IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 736/2013 & CM 15769/2013

% Date of decision : May 26, 2014

MS. NIDHI KAUSHIK ..... Appellant
Through : Ms. Jyoti Singh, Sr. Adv. with Mr. Sachin Chauhan, Ms. Saahila Lamba, Mr. Sameer Sharma, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents
Through : Ms. Archana Gaur, Adv. for respondent no.1.
Mr. J.C. Seth, Mr. Amitesh Gaurav, Advs. for respondent no.2.

CORAM:
HON'BLE MR. JUSTICE P.K. BHASIN
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

J.R. MIDHA, J.

1. The appellant has challenged the judgment dated 4th September, 2013 whereby the learned Single Judge dismissed her writ petition. The appellant is seeking appointment to the post of Supervisor Trainee (HR) in Bharat Heavy Electronics Ltd. ("BHEL") by setting aside of the order of cancellation of the offer of her appointment. Respondent nos.2 to 4 are the contesting respondents and are hereinafter referred to as "the respondents" instead of respondents no.2 to 4.

2. ***Factual matrix***

2.1 The appellant, BBA from I.P. University and Chartered Financial Analyst in ICFAI University, applied for the post of Supervisor Trainee (HR) in BHEL and was selected on the basis of performance in the written examination followed by the interview. At the time of interview dated 18th June, 2012, the appellant's submitted the bio-data form. Para 12 of the said form is relevant and reproduced hereunder:

"12.Whether involved in any Criminal case / Law suit at any time?

Yes	***No*** ✓

If yes, please give current status ……"

2.2 On 3rd September, 2012, BHEL issued the provisional offer of appointment to the appellant. The appellant was required to submit the attestation form before the issuance of final offer of appointment.

2.3 On 24th September, 2012, the appellant submitted the attestation form in which, in reply to 'Para 12(i)', she disclosed that an application was pending under Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to in short as "DV Act"). The appellant attached the copy of the notice with the attestation form. Relevant portion of the attestation form is reproduced hereunder:

"12. (a) Have you ever been arrested? No

(b) Have you ever been prosecuted? No

(c) Have you ever been kept under detention? No

(d) *Have you ever been bound down?* *No*

(e) *Have you ever been fined by a Court of Law?* *No*

(f) *Have you ever been convicted by a Court of Law for any offence?* *No*

(g) *Have you ever been debarred from any nomination or rusticated by any University or any other educational authority institution?* *No*

(h) *Have you ever been debarred/disqualified by any Public Service Commission Staff Selection Commission for any of its examination selection?* *No*

(i) Is any case pending against you in any Court of law at the time of filling up this Attestation Form? Yes

(ii) If the answer to any of the above mentioned questions is Yes, give full particulars of the case / arrest/detention / fine/ conviction/sentence/punishment etc. and/or the nature of the case pending in the Court/University/Educational Authority etc. at the time of filling up this form.

Complaint pending under Domestic Violence Act (Brother and Sister in Law Matrimonial Dispute)

I here also attach a copy of Court Notice"

2.4 On 26th September, 2012, the appellant reported for joining but was not allowed to join and was told to furnish the copy of the application under DV Act mentioned in her attestation form. On 28th September, 2012, the appellant visited the office of the

respondents to submit the copy of the said application but the same was not taken and she was told that these documents are not needed anymore. The appellant sent an e-mail to the Manager (HR) on 28th September, 2012 to place this fact on record. The copy of the same has been filed along with the writ petition.

2.5 *Vide* letter dated 9th October, 2012, BHEL cancelled the provisional letter of appointment to the appellant on the ground that she had suppressed the material fact of the pendency of case under DV Act in the bio-data form dated 18th June, 2012. The letter dated 9th October, 2012 is reproduced hereunder:

> *"Ref.No.PA: HRM:101-05* *Dated : 09.10.2012*
> *Ms. Nidhi Kaushik*
> *C-2/38A*
> *Yamuna Vihar,*
> *Delhi, Pin-110053*
>
> *Sub: Provisional Offer of Appointment - Cancellation*
>
> *This has reference to Provision Offer of Appointment dated 3rd Sept., 2012, for the post of Supervisor Trainee (HR).*
>
> ***You submitted the attestation form on 24th Sept., 2012, in which you have indicated that there is a case pending against you under Domestic Violence Act. It is noticed that you had suppressed this material fact in the Bio-data form, which you filled on 18th June, 2012 at the time of interview.***
>
> *In this connection your attention is invited to the clause published on the Web site for recruitment which provides:*
>
> *"In case it is detected at any stage of recruitment process that the candidate has suppressed any material fact(s), the candidature of such candidates is liable to be rejected."*
>
> ***Accordingly your candidature is rejected and the Provisional Offer of Appointment is hereby withdrawn and cancelled.***
>
> *Yours faithfully,*

For & on behalf of BHEL
sd/-
(Radhika Jain)
Manager (HR)"

2.6 On 15th October, 2012, the appellant preferred a departmental appeal against the order of cancellation of appointment dated 9th October, 2012 before the Chairman and Managing Director of BHEL on various grounds inter alia:-

2.6.1 The proceedings under the DV Act arising out of matrimonial discord between the appellant's brother and his wife are civil in nature.
2.6.2 The appellant was not involved in any criminal case and therefore, there is no concealment of any material fact in the bio-data form dated 18th June, 2012.
2.6.3 The appellant bonafidely believed that no criminal case was pending against her.
2.6.4 In any case, there is no intentional/deliberate concealment of any material fact as the appellant voluntary disclosed the information relating to the complaint under the DV Act in the attestation form.
2.6.5 In Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644, the Supreme Court condoned the minor indiscretions and granted relief to the candidate who had concealed the involvement in a FIR whereas in the present case, no FIR had been registered against the appellant.

2.7 *Vide* letter dated 5th December, 2012, the departmental appeal of the appellant was rejected by the appellate authority of BHEL. The rejection letter dated 5th December, 2012 is reproduced hereunder:

"Ref.No.PA:HRM:101-05 *Dated : 05.12.2012*
Ms. Nidhi Kaushik
C-2/38A

Yamuna Vihar,
Delhi, Pin-110053

Sub: Appeal regarding your candidature for the post of Supervisor Trainee (HR)

This has reference to your appeal dated nil to CMD, BHEL regarding your candidature for the post of Supervisor Trainee (HR).

Your appeal has been examined in detail by us. *We regret to inform you that our decision for cancellation of your provisional offer of appointment for the aforementioned post, communicated vide our letter Ref. No. PA:HRM:101-05 dtd.09.10.2012, remains unchanged.*

Yours faithfully,
For & on behalf of BHEL
sd/-
(Radhika Jain)
Manager (HR)"

2.8 The appellant filed the writ petition bearing W.P.(C)No.7457/2012 to challenge the cancellation of the provisional offer of appointment on various grounds inter alia that the proceedings under the DV Act arising out of matrimonial discord between her brother and his wife are civil in nature, no criminal case was pending against her and therefore, there was no concealment in the bio-data form. The respondents contested the writ petition on the ground that the appellant is involved in a serious offence of domestic violence of attempt to murder her sister-in-law and the proceedings under DV Act was a criminal case in which the appellant was accused No.4.

2.9 The learned Single Judge accepted the respondent's contention that the proceedings under Section 12 of the DV Act was a criminal case which was concealed by the appellant and

therefore, the respondent was justified in cancelling the offer of appointment. The relevant portion of the impugned judgment is reproduced hereunder:-

> ***"6. Also, I cannot agree with the argument urged on behalf of the petitioner that on a summons being issued in a Domestic Violence Act, it cannot be said that a criminal case is not pending and that unless cognizance is taken by the Metropolitan Magistrate, a criminal case cannot be said to have come into existence. This argument is an unnecessarily strict reading of the requirement of para 12 of the Bio-data form because the expression 'criminal case' used in that paragraph is basically to ascertain any form of criminal case including any summons being issued in a complaint case against the candidate. Therefore, I am unable to agree with the argument that there is no requirement to furnish any details of a criminal complaint case and the requirement to submit such information would only have been after cognizance was taken by the Metropolitan Magistrate."***

3. ***<u>Submissions of the Appellant</u>***

3.1. The proceedings under Section 12 of the DV Act relating to matrimonial dispute between the appellant's brother and sister-in-law are civil in nature and therefore, there was no suppression/concealment in the bio-data form.

3.2. 'Domestic Violence' *per se* is not an offence under DV Act and no punishment has been provided in the Act. The breach of a protection order under Section 18 of the DV Act is a criminal offence under Section 31 of the DV Act. However, no order was passed under Section 18 of the DV Act in the present case.

3.3. Reference was made to the relevant provisions and Clause 3 of the 'Objects and Reasons' of the DV Act which states that law was enacted to provide a remedy civil in nature. Reliance was placed on *Varsha Kapoor v. Union of India*, (170) 2010 DLT 166; *Shambhu Prasad Singh v. Manjari*, (190) 2012 DLT 647; *R.Nivendran v. Nivashini Mohan,* II (2010) DMC 119; *Bipin Prataprai Bhatt v. Union of India,* I (2011) DMC 734; *Sabana v. Mohd. Talib Ali,* MANU/RH/1336/2013 and; *Gangadhar Pradhan v. Rashmibala Pradhan,* 2012 Cri.LJ 4106.

3.4. The dispute between the appellant's brother and sister-in-law was finally settled on 15th January, 2013 in pursuance to which the complaint under DV Act was withdrawn on 30th March, 2013.

3.5. There was no concealment of any material fact by the appellant as no criminal case was pending against the appellant.

3.6. The appellant *bonafidely* believed that she was not involved in any criminal case and voluntarily disclosed the application under Section 12 of the DV Act in attestation form prior to the final offer of appointment. Reliance was placed on ***Commissioner of Police* v. *Dhaval Singh***, (1999) 1 SCC 246.

