



2025:DHC:7275



\* IN THE HIGH COURT OF DELHI AT NEW DELHI

*Reserved on: 30<sup>th</sup> July, 2025*

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*Pronounced on: 25<sup>th</sup> August, 2025*

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**CRL.M.C.3800/2025**

**NIHARIKA GHOSH @ NIHARIKA KUNDU**

W/o Sh. Shankar Ghosh

R/o 62-D, Humayunpur,

Safdarjung Enclave, New Delhi.

.....Petitioner

Through: Mr. Kuldeep Kumar, Advocate with  
Petitioner in person.

versus

1. **STATE (NCT OF DELHI)** .....Respondent No.1

2. **SHANKAR GHOSH**

S/o Late Sh. Sunil Kumar Ghosh,

R/o 62-D, Humayunpur, Safdarjung Enclave,

Safdarjung Enclave, New Delhi.

.....Respondent No.2

3. **SANDHYA GHOSH**

W/o Late Sh. Sunil Kumar Ghosh,

R/o 62-D, Humayunpur, Safdarjung Enclave,

Safdarjung Enclave, New Delhi.

.....Respondent No.3

Through: Mr. Shoaib Haider, APP for State  
with SI Sunil, PS Safdarjung Enclave.  
Mr. Sarthak Karol, Advocate from  
DHCLSC with Ms. Neelakshi  
Bhadauria, Mr. Abhishek Kumar  
singh, Ms. Tanishka Pawar and  
Mr. Shashank Sharma, Advocates for  
R-2 and R-3 with Respondents No. 2  
and 3 in person.

**CORAM:**

**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**



## J U D G M E N T

### NEENA BANSAL KRISHNA, J.

1. Criminal Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'BNSS'*) [*corresponding to Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C)*], has been filed on behalf of the *Petitioner/Niharika Ghosh @ Niharika Kundu* against ***impugned Order dated 24.01.2025 passed by learned ASJ***, South District, Saket Courts, New Delhi upholding the Order of ***learned MM dated 29.04.2024*** in CC No.391/2023, dismissing the Complaint under Section 31 of Protection of Women from Domestic Violence Act, 2005 (*hereinafter referred to as 'DV Act'*) for committing breach of the Protection Order dated 06.02.2020.

2. ***Briefly stated***, the *Petitioner/Niharika Ghosh @ Niharika Kundu* got married to Respondent No.2/Shankar Ghosh on 21.04.2014 according to Hindu rites, customs and ceremonies. According to the *Petitioner*, various dowry/*Istridhan* articles including much gold jewellery, other valuable goods and cash as demanded by Respondent No.2, Respondent No.3/Sandhya Ghosh and their family members, were given. Rs.12,00,000/- were spent on the marriage, despite which Respondent Nos.2 and 3 and their family members were not happy.

3. After marriage, the *Petitioner* started living in her matrimonial house, i.e., H. No.62-D, Humayunpur, Safdarjung Enclave, New Delhi in a *shared Household* with Respondent No.2/her Husband (Shankar Ghosh), Respondent No.3/her Mother-in-Law (Sandhya Ghosh), Brother-in-Law (*Jeth*) and Sister-in-Law (*Jethani*).



4. The **case of the Petitioner** is that from the very early days of her marriage, she was abused, beaten, harassed, taunted and ugly remarks were passed at her by Respondent Nos.2 and 3 and their family members, as they were dissatisfied with the dowry articles and demanded Rs.1,00,000/- in cash. Their atrocities increased day by day.

5. The Petitioner claimed that Respondent Nos.2 and 3 and their family members perpetuated various acts of domestic violence against her including but not limited to frequent physical assaults, treating her with cruelty for not fulfilling their illegal dowry demands, causing miscarriage, indulging unnatural sex and such like activities.

6. The Petitioner then made a ***Complaint at Crime Against Women (CAW) Cell, Nanak Pura, on which FIR No.0066/2017 under Sections 498A/406/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC')*** was registered at PS CAW Cell, Nanak Pura. Chargesheet was filed and Charges were framed against Respondent Nos.2 and 3 and the matter is still pending trial.

7. Thereafter, the Petitioner filed a Complaint dated 16.12.2016 under Section 12 DV Act, wherein she claimed various reliefs.

