, and in terms of the directions contained herein.

41. Considering that the intent of the DV Act is to have all proceedings disposed of, and orders of the Court enforced and implemented, in terms of the mandate contained in sub-section 5 of Section 12 within a period of 60 days, and further, considering that there has been substantial delay in implementing order dated 08.07.2019 by various proceedings at the behest of the

Respondent, the Magistrate dealing with the application at Exh.28 is requested to complete the execution and implementation of order dated 08.07.2019 preferably within four months of the communication of this order.

42. This Court records its sincere appreciation for the assistance rendered by Mr. Deepak Gaonkar in this matter and the able manner in which he rendered his expertise.

ORDER

1. In the light of the above facts and for reasons stated above, I pass the following order:

- a. The order dated 07.12.2024 passed by the Additional Sessions Judge, North Goa in Criminal Appeal No.198 of 2024 and Criminal Appeal No.286 of 2024 is quashed and set aside to the extent that it allows Criminal Appeal No.198 of 2024 of the Respondent and directs the JMFC at Mapusa dealing with Criminal Case No. 27/DVA/ 2019/C (now transferred to JMFC at Panaji as Case No. PWDVA/9/2025) to decide the Complainant's application for execution/enforcement of interim order dated 08.07.2019 at Exh.28, afresh, in the light of observations

made in its judgment dated 07.12.2024; the Respondent's Appeal bearing No 198 of 2024 stands dismissed.

- b. The application at Exh.28 is held to be maintainable and shall be dealt with and treated by the JMFC as an application for execution/enforcement of interim order dated 08.07.2019; Exh.28 shall be taken to its logical conclusion with the JMFC exercising all powers vested in it by Section 20 of the DV Act r/w. Section 128, Section 125(3) and Section 421 of CrPC and recover, by all means permissible and as discussed in this judgment, the outstanding interim monetary relief/ maintenance ordered to be paid by the Respondent.
- c. The Criminal Contempt Petition stands disposed of in view of the observations made above, and particularly in paragraph 40 above.

VALMIKI MENEZES, J.