3.7. Even if the complaint under DV Act is treated to be a criminal case, and it is assumed that the appellant concealed or suppressed such information, the same would not result in cancellation of her appointment as the involvement in a criminal case would not always result in denial of public employment. Every brush with criminal law is not a disqualification in appointment. It is only when a person stands convicted for a very

serious act which shocks the moral conscious of the society and evidences that a person is of depraved character and suffers from the tag of moral turpitude, the conviction results in denial of public employment. Reliance was placed on the following judgments.

3.8. In ***Commissioner of Police* v. *Sandeep Kumar***, (2011) 4 SCC 644, notice of show cause was issued against respondent for cancellation of his candidature on the grounds of concealment of involvement criminal case under Sections 352/34 IPC. The Supreme Court taking note of nature of case registered held that the case against respondent was not such a serious offence like murder, dacoity or rape and hence more lenient view should be taken. The observation of the Court is reproduced hereunder:

> *"12. It is true that in the application form the respondent did not mention that he was involved in a criminal case under Sections 325/34 IPC. Probably he did not mention this out of fear that if he did so he would automatically be disqualified. At any event, it was not such a serious offence like murder, dacoity or rape, and hence a more lenient view should be taken in the matter."*

3.9. In ***Commissioner of Police* v. *Mehar Singh***, (2013) 7 SCC 685, the Supreme Court observed that while deciding whether a person should be appointed, what is relevant is the nature of the offence and extent of his involvement. The observation of the Court has been reproduced as under:

> ***"34. … It bears repetition to state that while deciding whether a person against whom a criminal case was registered and who was later on acquitted or discharged should be appointed***

> ***to a post in the police force, what is relevant is the nature of the offence, the extent of his involvement,*** *whether the acquittal was a clean acquittal or an acquittal by giving benefit of doubt because the witnesses turned hostile or because of some serious flaw in the prosecution, and the propensity of such person to indulge in similar activities in future..."*
>
> *(Emphasis supplied)*

3.10. In ***Government of NCT of Delhi*** **v.** ***Robin Singh***, (2010) 171 DLT 705**,** the respondent was alleged of concealment of involvement in a criminal case, of which he was ultimately acquitted. The question before this Court was whether pendency of a criminal proceeding or conviction or an acquittal be a justified ground to dismiss a government servant from service or deny entry into service. The Court held that offences which are grave, serious and involve moral turpitude will not justify public employment. However, respondent's offence being non-cognizable, bailable, involving no moral turpitude and not shocking the moral conscience of the society does not justify denial of employment. Relevant portion of the judgment is reproduced hereunder:

> *"19. A criminal record is a record of a person's criminal history, generally used by potential employers to assess the candidate's trustworthiness. The information included in a criminal record varies between countries and even between jurisdictions within a country. In most cases it lists all non-expunged criminal offenses and may also include traffic offenses such as speeding and drunk-driving. In some countries the record is limited to actual*

convictions (where the individual has pleaded guilty or been declared guilty by a qualified court) while in others it also includes arrests, charges dismissed, charges pending and even charges of which the individual has been acquitted. The latter policy is often argued to be a human rights violation since it works contrary to the presumption of innocence by exposing people to discrimination on the basis of unproven allegations.

20. It is unfortunate that in India we are not marching ahead in the comity of nations and prefer to be governed by the recruitment processes which are a legacy of the British era; ignoring that the purpose of governance then was to rule and the purpose of governance now is to serve.

21. ***We have prefaced our decision with the statement whether pendency of a criminal proceeding or for that matter a conviction by a competent court of law may justify eyebrows to be raised, but would it justify the shutting of one's eye****?*

22. ***Now, a man can be booked for the offence of over-speeding and perhaps may be convicted for parking his motor vehicle in a non-parking area. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service? The answer would be in the negative. As against that, a man has committed murder or has broken into a departmental store and stolen cash. Would this man be of a character, compelling in public interest and for public good, not to induct him in public service. The answer would be in the affirmative****.*

23. Not to induct persons with a criminal background in public service, is based on the

premise that considerations of public policy, concern for public interest, regard for public good would justify a prohibition. ***Thus, the primary consideration is, whether public interest and public good would be jeopardized if a person with a criminal background is inducted in public service. And this takes us straight to the core of the issue, whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality****. If the answer is in the negative, the further question: what should be the higher degree of criminality which would justify the eyes being shut to such person needs to be addressed.*

24. With respect to the first two examples given by us in para 22 above, none would argue that for such trivial offences the eyes must be shut against the offender, and with regard to the next two, everybody would agree that the eyes should be shut to such a person who has to be ignored. We concede that the examples are in the extreme, but they certainly help us in understanding as to the process of reasoning required to be adopted to decide as to on which side of the border-line a case would fall.

25. A look at the penal laws in India would show that most of the penal offences can be categorized under two broad categories i.e. felony and misdemeanour. A further look at the sections stipulating penalties would show that felonies are treated as more grave vis-à-vis misdemeanours. Further, by classifying offences as cognizable and non-cognizable, higher and lower degrees of criminality to the offences can be discerned. Further, by classifying offences as

bailable and non-bailable, the degree of criminality can be further discerned.

26. The civil concept of an offence being of a depraving character is to look at whether the act complained of suffers from the tag of a moral turpitude or not.

27. We do not intend to make a catalog of reported decisions as to what misdemeanours should normally attract the penalty of removal or dismissal from service. ***We may simply state that with respect to conviction for grave and serious offences alone, on the anvil of public interest and for public good, Courts have held that the offender has rendered himself unfit to continue in office and in extreme cases summary dismissal or removal from service by invoking Article 311 of the Constitution is also held justified****.*

28. ***Thus, we have a guideline of serious and grave offences being the touchstone in case of the door being shown to the government servant****.*

29. Looking through the prism of case law pertaining to when can the door be shown to a government servant and by doing reverse engineering we can safely say that what is good for the door to be shown, is good for prohibiting entry through the door, and thus while denying public employment with respect to the offence committed by a person, it can be said, and we say so, that it may be a serious violation of the constitutional right of a citizen to be fairly treated in the matter of public employment if trivial offences committed by the citizen would justify the State shutting its eyes and denying employment.

30. Having answered the question posed in para 1 above, and the answer being in favour of the

citizen, we need to answer the further question as to which offences or brush therewith, would justify non entry into public service.

31. ***We have a clue; of offences being grave, serious and involving a moral turpitude justifying public employment not being given. These would certainly not justify the offender being inducted into public service. None would disagree that convicted and fined for parking a car in a no-parking area or convicted for over-speeding would attract the de minimis principle, but the problem would be in cases closer to the borderline. For therein would lie the problem as to in which side of the boundary line should they be categorized****.*

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36. ***Life is too precious to be staked over petty incidents and the cruel result of conviction for petty offences being the end of the career, the future and the present, of young and inexperienced persons cannot blast their life and their dreams.***

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40. All these offences are non-cognizable and needless to state are bailable. No moral turpitude, as generically understood, is involved. The acts do not shock the moral conscious of the society and with reference to the motive do not evidence a person with depraved character. The offences are not of the kind which would justify dismissal or removal from service, if the respondent had committed the same if in service.

41. Thus, being charged with the said offences, of which the respondent has ultimately been acquitted, would not be a bar and cannot be treated as a bar to seek public employment and on being successful at the

entrance exam, to be denied the same*."*

(Emphasis supplied)

3.11. In ***Commissioner of Police*** **v.** ***Narender Kumar Singh***, MANU/DE/0457/2013, one of the respondents was named as an accused along with all his family members in an FIR filed by his sister-in-law, which eventually was withdrawn upon a settlement. This Court held that no criminality of a kind which justifies denial of public employment can be attached to cases where trivial incidents are blown out of proportion and FIRs get registered in the heat of passion. Further, while restoring the employment, the Court held that it is the tendency of the estranged wife naming each and every member of his family of her in-laws as an accused of dowry harassment. The Court also held that the primary consideration, for denying public employment to persons with criminal records, should be if public interest and public good could be jeopardized if such a person is inducted in public service. The relevant paragraphs are reproduced hereunder:

> *"16. And this takes us straight to the core of the issue: Whether brush with penal law would justify the eyes to be closed against the offender or only such brush with penal law which is of a higher degree of criminality? If the answer is in the negative, the further question: What should be the higher degree of criminality which would justify the eyes being shut to such person?*
>
> *17.* ***With respect to the two illustrative situations we have highlighted in para 13 above, not even a fool would argue that for trivial offences public employment should be prohibited. The two examples are in the***

extreme but help to decipher the process of reasoning to be adopted to decide borderline cases.

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29. The aforesaid view would hold good even when a person has to be considered for employment and pertaining to heinous offences even if the person has been acquitted, would not mean that the person is of good character. We highlight that a person being acquitted at a criminal trial may not necessarily mean that the person is innocent. It would only mean that the prosecution could not muster sufficient and credible evidence to sustain a conviction. In today's environment where witnesses are suborned and hence turned hostile, one has to be careful. Thus, the fact of mere acquittal by itself may not be relevant and the background under which an acquittal took place may also become relevant for the reason we are not concerned with the consequence of a man being acquitted but are concerned on the subject of character verification. But at the same time the circumstance under which the complaint was made and who was the complainant becomes important, for the reason in India we find that disputes between neighbours relating to land are blown out of proportion in nearly every case and all adult members of the opposite family are roped in. ***In the field of domestic law, we find the dowry harassment laws being misused by the offending spouse naming each and every adult family member of her husband. Experience shows that when tempers cool and good sense prevails, the exaggerated versions are withdrawn. This is the fate suffered by Narender Kumar Singh who was named as an accused along with all his family***

members in FIR No. 36/2010 filed by his estranged sister-in-law and unfortunately he was also named as an accused along with all other family members in FIR No. 152A/2008 which pertained to a fight amongst neighbours and in which all his family members were named as accused. Both complaints were withdrawn upon a settlement*. Similar is the fate of Hawa Singh. Even he was a victim of a trivial dispute involving neighbours. He and all male family members were named as accused. Tempers cooled. The dispute got settled. All were acquitted. The same is the fate of Pravesh Kumar and Praveen Kumar who were named as accused along with all other male family members in a petty dispute pertaining to land with neighbours.*