8. Two Divorce Petitions on the ground of cruelty were filed by Respondent No.2/the husband, but both were false, fabricated and baseless allegations. *First Divorce Petition* was withdrawn jointly by the Petitioner and Respondent No.2 by obtaining her consent through misrepresentation after realizing that the same was not maintainable, since it was filed within one year of the marriage. The *Second Divorce Petition vide HMA No. 593/2016* is pending adjudication.



9. In her DV Complaint, the Petitioner moved an Application dated 20.07.2017 before the learned MM seeking directions to be issued to the Respondents and their family members to restore the water supply for her portion of residence. Second Application dated 21.06.2019 was filed for the similar relief.

10. Since Respondent Nos.2 and 3 refuted the allegations, the learned MM directed the **Protection Officer** to visit the *Shared Household* and ascertain the true and correct position about the supply of water to the premises and also to see whether any immediate repairs were required. Protection Officer visited the Shared Household and submitted her Report dated 06.11.2019, wherein she stated that the water was not available in the premises and on enquiry, the Petitioner had stated that she had to buy water for her daily usage. Even the *over-head water tank* at the roof, was empty.

11. Learned MM, in the light of the Report of Protection Officer *vide Order dated 06.02.2020* directed:-

*“Considering that the water is an essential amenity, respondents are also restrained from disturbing the water supply to the portion of premises where aggrieved is residing.”*

12. Again on 27.10.2020, the Petitioner filed similar Application for restoration of water supply to her portion. On 12.09.2021, part of the roof of the portion occupied by the Petitioner, collapsed for the third time due to its dilapidated condition and heavy rains. She then apprised the learned MM of the ground reality and submitted photographs of the collapsed roof on 24.09.2021 and prayed that Respondent No.2/the husband be directed to carry out the necessary repairs in the portion occupied by her. It was further



stated that on 12.09.2021, on account of collapse of the roof, the electric wires were broken, electric fittings were destroyed in half of the portion occupied by her, due to which no electricity was available in her portion.

13. Learned MM again directed the Protection Officer to visit the Shared Household, inspect the premises and submit its Report. ***Protection Officer submitted her Report in July, 2022***, wherein she confirmed that some portion of the roof had already collapsed and waste material was piled up in the room. After looking at the condition of kitchen, bathroom and toilet, it can be presumed that water supply is very scarce in her portion. Some water was available in the tank at the time of visit and when she enquired from Respondent No.2, he stated that he filled the water tank just prior to the visit. Waste material was also found besides her room, which created ideal environment for mosquitoes, insects and smell. It was reported that in rainy season, water may accumulate there and create problems for aggrieved. But it gave the impression that the flower pots were removed just before the visit.

14. The Protection Officer concluded, in view of the above, that *it can be said that the aggrieved is living in uninhabitable condition and her portion needs urgent attention comprehensive repair/construction as patchwork will not support the roof. Moreover, the availability of the water was very scarce. A separate water connection should be installed in her portion to ensure uninterrupted water supply to her.*

15. The Petitioner again made an Application dated 24.01.2023 for providing her an alternate accommodation in the same shared household. Learned MM vide Order dated 08.06.2023, directed the Respondent No.2 to provide alternate accommodation. Appeal was preferred against this Order,



which was summarily dismissed on 04.07.2023. The Petitioner preferred CRL. M.C. No. 4982/2023 before this Court. This Court stayed the Order of the learned MM dated 08.06.2023 and the Order dated 04.07.2023 of learned ASJ and the matter is still pending adjudication.

16. Since there was no water supply being made available to her premises, the Petitioner filed the ***Complaint under Section 31 DV Act vide CC No.391/2023*** against Respondent Nos.2 and 3 for ***willful breach of the Order dated 06.02.2020***. Pre-summoning evidence was recorded and the Complaint was dismissed by the learned MM vide Order dated 29.04.2024. Crl. Appeal No. 201/2024 was filed against this Order, which was dismissed vide the Impugned Order dated 24.01.2025.

17. *Aggrieved by the said Order dated 24.01.2025, present Petition has been filed by the Petitioner.*

18. The **grounds of challenge** are that the Appeal has been dismissed without appreciating the Restraint Order dated 06.02.2020, which tantamount to Protection Order in terms of Section 18 DV Act.

19. It is contended that the grounds on which the Appeal has been dismissed, were neither pleaded nor argued by any of the parties. During multiple hearings, learned ASJ had never enquired about the nature of the Order dated 06.02.2020.