30. We are not influenced by the fact that the said four young men were ultimately acquitted or discharged for the reason, the acquittal or discharge was the result of a compromise, but certainly would be influenced by the fact that the complaints would show trivial incidents being blown out of proportion, and this is at the core of what needs to be appreciated. ***If one can see through and find out that trivial incidents got exaggerated when quarrels took place amongst neighbours and the heat of the passion led to FIRs being registered, no criminality of a kind which justifies public employment being denied attaches to the stated wrong committed; assuming that the wrong was committed****.*

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32. One lasting word. The five young men before us come from humble socio-economic background. The incidents alleged against them have a rural setting. We have already noted

above the tendency in rural India, in interpersonal disputes, to rope in all adult male members of the opposite group. Small incidents of pushing, jostling or slapping are converted into alleged offences which seem to be serious. A fist blow directed towards the head is sometimes registered as an offence punishable under Section 308 IPC. A fight between two neighbouring boys in which the sister of one boy intervenes and is pushed by the other boy results in Section 354 IPC being added in the FIR. One should not therefore go by the label of the Sections recorded in the FIRs but should look at the attributes of the act keeping in view the genesis of the quarrel which may sometimes take a serious dimension of pushing and beating. But the seriousness is not of a dimension where one would label the wrongdoer as an evil person unworthy of public employment. It has to be kept in mind that with lack of education and the social pressures in rural India, young men are not able to reason with the same level of logic application as educated youth in the city would. As time passes and experience is gained in life, ones senses of rationality and reaction are chiselled, meaning thereby, the impulsive reaction of the youth cannot be equated with the thought off reaction of an experienced person.

33. As regards the fact that save and except Jagjeevan Ram all other had suppressed the information that in the past they were named as an accused for having committed an offence we note the observations made by the Supreme Court in Sandeep Kumar's case (supra) wherein it was observed that probably the information was not furnished due to fear, that if they did so, they would automatically be disqualified. The

Supreme Court noted that the emphasis should be on the seriousness of the offence for which a person has been alleged to be involved. The tendency of the young and the inexperienced to commit minor indiscretions when they are tender and inexperienced in age has to be ignored. And we may only add that this would include, suppressing an information out of fear but only when the information is of a kind which pertains to a minor indiscretion. In other words, the matter can be looked at from another angle. Had these young men furnished the relevant information and based thereon were held disentitled to be offered the job and they had approached the Court seeking a mandamus that letters offering appointment should be issued. Would the Court not have issued the mandamus on the reasoning afore-noted? The answer would be 'Yes'.

34. Considering the factual allegations which resulted in the five young men being named as accused, and one of them ultimately being convicted but let off on probation we concur with the view taken by the Tribunal in the orders which are a subject matter of WP(C) No. 8807/2011, WP(C) No. 8499/2011, WP(C) No. 2069/2012 and WP(C) No. 5142/2012 which we dismiss and disagreeing with the view taken by the Tribunal which is a subject matter of challenge in WP(C) No. 8142/2011 we allow the same and restore employment of the writ petitioner."

(Emphasis Supplied)

4. ***Submissions of the respondent***

4.1. The appellant is involved in a criminal case relating to serious offence of domestic violence of attempt to murder her

sister-in-law under Section 307 IPC which was concealed by her in the bio-data form dated 18th June, 2012. The appellant is accused No.4 in the criminal case under DV Act. The serious crime of attempt to murder under DV Act is not a trivial offence/case as claimed by the appellant.

4.2. The appellant's contention that the proceedings under Section 12 of the Domestic Violence Act are civil in nature is not relevant. The judgments cited by the appellant that the proceedings under Section 12 of the Domestic Violence Act are civil in nature are also not relevant because the respondent has rejected the appellant's appointment on the ground of making a false declaration in the bio-data form.

4.3. Even if the proceedings under Section 12 of the DV Act were not a criminal case, the appellant was required to disclose it. The technical defence that the case under DV Act was not criminal but civil in nature is neither tenable nor relevant since the Court dealing with DV Act is a Court of Law, it is not necessary to decide whether it is a criminal case or civil case.

4.4. The concealment of pendency of case under DV Act is a material fact which resulted in the cancellation of the appointment of the appellant in terms of Clause 20 of the 'Terms and conditions' of provisional offer of appointment.

4.5. The reliance was placed on ***Jainendra Singh v. State of U.P.***, 2012(8) SCC 748, in which the appellant therein was selected for the post of a Constable in police department and he submitted a declaration at the time of appointment that he was not involved in

any criminal case. However, it came to the notice of the respondent that the appellant was involved in a criminal case for the offence under Sections 147, 323, 336 IPC pending at the time of his selection though he was subsequently acquitted. The appointment of the appellant was terminated for concealment of his involvement in a criminal case which was challenged by a writ petition before the High Court. The High Court declined to interfere with the order of termination against which the appellant approached the Supreme Court. The Supreme Court examined the previous cases namely, *Ram Kumar v. State of U.P.*, (2011) 14 SCC 709; *State of W.B. v. Sk. Nazrul Islam*, (2011) 10 SCC 184; *Commissioner of Police v. Sandeep Kumar*, (2011) 4 SCC 644; *Daya Shankar Yadav v. Union of India*, (2010) 14 SCC 103; *Kamal Nayan Mishra v. State of M.P.*, (2010) 2 SCC 169; *Union of India v. Bipad Bhanjan Gayen*, (2008) 11 SCC 314; *R. Radhakrishnan v. Director General of Police*, (2008) 1 SCC 660; *Deptt. of Home Secy., A.P. v. B. Chinnam Naidu*, (2005) 2 SCC 746; *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav*, (2003) 3 SCC 437; *Bank of Baroda v. Central Govt. Industrial Tribunal*, (1999) 2 SCC 247; *Commissioner of Police v. Dhaval Singh*, (1999) 1 SCC 246; *Delhi Admn. v. Sushil Kumar*, (1996) 11 SCC 605; *Union of India v. M. Bhaskaran*, 1995 Supp (4) SCC 100 and held that verification of character and antecedents is one of the most important criteria to test whether the selected candidate is suitable for the post. The Supreme Court further held that the authorities invested with the responsibility of appointing constables are under duty to verify the antecedents of

candidates to find out whether he is suitable for the post of constable and so long as the candidate has not been acquitted in criminal case, he cannot held to be suitable for appointment for the post of constable. The Supreme Court further held that the concealment of a material fact by a candidate at the time of seeking appointment renders his appointment liable to be cancelled. However, considering different view taken by coordinate Benches, the Supreme Court referred the issue to the larger Bench and the said reference is still pending.

4.6. The cancellation of provisional appointment of appellant as well as rejection of the appeal was after due deliberations. Full and exhaustive consideration was given to the decision making process. The scope of judicial review is limited and this Court can only look into the decision making process and cannot interfere in the decision taken. Reliance was placed on *Tata Cellular* v. *Union of India*, (1994) 6 SCC 651 in this regard.

5. ***What is the nature of proceedings under Section 12 of the DV Act?***

5.1. The appellant was facing proceedings under Section 12 of DV Act relating to a matrimonial dispute between her brother and sister-in-law at the time of submitting the bio-data form. According to the appellant, the said proceedings were civil in nature whereas the respondents' contention is that it was a criminal case. The question which has therefore, arisen for consideration is – What is the nature of proceedings under Section 12 of the DV Act?

5.2. ***Statement of Objects and Reasons of the DV Act.***

The Protection of Women from Domestic Violence Act, 2005 was enacted on 13th September, 2005 and came into force on 26th October, 2006. The Objects and Reasons of the Act record that the civil law does not address the phenomena of domestic violence and therefore, the law be enacted to provide a remedy in civil law for protection of women from being victims of domestic violence. The relevant portion of the Statement of Objects and Reasons is reproduced hereunder:-

> *"**INTRODUCTION***
> *The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain.* ***The civil law does not address this phenomenon in its entirety.*** *Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code.* ***In order to provide a remedy in the civil law*** *for the protection of women from being victims of domestic violence and to prevent the occurance of domestic violence in the society the Protection of Women from Domestic Violence Bill was introduced in the Parliament.*
> ***STATEMENT OF OBJECT AND REASONS***
> *Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the*

Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (C E D A W) in it's General Recommendation No. XII (1989) has recommended that State Parties should act to protect women against violence of any kind especially that occulting within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of IPC. ***The Civil Law does not however address this phenomenon in its entirety****.*

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

(Emphasis supplied)

5.3. ***Civil rights under the DV Act***

DV Act created certain civil rights namely, right to protection against domestic violence, right to maintenance, right to reside in a shared household, right to compensation on account of domestic violence, right to custody of children and right to medical expenses. Section 12 of the DV Act empowers the accused person to approach the Court to seek any of the following reliefs:-

- Protection order under Section 18.
- Residence order under Section 19.
- Monetary relief under Section 20.
- Custody order under Section 21.
- Compensation under Section 22.
- Interim injunction under Section 23.

5.4. ***Concurrent jurisdiction of Civil Court, Family Court or Criminal Court to deal with application under Section 12 of the DV Act***

Section 26 empowers the aggrieved person to seek the reliefs under Section 18 to 22 in any legal proceedings before a Civil Court, Family Court or Criminal Court. Section 26(1) is reproduced hereunder:-

> *"**Section 26. Relief in other suits and legal proceedings.—***
> *(1) **Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court**, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*
> *(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.*
> *(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."*
>
> (Emphasis supplied)

5.5. ***Procedure to be followed***

Section 28(2) of the DV Act provides that the Court can formulate its own procedure for disposal of an application under Section 12 of the DV Act and it is not bound to follow the Code of Criminal Procedure. Rule 6(5) specifies that the procedure under Section 125 Cr.P.C. should be followed with respect to the application under Section 12. Section 125 provides for trial in a

summary manner. Section 28 is reproduced hereunder:-

> ***"Section 28. Procedure.-*** *(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).*
> *(2)* ***Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.****"*
>
> (Emphasis supplied)

5.6. ***Domestic violence per se is not an offence under DV Act***

Domestic violence defined in Section 3 of the DV Act *per se* is not an offence and the Act does not provide for any punishment for the same. However, breach of a protection order passed by the Court , amounts to an offence under Section 31 of the DV Act which is punishable with imprisonment which may extend to one year or fine up to Rs.20,000/- or both. The two main ingredients of an offence under Section 31 of the DV Act are that there should be a protection order under the Act and breach by the respondent.