20. A grave error has been committed in holding that restraintment Order by itself, cannot be considered a breach under Section 31 DV Act, as this Section specifically refers to *Protection Order*, thereby failing to Notice that restraintment Order against the Respondents, shall be *Protection Order* in favour of the aggrieved in terms of the DV Act.



21. Learned ASJ fell in error in observing, “A *simple restraintment Order from another legal proceedings, would not fall under this category. There is nothing in Order dated 06.02.2020 or in the pre-summoning evidence led by appellant to suggest that Ld. Trial Court had passed any specific protection order against respondents in terms of mandate of section 18 of PWDV Act.*”

22. It has not been appreciated that question for determination before him was *whether an offence under Section 31 DV Act once committed by the Respondent and having been brought to the knowledge of the learned MM, can be condoned without the consent of the aggrieved/Petitioner?*

23. Section 18 DV Act categorically states that an Order prohibiting the Respondent from committing any other act specified in the *Protection Order*, is the Protection Order within the meaning of Section 18 of DV Act. Learned ASJ therefore, fell in error in concluding that there was no breach of Protection Order. The reasoning given is erroneous and the impugned Order of learned ASJ is liable to be set aside.

24. Likewise, it is submitted that the Order of learned MM dated 29.04.2024, suffers from similar infirmity and is also liable to be re-called.

25. *It is therefore, submitted that both these Orders dated 29.04.2024 of learned MM and 24.01.2025 of learned ASJ, be set aside.*

26. **Status Report has been filed on behalf of the State**, wherein the entire narrative of the events between the parties has been reiterated and it is submitted that *vide* Order dated 08.06.2023, learned MM had directed Respondent/husband (*Respondent No.2 herein*) to either provide an alternate accommodation within four weeks or otherwise allow the Petitioner (*Complainant therein*) to find suitable accommodation for herself on her own and Respondent/husband would pay Rs.10,000/- per month to her



towards rent. The aforesaid Order has been challenged before this Court, where the said Petition is pending.

27. It is further submitted that the Petitioner is still living on the first floor of the *Shared Household* and Respondent Nos.2 and 3 are residing on the ground floor of the Shared Household.

28. **Learned Counsel for the Petitioner has argued on similar lines as the contentions made in the Petition.**

29. **Learned Counsel for Respondent Nos.2 and 3** submits that there is no infirmity in the Orders of the learned MM or learned ASJ and considering the dilapidated condition of the premises of her portion, the option had been given to the Petitioner to shift out from the Shared Household within four weeks, but she has failed to do so. Moreover, Respondent No.2 was also directed to pay Rs.10,000/- per month towards rent to the Petitioner for alternate accommodation. Despite these directions, Petitioner has been in violation of the Orders of learned ASJ and learned MM and is continuing to reside in the said premises. Therefore, the Appeal under Section 31 DV Act has been rightly dismissed.

30. Further, it has been argued that words in the Statute are clear, plain and unambiguous, which have only one meaning. The Courts are bound to give effect to the said meaning, irrespective of the consequences; hardship cannot be a basis to alter the statute.

31. Reliance has been placed on Commissioner of Customs (Import), Mumbai vs. M/s. Dilip Kumar and Company, (2018) 9 SCC 1 and Mohd. Wajid vs. State of U.P., 2023 SCC OnLine SC 951.

32. It is further argued that Section 31 DV Act applies to breach of Protection Order mentioned under Section 18 DV Act and not to any other



incidental Order that may be made and therefore, the Petition under Section 31 of DV Act has been rightly dismissed.

33. Reliance has also been placed on Judgment dated 25.04.2025 passed by Hon'ble High Court of Himachal Pradesh in Akshay Thakur vs. State of H.P. and Others, Cr. MMO No.1079/2024 and Judgment dated 01.12.2023 passed by this Court in the case of Anish Pramod Patel vs. Kiran Jyot Maini, CRL. REV. P. No. 298/2023.

**Submission heard and record perused.**

34. The Petitioner has filed an Application under Section 31 DV Act, Praying that cognizance be taken against the Accused persons for committing offence of breach of Protection Order dated 06.02.2020 and that the SHO be directed to register FIR against the Accused persons for said breach.

35. Before considering the present Petition, it may be stated that the Parties are in matrimonial litigation since 2015. Several Litigations including Divorce Petition, FIR, and the Petition under DV Act, are pending.

36. The Petitioner has been residing in the portion of Shared Household and the Respondent Nos.2 and 3 are also residing on the Ground Floor of the same premises. It is but natural that while residing in such acrimonious environment, there are various Complaints of the Petitioner, the redressal of which was sought from time to time. Furthermore, multiple Interim Applications were filed by the Petitioner including seeking same relief of restoration of water supply, repairs to the portion of the premises she was residing in, protection from verbal abuse by Respondents, and removal of CCTV cameras infringing upon her privacy. Essentially, one set of



grievance was about non-supply of water to her portion and second was the dilapidated condition of the House in her possession. *There is separate set of Applications and Orders in regard to repairs and alternate accommodation.*

37. The learned MM vide Order dated 01.11.2021, noted that similar Application for repairs had earlier been allowed on 06.02.2020. It was noted that the issue of responsibility for deterioration was a matter for trial and emphasized that the Petitioner could not be compelled to reside in uninhabitable conditions and accordingly *directed Respondent to carry out effective repairs*. Similarly, the Application seeking protection from verbal abuse was dismissed, as the allegations were not supported by *prima facie* material and were contested by counter-allegations from the Respondent, making it a matter of trial. *However, on the Application regarding CCTV cameras, the Court held that the Petitioner's right to privacy could not be compromised and by way of an ex parte Protection Order, directed removal of cameras covering her private space until the next date of hearing.*

38. This Petition under Section 31 DV Act for taking cognizance against Respondent Nos.2 and 3 for having committed breach of **Protection Order dated 06.02.2020** and to direct registration of FIR, in so much as the water supply was not being provided to her premises and she was being deprived of the water.

39. To comprehend the true scope of the present Petition, it would be pertinent to refer to the **Order dated 06.02.2020**, which reads as under:-

*"CT Case 476458/2016*

*...*

*Heard. Report of protection officer perused.*

*By way of two separate applications, aggrieved has sought directions to respondents to not to disturb the water*



*supply of the aggrieved and to repair the roof and walls of the portion of premises where aggrieved is residing.*

*After hearing, both the sides and perusing the report of protection officer, I am of the considered opinion that the portion of premises where aggrieved is residing at present first floor of the old premises is in dilapidated condition and requires immediate repairs. **Let respondent no.1 get the roof and walls of the portion of premises where aggrieved is residing repaired at his own cost within three weeks from today.** The work of repair be carried out in the presence of aggrieved and aggrieved shall cooperate with the respondent for getting the repair work done.*

*Aggrieved is also at liberty to approach SHO concerned as well as the protection officer and SHO concerned and protection officer are directed to provide necessary support/assistance to the aggrieved, in case of any problem faced by the aggrieved in this regard*

***Considering that the water is an essential amenity, respondents are also restrained from disturbing the water supply to the portion of premises where aggrieved is residing.***

*In as much as it is the case of the respondents that the aggrieved leaves the water taps/water motor open which leads to wastage of water, respondents are at liberty to bring on record the material to support their contentions at any stage of the trial and seek necessary directions....”*

40. In this Order, the learned MM had considered two separate Applications filed by the Petitioner; one of which was to issue directions to the Respondents *not to disturb the water supply* of the aggrieved to her premises and the *Second*, was to *repair the roof and walls of the portion of premises* where she was residing. While directions were given to the Respondent/husband to get the repair work carried out in the presence of the Petitioner, the **second Application** in regard to supply of water was disposed of with the directions that the *Respondents are restrained from disturbing the water supply to the portion of premises where aggrieved is residing.*



41. The Petitioner had moved an Application on 27.10.2020 which was decided *vide* composite Order dated 29.07.2022 with the observations that *no further intervention of the Court was required*. It was also noted that a similar Application for Protection Orders had been filed by the Petitioner and was dismissed *vide* Order dated 01.11.2021, though liberty was given to the Petitioner to proceed as per law, in case the Orders were not complied with. An Appeal against this subsequent Order dated 29.07.2022 which pertained to the Application dated 27.10.2020 was challenged by way of Appeal, but the same was dismissed by the Appellate Court *vide* Order dated 04.01.2023 with the observations that that since Restraint Order was already in operation, there cannot be any question of passing further Order on same point.

42. The moot point which comes up for consideration is *whether the aforesaid Order can be termed as a Protection Order under Section 18 DV Act and whether its breach would fall under the ambits of Section 31 DV Act*.

43. The DV Act was enacted to provide stronger and more effective protection for women's constitutional rights, specifically to those who are victims of any form of violence within the household. This legislation aims to address and combat the widespread issue of domestic violence against women in our society.