5.7. ***The Court dealing with an application under Section 12 of D.V. Act cannot take cognizance of an offence under IPC.***

The Court dealing with an application under Section 12 of D.V. Act cannot take cognizance of any offence under IPC. The reason appears to be that the proceedings under Section 12 of the D.V. Act are civil in nature triable by a Civil Court, Criminal Court as well as Family Court. However, in the event of breach of a

protection order, a fresh criminal case has to be initiated against the accused (either by an FIR or by a criminal complaint before the Court) and in that criminal case, at the stage of framing the charge, the Court is empowered to frame a charge under IPC or any other law if the facts disclose the commissioner of such offence. The fresh complaint under Section 31 of the DV Act would be a criminal case as the respondent would be accused of an offence under Section 31 of the DV Act and as per Section 31(2), it should preferably be tried by the Magistrate who passed the order. This is clear from the reading of Section 31(2) and (3) of D.V. Act. Sections 31 and 32 are reproduced hereunder:-

> ***"Section 31. Penalty for breach of protection order by respondent.—***
> *(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.*
> *(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.*
> *(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.*
> ***Section 32. Cognizance and proof.—***
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under*

sub-section (1) of section 31 shall be cognizable and non-bailable.
(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused."

5.8. ***DV Act not in derogation of any other law***

Section 36 of the DV Act provides that the provisions of the Act are in addition to and not in derogation of any other law. This means that in addition to DV Act, various other provisions under the general laws as well as specific statutes can be invoked by the aggrieved person. Section 5(e) of the DV Act expressly provides that the Magistrate upon receipt the complaint of domestic violence, shall inform the aggrieved person of her right to file a complaint under Section 498A of the Indian Penal Code wherever relevant. Section 5(e) and 36 is reproduced hereunder:-

*"**Section 5** - **Duties of police officers, service providers and Magistrate.**—A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—*
(e) of her right to file a complaint under section 498A of the Indian Penal Code (45 of 1860), wherever relevant

Section 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."

5.9. Since the domestic violence *per se* is not an offence, the opposite party under the DV Act has been clearly mentioned as the

'respondent' in Sections 12 to 23 of the DV Act. The respondent has been specifically defined in Section 2(q) of the DV Act.

5.10. Rule 6 of the Protection of Women from Domestic Violence Rules, 2006 provides that the application under Section 12 of the DV Act and the affidavit shall be in Forms I and II respectively of the Rules. Rule 5(1)(2) provides that upon receipt of complaint of domestic violence, the protection officers shall prepare a domestic incident report in Form I and submit the same to the Magistrate. Clause 8 of Form I provides that upon receipt of information about an offence under IPC or any other law, the police officer shall inform the aggrieved person to initiate criminal proceedings by lodging an FIR under Cr.P.C. and if the aggrieved person does not want to initiate criminal proceedings, then he shall make a daily diary entry with remarks that the aggrieved person due to intimating nature of relationship wants to pursue civil remedies only. Clause 8 of Form I is reproduced hereunder:-

> **"8.** ***Instruction for the police officer assisting in registration of a Domestic Incident Report:***
>
> ***Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the police officer shall—***
>
> ***(a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974).***
>
> ***(b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship***

with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

5.11. Clause 2 of Form II recites the prayers which can be claimed by the aggrieved person under the DV Act which is reproduced hereunder:-

> *"2. It is prayed that the Hon'ble Court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case*
> *(a) Pass protection orders under Section 18 and/or*
> *(b) Pass residence orders under Section 19 and/or*
> *(c) Direct the respondent to pay monetary relief under Section 20 and/or*
> *(d) Pass orders under Section 21 of the Act and/or*
> *(e) Direct the respondent to grant compensation or damages under Section 22 and/or*
> *(f) Pass such interim orders as the court deems just and proper*
> *(g) Pass any orders as deems fit in the circumstances of the case."*

Clause 4 of Form II seeks information with respect to the details of previous litigation, if any, under IPC, Cr.P.C., Hindu Marriage Act and other Acts.

5.12. The affidavit to be filed along with the application under Section 12 of the DV Act is to be as per Form III which clearly provides that the parties in the application under DV Act are named as complainant and respondent.

5.13. Clause 4(x) of the Form IV recognizes the right of the aggrieved person to file an application for relief under Sections 12 and 18 to 23 under the DV Act.

5.14. Rule 8(1)(ii) provides the duties and functions of the protection officers to inform the aggrieved person about her rights as given in Form IV.

5.15. From the aforesaid provisions of the DV Act, it is clear beyond doubt that the proceedings under Section 12 of the DV Act are purely civil in nature. However, the relevant provisions of DV Act have been time and again interpreted by the Supreme Court and the High Courts and the consistent view has been taken that the proceedings under Section 12 of the DV Act are civil in nature. The relevant judgments are discussed hereunder:

5.16. In ***Indra Sarma* v. *V.K.V. Sarma*,** 2013 (14) SCALE 448, the Supreme Court examined the scope of DV Act and held that the Act was enacted to provide a remedy in civil law for protection of women from being victims of domestic violence. The Supreme Court further noted that the relief available under Sections 18 to 22 can be sought in any legal proceedings before Civil Court, Family Court or a Criminal Court. Relevant portion of the said judgment is reproduced hereunder:

> *"**D.V. ACT***
> *14. **The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society**. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who*

are victims of violence of any kind occurring within the family.

15. "Domestic Violence" is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. ***The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.***

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17. ***Section 26 of the DV Act provides that any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a Civil Court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.****"*

(Emphasis supplied)

5.17. In ***Varsha Kapoor* v. *Union of India***, (170) 2010 DLT 166, the Division Bench of this Court held that DV Act was enacted to provide monetary relief to the wife since invoking criminal machinery under Section 498-A IPC had serious ramifications. The relevant portion of the judgment is reproduced hereunder:

> *"25.* ***Since invoking criminal machinery under Section 498A IPC has serious ramifications, need was felt to have civil law on domestic violence inasmuch as there was no law enabling the Court to give protection order to give monetary relief in case women go to Court complaining violence****. In order to provide such remedies, DV Act has been enacted. It is in this backdrop, we have to appreciate that married women (i.e. wives) are given rights to agitate their grievances against wide spectrum of respondents under proviso to Section 2(q) of the DV Act,* ***with attempt to put an end to domestic violence and at the same time saving matrimonial home, which was not possible under the remedies provided in criminal law and there was no such provision under the existing Family Laws.*** *When this was the lacuna in law sought to be plugged by passing the DV Act and the purpose was to remove the said mischief, leaving family relatives of a husband or a male partner out of purview of the 'respondent' would negate the purpose for which the DV Act is passed. …"*
>
> (Emphasis supplied)

5.18. In ***Shambhu Prasad Singh* v. *Manjari***, (190) 2012 DLT 647, the Division Bench of this Court held that domestic violence *per se* is not a criminal offence and only when a protection order under Section 18 is violated by the respondent, such action would constitute punishable offence which can be tried under Section 31

of the DV Act. The relevant portion of the judgment is reproduced hereunder:

> *"9. The basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship.* ***Domestic violence, is, per se, not a criminal offence but is defined extensively and comprehensively to include various conditions****. The woman exposed to such domestic violence is given the right to move to Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, right to residence, compensation etc. or even move to Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section 26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The Act being a beneficial one, the Court should adopt a construction to its provisions which advances the parliamentary intention rather than confining it. If the latter course is adopted the result would be to defeat the object of the law.* ***As noticed earlier, domestic violence is per se not an offence but its incidence or occurrence enables a woman to approach the Court for more than one relief.*** *The Court is empowered to grant ex-parte relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc.* ***If such an order is violated by the respondent (a term defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.****"*
>
> (Emphasis supplied)

5.19. In ***Savita Bhanot v. Lt. Col. V.D. Bhanot,*** 168 (2010) DLT 68, V.K. Jain, J. of this Court examined the nature of proceedings under DV Act and held as under:-

> ***"6. The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty. There can be no prosecution of a person under the provisions of this Act, for committing acts of domestic violence, as defined in Section 3 of the Act. No one can be punished under the Act merely because he subjects a woman to violence or harasses, harms or injures her or subjects her to any abuse whether physical, sexual, verbal, emotional or economic. No one can be punished under the provisions of the Act on account of his depriving a woman of her right to reside in the shared household.***
>
> ***7. Section 31 of the Act provides for punishment only if a person commits breach of protection order passed under Section 18 or an order of interim protection passed under Section 23 of the Act. Thus, commission of acts of domestic violence by themselves do not constitute any offence punishable under the Act and it is only the breach of the order passed by the Magistrate either under Section 18 or under Section 23 of the Act which has been made punishable under Section 31 of the Act. No criminal liability is thus incurred by a person under this Act merely on account of his indulging into acts of domestic violence or depriving a woman from use of the shared household. It is only the breach of the orders passed under Sections 18 and 23 of the Act, which has been made punishable.***
>
> *9. The Statement of Objects and Reasons for enacting Prevention of Women from Domestic Violence Act, 2005 would show that since subjecting of a woman to cruelty by her husband or his relative was only a criminal offence and civil law did not address the phenomenon of domestic violence in its entirety, the Parliament proposed to enact a law keeping in view the rights guaranteed*

under Articles 14,15 and 21 of the Constitution of India so as to provide for a remedy under the civil law, in order to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence. Thus, the Act provides civil remedies to the victims so as to give them relief against domestic violence and the punishment can be given only if there is breach of order passed under the Act."

5.20. In ***Sabana* v. *Mohd. Talib Ali***, 2014 (1) RLW 26 (Raj.), the Rajasthan High Court considered the issue whether the proceedings under the DV Act were criminal in nature. The Division Bench of Rajasthan High Court held that various reliefs provided by the DV Act are remedial in nature and fall in realm of civil law and can never be construed to be criminal proceedings. The observation of the Court is reproduced hereunder:

"19. ... the first question that comes for our consideration is whether the proceedings under the Act are criminal in nature…

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21. ... while disposing of an application preferred under Section 12 of the Act, the Magistrate may direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control…

22. ***Undoubtedly, the various reliefs that may be extended by the Magistrate to a woman victim of domestic violence within the ambit of the Act are remedial in nature and squarely fall within the arena of civil law and by no stretch of imagination the proceedings under the Act could be construed to be criminal proceedings inasmuch as on occurrence of the domestic violence, the reliefs to be extended in terms of***

Sections 18 to 23 of the Act in no manner penalise the respondent for any act of violence committed by him or her. Rather it provides for remedial measures to protect the victim of domestic violence and to prevent the occurrence of domestic violence. In other words, the reliefs for which an aggrieved person is entitled against the respondent in terms of the said provisions are provided for as remedial measures and the said provisions, in no manner, could be construed to as providing for penalties for commission of the offences.

23. As a matter of fact, the penal provisions incorporated in the Act are Sections 31 and 33 which provide for penalty for breach of protection order by the respondent and for not discharging duty by the Protection Officer respectively. Obviously, the punishment provided as aforesaid under Sections 31 and 33 are the penalties for an offence committed under the Act and it have no nexus with the act of domestic violence as such which was the subject matter of proceedings before the Magistrate wherein the protection orders were passed...

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49. ... ***It is pertinent to note that the Act has been enacted by the legislature with the sole object to provide a remedy in the civil law for protection of women from being victims of domestic violence and to prevent the occurrence of the domestic violence in the society....****"*

(Emphasis supplied)

5.21. In ***Bipin Prataprai Bhatt*** **v.** ***Union of India,*** (2010) 3 GLH 276, the husband challenged the constitutional validity of Section 26(1) of the DV Act on the ground that it is violative of Article 20(1) of the Constitution. The Division Bench of Gujarat High Court dismissed the petition holding that the proceedings under Sections 18 to 22 of the DV Act are civil in nature and have nothing to do with the conviction for any offence. Article 20(1) is

attracted only in matter of conviction of offence and it does not relate to a civil relief which may be granted without any conviction. The Court further held that the relief under Sections 18 to 22 of the DV Act can be sought even from a Civil Court as provided in Section 26 as the reliefs are civil in nature. The relevant portion of the said judgment is reproduced hereunder:

> *"8. From the Statement of Objects and Reasons of the Domestic Violence Act, it will be evident that domestic violence is a human right issue and is a serious deterrent to development. After the Vienna Accord, 1994, followed by Beijing Declaration and the Platform for Action (1995), and after the United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women, the Central Government, having noticed that domestic violence is widely prevalent but has remained largely invisible in the public domain where a woman is subjected to cruelty by her husband or his relatives, except offence u/Sec. 498A of the I.P.C. no civil law exists, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India* ***to provide for remedy under the civil law, which is intended to protect the women from being victims of domestic violence and to prevent occurrence of domestic violence in the society.*** *It covers those women who are or have been in relationship with the abuser where both parties have lived together and shared a household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. It provides for right of a women to reside in her matrimonial house or shared household, irrespective of right or title in such home or household; it empowers the Magistrate to pass protection orders in favour of the aggrieved persons to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace*

or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and from causing violence to the aggrieved person.

9. ***From Sec.26(1) of Domestic Violence Act, it will be evident that the aggrieved person can ask for relief in other suits and legal proceedings as available u/Secs. 18, 19, 20, 21 and 22 of the said Act.***

Sec. 18 empowers the Magistrate to pass a protection order prohibiting respondents from committing any act of domestic violence, aiding or abetting in the commission of acts of domestic violence, entering a place of employment of the aggrieved person, etc.

Under Sec.19, the Magistrate, on being satisfied that domestic violence has taken place, may pass a residence order restraining the respondents from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, irrespective of legal or equitable interest of women in the shared household, etc.

Sec. 20 deals with monetary reliefs which empowers the Magistrate to direct the respondents to pay to the aggrieved women to meet the expenses incurred and losses suffered by aggrieved person and any child of the aggrieved person as a result of the domestic violence.

Under Sec.21, the custody order of the child or children of the aggrieved person or the person making an application on her behalf can be passed by a Magistrate.

Under Sec.22, the Court is also empowered to pay compensation.

10. Sec.23 empowers the Magistrate to grant interim and ex-parte orders; including the power vested u/Secs. 18, 19, 20, 21 and 22 of the Domestic Violence Act.

All the aforesaid reliefs can be granted under other suits and legal proceedings in view of Sec.26 of the Domestic Violence Act, relevant portion of which is quoted hereunder:

"26. ***Relief in other suits and legal proceedings. -*** *(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act".*

From the aforesaid provisions of Domestic Violence Act, it will be evident that the reliefs granted are civil in nature and have nothing to do with the conviction for any offence.

Under Art.20(1), no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

From the aforesaid provisions, ***it will be evident that Art.20(1) is attracted only in the matter of conviction for any offence and it do not relate to civil relief as may be granted without any conviction.***

11. ***As it will be evident that Secs. 18 to 22 of the Domestic Violence Act relate to relief, which can be sought for even from civil court and they are civil in nature, the petitioner cannot derive the advantage of Art.20(1) of the Constitution to challenge the validity of Sec.26 of the Domestic Violence Act."***

(Emphasis supplied)

5.22. In ***Narendrakumar*** **v.** ***State of Gujarat*****,** Criminal Misc. Application No. 19853 of 2013 and Criminal Misc. Application No. 18703 of 2013 decided on 17th January, 2014, the petitioners invoked Section 482 Cr.P.C. to seek quashment of proceedings under Sections 18, 19, 20 and 21 of the DV Act. The Gujarat High Court examined the scope of DV Act as well as Code of Criminal

Procedure and held that the proceedings under Sections 18 to 22 of DV Act are civil in nature. The Court further held that merely because judicial authorities contemplated under Code of Criminal Procedure are found competent to deal with the proceedings arising out of DV Act, it cannot be argued that such proceedings deal with crime. Relevant portion of the said judgment is as under:

> ***"SUBMISSIONS:***
> *14. The argument is that the expression "violence" used in D.V. Act connotes criminality and criminality can be inferred from the criminal mindset and that procedure contemplated under Section 28 of D.V. Act for the purpose of Sections 12, 18, 19, 20, 21, 22, 23 and 31 of D.V. Act is the one under the Cr.P.C., and thus the proceedings under D.V. Act are criminal in nature. The contention is also that Section 31(1) of D.V. Act speaks of a cognizable offence. That Section 27 speaks of jurisdiction of the Court and the Court of Judicial Magistrate First Class or the Metropolitan Magistrate Court as the case may be constituted under Cr.P.C. is declared as a competent court to grant various orders and to try offences. Reliance is also placed upon Section 4(2) of the Cr.P.C. to contend that even the offences under other laws can be tried in accordance with the procedure under Cr.P.C., and in absence of special law i.e. D.V. Act providing a separate procedure, all the provisions of Cr.P.C. are applicable to D.V. Act. It is contended that the legislature could not have provided for a civil remedy to be dealt with in accordance with the procedure laid down in Cr.P.C. While placing reliance upon Inderjit Singh Grewal v. State of Punjab [(2011) 12 SCC 588], the contention is that Section 468 of the Cr.P.C. was made applicable to the proceedings under D.V. Act, and thus, according to the submissions made by learned counsel for the petitioners, the proceedings*

under D.V. Act can be quashed under Section 482 of Cr.P.C.

REASONS:

15. The argument that expression 'violence' necessarily connotes criminality overlooks Section 3(iv) which defines economic abuse. The clause refers to deprivation of all or any economic or financial resources to which the aggrieved person is entitled or requires out of necessity including household necessities, stridhan, property jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance, disposal of household effects, any alienation of assets, shares, securities etc. in which aggrieved person has an interest or is entitled to use by virtue of domestic relationship or which may be reasonably required by the aggrieved person. Expression 'domestic violence' also includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Thus 'economic abuse' being part of expression 'domestic violence' as defined in Section 3 of D.V. Act constitute abuse of various civil rights of an aggrieved person. In addition, various kinds of mental and physical harms, injuries, harassments and abuses to a woman in domestic relationship constituting various offences under IPC would constitute 'domestic violence'. Thus domestic violence includes objectionable acts punishable under IPC and other objectionable commissions or omissions in relation to civil or human rights of aggrieved person. ***Pertinently, except as under Section 31, the Magistrate is not empowered to take cognizance of any objectionable criminal acts within the meaning of IPC, while exercising the jurisdiction under D.V. Act. Having regard to the nature of reliefs which can be prayed for by aggrieved person in an application under D.V. Act, it is clear that the D.V. Act predominantly focuses on fallouts of domestic violence***

resulting into deprivation of or necessitating securing of various civil rights of aggrieved person like residence in a shared household, protection of aggrieved person, right to residence, monetary reliefs, orders for custody of child/children, orders for compensation etc. The criminal acts are left to be dealt with by aggrieved person with appropriate complaint even as the police officer, protection officer, service provider or Magistrate in know of domestic violence is inter-alia obliged to inform the aggrieved person of her right to file a complaint under Section 498A of IPC, as contemplated under Section 5 of D.V. Act. Pertinently, proviso to Section 5 cautions and reminds the police officer of his duty to proceed in accordance with law upon receipt of the information of commission of a cognizable offence. Thus, in addition to the reliefs available to the aggrieved person under D.V. Act, acts of commission of a cognizable offence against the aggrieved person can be separately proceeded with. This is one more indicator indicating the focus of D.V. Act on the reliefs for aggrieved person, other than punishment to the offender.