44. In the Statement of Objects and Reasons as well, it has been observed that the DV Act has been enacted to honour its commitment of India to CEDAW. It was stated that presently a woman subjected to cruelty by her husband or his relatives, has the remedy under Section 498A IPC or the Dowry Prohibition Act; but the civil law does not address this aspect in its



entirety. *Therefore, the DV Act was enacted to provide for a remedy under the civil law which is intended to protect the woman from being a victim of domestic violence.*

45. The DV Act thus, provides civil remedies, but ensures effective adjudication and implementation through Criminal procedures.

46. In Velayudhan Nair vs. Karthiayani, (2009) 3 KHC 377, it was observed that Rule 6 (5) of Protection of Women from Domestic Violence Rules, 2006 provides that the Application under Section 12 DV Act shall be dealt with and the Order enforced in the same manner as laid down in Code of Criminal Procedure.

47. Furthermore, in the case Francis Cyril C. Cunha vs. Lydia Jane D. Cunha, 2015 SCC OnLine Kar 8760 while taking a similar view, it was further held that Section 28 DV Act deals with the certain provisions of Cr.P.C. All proceedings under Sections 12/15/18/20/21/22 and 23 as well as offenses under 31 DV Act shall be governed by the provisions of Cr.P.C.

48. Under DV Act, several reliefs can be granted which are specifically provided under Sections 18 to 22 DV Act and also the power to grant *ex parte* and interim reliefs as provided under Section 23 DV Act. *Section 18 DV Act deals with Protection Order and Section 19 DV Act deals with the Residence Order.* Section 20 DV Act provides for Monetary Relief while Section 21 DV Act deals with the Custody of the child. In addition, Section 22 DV Act provides for Payment of Compensation and Damages for the injuries which may include mental torture, emotional distress caused on account of domestic violence.

49. **Sections 2(o) and (p) DV Act define the Protection Order and the Residence Order as under:-**



- (o) **“Protection Order”** means an order made in terms of Section 18.
- (p) **“Residence Rrder”** means an order granted in terms of Sub-Section (1) of Section 19.

50. **Section 18 DV Act deals with the Protection Order, which reads as under:-**

**“SECTION 18. PROTECTION ORDERS.**

*The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from*

- a. committing any act of domestic violence;*
- b. aiding or abetting in the commission of acts of domestic violence;*
- c. entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;*
- d. attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;*
- e. alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;*
- f. causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;*
- g. committing any other act as specified in the protection order.”*

51. **Section 19 DV Act deals with the Residence Order, which reads as under:-**

**“SECTION 19. RESIDENCE ORDERS.**



(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order

- a. restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;*
- b. directing the respondent to remove himself from the shared household;*
- c. restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;*
- d. restraining the respondent from alienating or disposing off the shared household or encumbering the same;*
- e. restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or*
- f. directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:*

*Provided that no order under clause (b) shall be passed against any person who is a woman.*

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the



*person making an application on her behalf in the implementation of the order.*

*(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.*

*(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.*

*(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.”*

52. From the bare perusal of Section 18 DV Act, it is evident that the Protection Orders are granted against the act, aiding or abetting or in the commission of domestic violence, entering into the place of employment of the aggrieved person, attempting to communicate in any form, alienating any asset or causing violence or any person, who assist in causing domestic violence to the aggrieved person and committing any other act as specified in the Protection Order. From the very definition, it is evident that Section 18 ensures that the aggrieved is provided a safe roof on her head and no acts are done to make it difficult for her to continue to reside in the premises.

53. *The Order dated 06.02.2020, which restrains the Respondents from obstructing the supply of water, comes in the domain of **Residence Order** from disturbing her residence or making it inconvenient for her continued residence and cannot be termed as a Protection Order.*

54. Pertinently vide Order dated 01.11.2021 regarding removal of CCTV cameras, was explicitly termed as a ‘Protection Order’ by the learned MM, but the same cannot be said for the Order dated 06.02.2020. The CCTV



camera order directly addressed protection from invasion of privacy, whereas the water supply direction was purely a facilitative measure to ensure basic amenities during residence.

55. The ***next aspect*** which requires consideration is that the Residence Order under Section 19 DV Act also states that while passing an Order of Residence, the Court may also pass an Order to give protection to the aggrieved person. Therefore, a ***composite Order of Residence and Protection*** may be made in certain cases.