'15.1 From the scheme of D.V. Act, as aforementioned, the emphasis on 'aggrieved person', 'domestic violence', 'domestic incident report' is eloquent. As per Section 12, aggrieved person or protection officer or any other person on behalf of the aggrieved person is entitled to move an application, and as noticed in Section 2(a), 'aggrieved person' is a woman in domestic relationship with 'respondent' alleging a commission of domestic violence by such respondent. Thus the application under Section 12 can be moved by or on behalf of a woman suffering from domestic violence. Thus the 'domestic violence' is only the cause of action for reliefs under Sections 17 to 23 of the D.V. Act.'

15.2 Further, the provisions are also made for establishment of various facilitators like shelter homes, service providers, protection officers to assist the

Magistrate and aggrieved person as also to enhance her knowledge about rights available to her under D.V. Act or IPC or Dowry Prohibition Act. ***Thus the remedies contemplated under D.V. Act except the one under Section 31 are not remedies under criminal law. Domestic violence may confer a cause upon the aggrieved person to proceed against the 'respondent' under criminal law and or under D.V. Act. Therefore, though the expression 'violence' connotes criminality referable to criminal mindset, the object of act being to assist the aggrieved person suffering from domestic violence by providing to her various reliefs as above and the act of domestic violence not being punishable under D.V. Act, it cannot be said that mere use of expression 'violence' would render the applications under Sections 12, 17 to 24 of the D.V. Act as criminal proceedings. The fact that the civil remedies are provided to aggrieved person is also made eloquent by objects and reasons of D.V. Act as well.***

15.3 True that the object of Section 31 is to punish the offender for violation of protection orders issued under Section 18 of D.V. Act. Breach of protection orders is classified as cognizable and non-bailable offence under Section 32, and upon testimony of the aggrieved person, the Court may conclude that offence under Sub-Section (1) of Section 31 has been committed by the accused. Protection order can be issued under Section 16 and its breach is cognizable under Section 32. The purpose of Sections 31 and 32 appears to be to ensure compliance of protection orders, if necessary, by enforcing a criminal machinery against the offender. It is only while hearing a case under Section 31 that a charge can be framed also under Section 498A of IPC or any other provision of that Code or the Dowry Prohibition Act, as the case may be, on disclosure of the commission of an offence under those provisions. Pertinently, ***except in relation to few provisions like Section 5 and 31, there is no reference to the expression 'offence', 'crime' or the like in entire***

***D.V. Act**. Therefore, even by virtue of doctrine of exclusion, an inference that none of the commissions or omissions except those made specifically punishable, the D.V. Act not intended to punish the 'respondent'.*

15.4 ***For the foregoing reasons, it cannot be said that the acts or omissions constituting 'domestic violence' as defined in Section 3 of D.V. Act constitute an offence under D.V. Act so as to attract Section 4(2) of Cr.P.C.***

15.5 In contrast, ***in order to attract Section 4(2) of Cr.P.C., the commissions or omissions complained of must necessarily be an offence as defined in Section 2(n) of Cr.P.C.*** *Reference to various terms as quoted in para 13.1 of this judgment as also the constitution of various courts to try offences; the procedure to investigate or inquire into the offences; obligations cast upon the police or others for prevention and detection of offences; provisions for maintenance of public order and tranquility etc., all go to indicate that predominant object of Cr.P.C. is to provide for the procedure to deal with offences. Since the scheme of Cr.P.C. predominantly prescribes a procedure to try offences, Section 482 of Cr.P.C. also can be applied in relation to offences and not in relation to civil proceedings.*

15.6 The procedure contemplated under Section 28 of D.V. Act applying the Criminal Procedure Code to the proceedings under Sections 12, 18 to 23 and 31 of D.V. Act would not ipso facto attract Section 482 of Cr.P.C. Having regard to the scheme of D.V. Act, Section 28 while adopting the provision of Cr.P.C. intends to apply procedure necessary for passing orders for securing the civil rights contemplated under Sections 12, 18 to 23 of D.V. Act. To illustrate, a Magistrate may issue the summon or warrant for securing the presence of 'respondent' as defined in Section 2(q) of the D.V. Act. Pertinently, Section 28, while referring to various provisions of D.V. Act prefixes the expression 'offence' to Section 31 only thus making the intent of the act very specific and eloquent. In other words, the expression

'offence' is prefixed to Section 31 as referred to in Section 28, while the said expression is omitted in Section 28 in reference to other provisions of D.V. Act, because Section 31 declares the breach of protection order an offence and other provisions do not. Further, under the very provision, Magistrate is empowered to prescribe its own procedure as well in which event the Magistrate may not have to rely upon Cr.P.C.

15.7 Thus, mere use of the provisions of Cr.P.C. for limited purposes of Sections 12, 18 to 23 and 31 of D.V. Act would not ipso facto attract Section 482 of Cr.P.C.

15.8 Further, 'domestic violence' as defined in Section 3 of the Act has attributes of crime inasmuch as such acts may constitute an offence under one or other provisions of IPC. The Magistrate is one of the authority contemplated under Cr.P.C. to deal with offences. It appears that, keeping the above aspect in view, it was deemed appropriate to authorise a judicial mind well-versed with the procedure dealing with crime, also to deal with the proceedings arising under D.V. Act since criminal acts as defined under Section 3 of D.V. Act give rise to cause of action under that Act. Furthermore, in case of breach of protection orders, the Magistrate is empowered to proceed under Section 31 of D.V. Act and also to frame charge for the offence under Section 498A of IPC. Therefore also it appears that the Magistrate has been selected as competent judicial authority to deal with the proceedings arising under D.V. Act and the Court of Sessions is contemplated as competent appellate authority. Thus ***merely because judicial authorities contemplated under Cr.P.C are found competent to deal with the proceedings arising under D.V. Act, it cannot be argued that such proceedings deal with crime.****"*

(Emphasis supplied)

5.23. In ***Naorem Shamungou Singh*** v. ***Moirangthem Guni Devi,*** AIR 2014 Mani 25, the Manipur High Court held that the DV

Act provides the remedies available under Civil law. The Court further held that though Section 28(1) of the Act provides that all proceedings shall be governed by provisions of Cr.P.C. but Section 28(2) empowers the Court to lay down its own procedure for disposal of the application under Sections 12 and 23(2). The flexibility has been given to the Court as the proceedings under Sections 12 and 18 to 23 provide civil remedies whereas Section 31 provides a criminal offence. Relevant portion of the said judgment is reproduced hereunder:

> *"[11] In this context, it may be noted that Protection of Women from Domestic Violence Act, 2005 was enacted by the Parliament keeping in view that phenomenon of domestic violence which is widely prevalent has remained largely invisible in the public domain and even though there is a specific offence under section 498-A of the Indian Penal Code dealing with cruelty by husband and relatives, there is no civil law to address this issue. The Parliament keeping in mind the said aspect and to provide the remedy under the Civil law which is intended to protect the women from being victims of domestic violence and to prevent occurrence of domestic violence, enacted the said law as evident from the Statement of Objects and Reasons, ...*
>
> ***The Statement of Objects and Reasons indicates that various issues arising out of and relating to domestic violence are sought to be dealt with by enacting the said law and by providing remedies which are normally available under the civil law. Therefore, even if Section 28(1) of the Act provides that the proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of Code of Criminal Procedure, 1973, in view of different remedies which one can obtained under Section 12 of the Act, some of which are of civil in nature, the Act***

itself has provided under sub-section (2) of Section 28 that nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12. Therefore, the Legislature has introduced an element of flexibility in the procedure to be adopted while dealing with application under section 12 of the Act. This is, perhaps, because of the intention of the Legislature in seeking to provide civil remedies also under the said Act. Code of Criminal Procedure had been enacted primarily to provide a fair procedure to deal with the offences punishable under various penal Acts and is geared to find out the guilt or innocence of the person, who has been charged of any offence. Protection of Women from Domestic Violence Act, 2005 has been enacted primarily to give relief to the victims of domestic violence many of which are of civil nature and as such, while devising and granting appropriate relief under the Act, the provisions of Code of Criminal Procedure which is fashioned for criminal trial may not be appropriate in all cases. Many of the reliefs contemplated under the Act are of civil nature which cannot normally granted by the Criminal Court, but only by a Civil Court. That is the reason why the Legislature incorporated sub-section (2) in Section 28 permitting the Court to lay down its own procedure for disposal of an application under section 12 of the Act.

[12] ***Thus, it is clear that even though section 28(1) specifically provides that all proceedings under section 12 shall be governed by the provisions of Cr.P.C., 1973, it is directory in nature and any departure from the provisions of Code of Criminal Procedure will not vitiate a proceeding initiated under section 12.*** *Therefore, this Court will hold that the Courts while dealing with proceedings under section 12 of the Protection of Women from Domestic Violence Act, 2005 shall abide by the provisions of Cr.P.C., 1973 as far as possible. However, any departure from the provisions of Cr.P.C. will not have the effect of vitiating the*

proceeding in view of the fact that the statute itself specifically provides for the Court to lay down its own procedure for disposal of an application under section 12."