56. In this context, reference is made to the case of Vijay Kumari vs. Jai Kumar 2024 SCC OnLine Ker 3568 wherein this aspect was considered and it was observed that where the Residence Order also entails a measure of protection, then such Order of Protection may be deemed as one of Residence Order and the Protection Order and Section 31 DV Act may be invoked.

57. *In the present case*, the Order dated 06.02.2020 in no way concerns itself with granting protection to the Petitioner of the kind envisaged under Section 18 DV Act while she is residing in the *Shared Household*. In fact, no Residence Order *per se* has been placed on record except the Order dated 06.02.2020, which was only to ensure that she was not inconvenienced in her residence on account of non-availability of water. In no way, can the Order dated 06.02.2020 can be termed as a Protection Order.

58. In the case of Akshay Thakur vs. State of HP, Cr. MMO No. 1079/2024 decided on 25.04.2025, the High Court of Himachal Pradesh was confronted with the question that whether Section 31 can be invoked for breach of the Maintenance Order. The Court placed reliance on the Kerala High Court case of Suneesh vs. State of Kerala, 2022 SCC OnLine Ker



6210, wherein it was held that Section 31 DV Act applies only to the breach of Protection Orders mentioned in Section 18 DV Act and not to any other orders. *It was observed that the legislature never intended to impose a penalty for violence or violation of Residence Orders or monetary reliefs.*

59. Rule 15 of Protection of Women from Domestic Violence Rules, 2006 also deals with the breach of Protection Orders. The non-compliance with any other relief granted under the Act, cannot pave the way for Prosecution of the husband under 31 DV Act.

60. Similar view has been taken in Mohammad Yaseen Naikwadi vs. Aneesa Mohammed Yaseen Naikwadi and Ors., MANU/KA/3450/2023. The Coordinate Bench of this Court in Anish Pramod Patel vs. Kiran Jyot Maini, 2023 SCC OnLine Del 7605 has also observed that ambit of Section 31 DV Act which deals with Protection Order cannot be enlarged to include breach of any order of maintenance.

61. Section 31 DV Act is punitive in nature in an act which is otherwise beneficial and welfare legislation. Where the offence is punitive in nature, the provision is to be construed strictly as has been held by the Apex Court in the case of Tolaram Rerumal vs. State of Bombay, 1954 SCC OnLine SC

62. The learned ASJ has rightly noted not only that Section 31 DV Act could not have been invoked for alleged violation of the Order dated 06.02.2020. Therefore, when there was no Protection Order, the violation of which would have been agitated under Section 31 DV Act. If every direction or restraint in DV proceedings could trigger criminal consequences under Section 31, it would blur the distinction between civil remedies and criminal sanctions that the legislature carefully maintained.



63. Another aspect which needs mention is that this Order of 06.02.2020 got merged in the Order dated 08.06.2023 whereby the learned MM, noting the dilapidated condition of the portion of the house which was in occupation of the Petitioner, had directed for arrangement of alternate accommodation within 04 weeks, failing which the Respondent/the husband had been directed to pay her Rs.10,000/- per month towards the rent in lieu of alternate accommodation.

64. This Order was challenged before learned ASJ by way of Appeal, but was dismissed *vide* Order dated 04.07.2023. The Order of the learned MM dated 08.06.2023 and of learned ASJ dated 04.07.2023 were challenged before this Court in Criminal M.C. No.4982/2023, which is pending adjudication.

65. Clearly, when an order for alternate accommodation/payment of rent in case the alternate accommodation is not arranged, has already been made, the Order dated 06.02.2020 restraining the Respondents from disrupting the supply of water to the premises of the Petitioner, loses its significance, as has been observed by Ld. ASJ in the impugned Order.

66. *To sum up*, the Order dated 06.02.2020 fails to satisfy the essential requirements under Section 31 DV Act on multiple grounds - it is not a Protection Order as defined under Section 18 DV Act; it constitutes a facilitative direction for ensuring basic amenities rather than a protective measure against domestic violence; and has been rendered otiose by subsequent comprehensive alternate accommodation orders, which addresses the Petitioner's grievance of habitable premises in their entirety.

67. The remedy of the Petitioner may lie in other provisions of DV Act, but not by way of a Complaint under Section 31 DV Act. There is no



2025:DHC:7275



infirmity in the Order of the learned ASJ dated 24.01.2025, upholding the Order of learned MM dated 29.04.2024.

68. The present Petition is without any merit and is hereby, dismissed. Pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**AUGUST 25, 2025**  
*R/N*