(Emphasis supplied)

5.24. In ***Vijaya Baskar*** **v.** ***Suganya Devi,*** MANU/TN/3477/2010 the Madras High Court examined the scope of DV Act and held that the term civil law used in the Object and Reasons of the Act is not an empty formality and would exemplify and demonstrate that the proceedings in the first instance should be civil in nature. The legislature was conscious of the fact that the enforcement of a criminal law on the husband and relatives would have deliterious effect in the matrimonial relationship. The object of the Act is that the victim lady should be enabled by law to live in matrimonial family atmosphere of her husband's house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate. The High Court referred to Rule 6(5) of the DV Rules which provides that the application under Section 12 shall be dealt with and enforced in the same manner laid down in Sectio 125 Cr.P.C. The Court further observed that the violation of protection order would constitute an offence under Section 31 and Section 32 provides that such violation would amount to a cognizable and non-bailable offence. Relevant portion of the said judgment is reproduced hereunder:

"11. Paramount, it is, to consider the gamut and the scope of the Act, namely The Protection of Women from Domestic Violence Act, 2005; certain excerpts from the objects and reasons are of immense importance which would run thus:

"2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a women is subjected to cruelty by her husband or his relatives, it is an offence under Section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

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

12. ***The term 'civil law' twice used therein is not an empty formality and that would exemplify and demonstrate, display and convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deliterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband/in-laws' house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate and keeping that in mind alone in the Act, the initiation of action is given the trappings of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not lose sight of.***

13. The status of the respondents should not be treated as that of accused and that would spoil the very tenor and tone with which the Act has been drafted. Keeping that in mind alone, Section 13 of the Act would contemplate only service of notice on the respondents and Rule 6(5) of the Protection of Women from Domestic Violence Rules, would contemplate that the applications under Section 12 shall be dealt with inconformity with Section 125 of the Code of Criminal Procedure, 1973.

14. It is obvious that the proceedings under Section 125 Cr.P.C are not in stricto sensu criminal proceedings.

15. After the passing of the protection order, if there is any violation, then only, such violation would constitute an offence under Section 31 of the said Act and Section 32 of the Act would indicate that such violation would amount to a cognizable and non-bailable offence.*"*

(Emphasis supplied)

Respondent's response

5.25. The respondents did not make any submission with respect to the interpretation of the provisions of the DV Act mentioned above.

5.26. The respondents also did not controvert any of the judgments relied upon by the appellant in which it is held that the proceedings under DV Act are civil in nature.

5.27. The respondents also did not cite any judgment in support of his contention that the proceedings under the DV Act is a criminal case.

5.28. The respondent's only contention is that the provisions of the DV Act and the judgments relied upon by the appellant to show

that the proceedings under DV Act are civil in nature, are irrelevant.

5.29. This argument is absurd on the face of it because the question as to whether the proceedings under DV Act are civil or criminal has arisen because of a perverse view taken by the respondents that the proceedings under Section 12 is a criminal case despite clear provisions of the DV Act and the catena of judgments mentioned above.

5.30. The respondents have dared to take a position contrary to the well settled law. The consequences of taking such a position shall be discussed in the later part of this judgment.

6. ***Whether any criminal case was pending against the appellant at the time of submitting the bio-data form?***

6.1. The respondents have cancelled the offer of appointment of the appellant on the sole ground that she has suppressed the pendency of a criminal case under the DV Act relating to a serious offence of domestic violence of attempt to murder her sister-in-law. According to the respondents, the proceedings under Section 12 of the DV Act is a criminal case. The question which therefore, arises for consideration is - What is the meaning of the term "criminal case"?

6.2. The learned counsel for the respondents have made no submissions as to what is the meaning of the term "criminal case" except referring to the definition of "Criminal" in Blacks Law Dictionary. The respondents have also not explained, what meaning they intended to give. The learned Senior Counsel for the

appellants, on the other hand has referred to and relied upon the relevant provisions of the DV Act as well as the relevant judgments mentioned above according to which the proceedings under the DV Act are purely civil in nature.

6.3. The term "criminal case" is not defined in any statute. We are of the view that "criminal case" mentioned in Q.12 of the bio-data form means "proceedings in respect of an offence alleged to have been committed by the appellant pending before a criminal Court" as defined in Section 6(2)(f) of the Passports Act, 1967.

6.4. The term "offence" is defined in Section 2(n) Cr.P.C., Section 40 IPC and Section 3(38) of the General Clauses Act according to which the offence means an act or omission punishable by any law. Section 2(n) of Cr.P.C. and Section 3(38) of the General Clauses Act are reproduced hereunder:-

> ***"Section 2 (n) Cr.P.C.***- *"Offence" means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871)"*
>
> ***"Section 3(38) General Clauses Act*** - *"Offence" shall mean any act or omission made punishable by any law for the time being in force."*

6.5. In ***Yeo Swee Choon alias Bah U v. The Chartered Bank of India Australia and China Rangoon and Ors.,*** (1892) ILR 19 Cal 605, the Division Bench of the Calcutta High Court considered the meaning of the term "criminal case". The Division Bench held that the case in which imprisonment is inflicted as a punishment for an

offence is a criminal case. The relevant portion of the said judgment is reproduced hereunder:-

> *"1. ...The first point which has been referred to us and upon which our opinion is required is, whether this matter is a criminal case within the meaning of Section 69 of the Lower Burma Courts Act. The learned Recorder thinks it is not a criminal case, but a civil one. The Judicial Commissioner thinks it is a criminal case, and, as I said just now, we agree with the Judicial Commissioner. The punishment which can be awarded under this section is a punishment for something which the person to be punished has done, and is not in any way an imprisonment to which he is subjected in order to compel him to do something in the future; and that brings the case within the definition of a criminal case which is to be found in the various cases which have been cited before us by Sir Griffith Evans, which were O'Shea v. O'Shea and Parnell I.L.R. 15 P.D. 59, In re Ashwin I.L.R. 25 Q.B.D. 271 In e Freston I.L.R. 11 Q.B.D. 545 Harris v. Ingram I.L.R. 13 Ch. D. 338 and Ex parts Marsden I.L.R. 2 Ch. D. 786. These cases show, as one would expect they would show, that* ***where imprisonment is inflicted as a punishment for something done, the case in which it is inflicted is a criminal case.*** *To hold anything else would be, in our opinion, to sacrifice the substance of the matter to a mere question of words; in other words, it would be to say that where a man is punished for an offence which he has committed it is to be taken as a civil matter when the Court which is authorized to inflict the punishment happens to be a Civil Court. That, as I said just now, would be to sacrifice the real intention of the Legislature to a mere form of words. We think, therefore, that the view taken by the Judicial Commissioner on the first point is correct."*

6.6. In ***Sunil Kumar Ghosh v. State of West Bengal & Ors.,*** MANU/WB/0519/1969, the Division Bench of the Calcutta High

Court held that the crime means an act punishable by law and criminal proceedings mean the proceedings for inflicting punishment on the accused. The relevant portion of the judgment is reproduced hereunder:-

> *"8. Obviously, this is not a charge of an offence included in the Indian Penal Code, which constitutes the general law of crimes in this country, but an offence created by a special statute, namely, the Police Act, to be met with by a statutory penalty.* ***The question is whether this constitutes a 'criminal charge', which expression is not defined in the Constitution or in the General Clauses Act.***
> *9. The question has, therefore, to be answered with reference to general principles.*
> *10. The Dictionary meaning of the word 'charge' in the legal sense, is 'accusation'. 'Criminal charge', therefore, would mean accusation of a 'crime'.*
> *11. The Dictionary meaning of the word 'crime', again, is an 'act punishable by law' (Shorter Oxford Dictionary). To punish means to 'inflict penalty on an offender'. If these Dictionary meanings prevail, any offence which is created by any statute and is punishable by any penalty imposed thereby would be included within the concept of a 'criminal charge'.*
> *12. The most common way adopted by leading treatises is to define crimes by distinguishing it from civil wrongs. In Salmond on Torts (10th Ed., p. 7), the distinction is drawn as follows :*
> ***The distinction between civil and criminal wrongs depends on the nature of the appropriate remedy provided by law. A civil wrong is one which gives rise to civil proceedings - proceedings, that is to say, which have as their purpose the enforcement of some right claimed by the plaintiff as against the defendant : for example, an action for the recovery of a debt * * *. Criminal proceedings, on the other hand, are those***

which have for their object the punishment of the defendant for some act of which he is accused. He who proceeds civilly is a claimant, demanding the enforcement of some right vested in himself, he who proceeds criminally is an accuser, demanding nothing for himself, but merely the punishment of the defendant for a wrong committed by him.

13. The element of punishment as the differentia of a crime is also emphasised by Winfield (Torts, 7th Ed., pp. 10-11) and Kenny [Outline of Criminal Law (16th Ed., p. 539)]. In some cases, of course, criminal law provides for payment of monetary compensation by the convicted person to the person injured, but even in those cases, such compensation is awarded in addition to some punishment.

14. Quoting observations in decisions, Wilshere (Criminal Law, 17th Ed., pp. 1-2) explains the essential characteristics of a crime as follows:

The essential characteristic of a criminal offence is that it entails a liability to punishment : the domain of criminal jurisprudence can only be ascertained by examining what acts at any particular period are declared by the State to be crimes, and the only common feature that they will be found to possess is that they are prohibited by the State and that those who commit them are punished.

15. The old distinction between mala prohibita and mala in se has broken down because many acts which have been made punishable as an offence by statutes do not involve any moral turpitude:

In particular, nothing in the moral character of an act or omission can distinguish it from a civil wrong or make it a criminal offence. There are, for example, many breaches of statutory regulations and bye-laws which, because they are punishable in criminal proceedings, must be classed as criminal offences though they do not involve the slightest moral blame, as, for example, 'the

*failure to have a proper light on a bicycle * * * (Salmond, ibid).*

16. But a statutory offence should not be a criminal offence "unless the punishment is inflicted as a result of a criminal proceedings" (p. 2, ibid.), i.e. in a proceeding before a criminal court.

17. Judged by the foregoing tests, the offence under section 29 of the Police Act is a criminal offence and the charge of such an offence is a criminal charge because-

(a) By the statute, violation of duty or willful breach of any order made by a competent authority has been prohibited and made punishable by fine or imprisonment or both.

(b) The offence list triable before a Magistrate, i.e., a criminal court.

(c) The proceeding is a criminal proceeding because the object of the proceeding is not the enforcement of some right belonging to any complainant or person injured by such act but the punishment of the delinquent Police Officer, and it started with a prosecution (Annexure D/1)."

6.7. Coming back to the facts of the present case, it is clear that the appellant was not accused of any offence in the proceedings under Section 12 of the DV Act and therefore, she was not involved in any criminal case. Although serious allegations are made in the application under Section 12, the Magistrate had no jurisdiction to take cognizance of any criminal offence.

6.8. With respect to the respondent's contention that the application under Section 12 of the DV Act contains serious allegations of attempt to murder, this Court is of the view that the proceedings under Section 12 of the DV Act are purely civil in nature and making any allegations relating to an offence would not

make the appellant accused of any offence. Section 5(e) of the DV Act specifically casts the duty upon the police officer, service providers and Magistrate to inform the aggrieved person of her right to file a separate complaint to the police. The domestic incident report under Form 1 under Rules 5(1)(2) also clearly record the instructions for the police officer to inform the aggrieved person to initiate criminal proceedings by lodging an FIR with the police. Clause 8(b) further recognises that the aggrieved person may not want to initiate criminal proceedings due to intimate nature of relationship with the accused and therefore, may wish to pursue the civil remedies only.

6.9. The respondent's argument can be tested by taking an example of a civil suit in which the plaintiff makes a serious allegation that the defendant has cheated him but chooses not to lodge an FIR or file a criminal complaint before the competent Magistrate. Can it be said that the defendant is accused of an offence of cheating. The answer is clearly 'No' because in the proceedings before the Civil Court, the defendant is not accused of an offence and Civil Court has no jurisdiction to take cognizance of an offence. In the present case also, the proceedings are purely civil in nature and the Court dealing with application under Section 12 is not competent to take cognizance of any offence under IPC. The Section 5(e) imposes a duty on the Magistrate to inform the complainant to file an FIR for any offence under IPC. Section 31(2) further provides that upon breach of a protection order, the separate criminal case has to be initiated which should preferably

be tried by the same Court. In the fresh criminal case under Section 31 of the DV Act, the Magistrate is empowered to frame a charge under IPC if the facts so disclose but so far as the proceedings under Section 12 are concerned, the Court has no jurisdiction to take cognizance of any offence under IPC.

6.10. The respondents' contention that the domestic violence is an offence, is contrary to the well settled law. The respondents' argument is devoid of merit. The respondents' next contention that the appellant is accused No.4 in the criminal case is also false as the appellant is respondent No.4 and not accused No.4. The consequence of raising grounds contrary to well settled law shall be discussed in later part of the judgment.

6.11. Under Section 4(2) of Code of Criminal Procedure, all offences under IPC or under any other law have to be investigated, inquired into and tried according to the Code of Criminal Procedure. Since domestic violence *per se* is not an offence and Sections 12 and 18 to 23 also do not constitute any offence, the Metropolitan Magistrate dealing with the application under Section 12 of the DV Act cannot inquire into or try the appellant for any offence.

6.12. In the present case, the learned Magistrate formulated its own procedure under Section 26(2) of the DV Act and merely issued summons of the application under Section 12 of the DV Act. The Magistrate has not taken any cognizance nor could he have taken cognizance of any offence under the DV Act. That apart, according to First Schedule of Cr.P.C., Section 307 IPC is triable

by a Court of Session and the Magistrate was not even competent to take cognizance of that offence.

6.13. In view of the above, we hold that no criminal case was pending against the appellant at the time of submitting the bio-data form as she was not an accused of any offence in those proceedings and the Court dealing with the application under Section 12 of the DV Act was not holding a trial of any offence punishable by law.

7. ***The validity of an order has to be judged by the reasons stated in the order itself and can't be supplemented by fresh reasons later on***

7.1. The respondent has cancelled the appellant's provisional appointment on the sole ground that she was involved in a criminal case. We have perused the original record of the respondents which reveal that the Senior Manager (HR) in his note dated 28th September, 2012 noted that the case against the appellant was a criminal case, which was approved by all the officers up to the level of Director (HR). The respondents contested the writ petition also mainly on the ground that the appellant was involved in a criminal case which was accepted by the learned Single Judge. However, at the time of hearing of this appeal, an additional ground was raised that even if the proceedings under Section 12 of the DV Act do not fall within the meaning of criminal case, it would fall within the second part i.e. law suit. The question arises whether the respondent can raise this additional ground.

7.2. **The law on this issue is well settled that the validity of an order has to be judged by the reasons stated in the order itself**

and not by anything else, otherwise an order bad in the beginning, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out. An affidavit can't be relied upon to improve or supplement an order.

7.3. ***In Commr. of Police, Bombay v. Gordhandas Bhanji***, AIR 1952 SC 16], the Supreme Court held that an administrative order cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Bose, J., held as under:

> ***"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."***

7.4. This question again arose before the Constitution Bench of the Supreme Court in ***Mohinder Singh Gill v. The Chief Election Commisioner,*** (1978) 1 SCC 405 in which Krishna Iyer, J following ***Gordhandas Bhanji*** (supra) held as under:-

> *"8.* ***... when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.***

...Orders are not like old wine becoming better as they grow older."

7.5. In ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences,*** (2002) 1 SCC 520, the Supreme Court, following ***Mohinder Singh Gill*** (supra) again held that an affidavit cannot be relied on to improve or supplement an order. The Supreme Court observed as under:-

> ***"34.*** *That an affidavit cannot be relied on to improve or supplement an order has been held by a Constitution Bench in Mohinder Singh Gill v. Chief Election Commr., New Delhi [(1978) 1 SCC 405 : AIR 1978 SC 851] : (SCC p. 417, para 8)*
> ***35.*** *Equally, an order which is otherwise valid cannot be invalidated by reason of any statement in any affidavit seeking to justify the order. This is also what was held in State of U.P. v. Kaushal Kishore Shukla[(1991) 1 SCC 691 : 1991 SCC (L&S) 587 : (1991) 16 ATC 498] : (SCC p. 705, para 13)*
> *"The allegations made against the respondent contained in the counter-affidavit by way of a defence filed on behalf of the appellants also do not change the nature and character of the order of termination."*

7.6. In ***East Coast Railway v. Mahadev Appa Rao,*** (2010) 7 SCC 678, the Supreme Court following the earlier decisions mentioned above again reiterated the law laid down in the aforesaid judgments. Relevant portion of the said judgment is as under:

> *"9. There is no quarrel with the well-settled proposition of law that an order passed by a public authority exercising administrative/executive or statutory powers must be judged by the reasons stated in the order or any record or file contemporaneously maintained. It follows that the infirmity arising out of the absence of reasons*

cannot be cured by the authority passing the order stating such reasons in an affidavit filed before the court where the validity of any such order is under challenge."

7.7. In ***Rashmi Metaliks Limited and Another v. Kolkata Metropolitan Development Authority and Others,*** (2013) 10 SCC 95, the Supreme Court following ***Mohinder Singh Gill*** (supra) and ***Gordhandas Bhanji*** (supra) held as under:-

> ***"14.*** *...Regardless of the weight, pithiness or sufficiency of the explanation given by the appellant Company in this regard,* ***this issue in its entirety has become irrelevant for our cogitation for the reason that it does not feature as a reason for the impugned rejection.*** *This ground should have been articulated at the very inception itself, and now it is not forensically fair or permissible for the authority or any of the respondents to adopt this ground for the first time in this second salvo of litigation by way of a side wind.*
>
> ***15.*** *The impugned judgment [Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority, MAT No. 1031 of 2013, decided on 11-7-2013 (Cal)] is indubitably a cryptic one and does not contain the reasons on which the decision is predicated. Since reasons are not contained in the impugned judgment [Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority, MAT No. 1031 of 2013, decided on 11-7-2013 (Cal)] itself, it must be set aside on the short ground that a party cannot be permitted to travel beyond the stand adopted and expressed by it in its earlier decision."*
>
> (Emphasis supplied)

7.8. In ***Dipak Babaria and Another v. State of Gujarat and Others***, (2014) 3 SCC 502, the Supreme Court following ***Mohinder Singh Gill*** (supra) and ***Gordhandas Bhanji*** (supra)

again held that the Government cannot improve its stand by filing subsequent affidavits.

> ***"64.*** *That apart, it has to be examined whether the Government had given sufficient reasons for the order it passed, at the time of passing such order.* ***The Government must defend its action on the basis of the order that it has passed, and it cannot improve its stand by filing subsequent affidavits as laid down by this Court long back in Commr. of Police v. Gordhandas Bhanji. …"***
> *"…This proposition has been quoted with approval in para 8 by a Constitution Bench in Mohinder Singh Gill v.Chief Election Commr. …"'*
>
> (Emphasis supplied)

7.9. In ***Kunjumon Thankappan v. Chief Passport Officer,*** 2012 (1) KHC 720, a passport was impounded on the ground that a criminal case was pending against the passport holder. The impounding order was challenged in appeal on the ground that no criminal case was pending against the person except two cases pending before the Family Court which were also settled. The Kerala High Court held that the proceedings pending before the Family Court do not render a person ineligible for issuance of passport under Section 6(2)(f) and therefore, the impounding order was bad. An additional ground was raised before the High Court that there was a suppression of a material fact by the petitioner. The Kerala High Court relying on ***Mohinder Singh Gill*** (supra) held that since the suppression was not a reason relied upon in the impounding order, and therefore, which is ground cannot be raised

by the respondents. Relevant portion of the said order is reproduced hereunder:

> *"9. As far as the suppression alleged against the petitioner is concerned, that is not a ground relied on in Ext. P1 order. It is the settled position of law* ***Mohinder Singh Gill v. Chief Election Commissioner, New Delhi****: AIR 1978 SC 851 that the validity of an order has to be judged based on the reasons stated in the order itself and not by anything else.* ***Therefore, since suppression alleged is not a reason relied on in Ext. P1, I am not inclined to entertain the submission now made by the learned counsel for the respondents."***
>
> (Emphasis supplied)

7.10. Since the appellants provisional appointment was cancelled on the sole ground that the proceedings under Section 12 of the DV Act is a criminal case; the additional ground raised by the respondent before us can't be looked into in view of the principles laid down by the Supreme Court in the aforesaid judgments.

8. ***Whether there was any concealment of a material fact by the appellant in the bio-data form?***

8.1. The learned counsel for the respondents has strongly relied on the judgment of the Supreme Court in ***Jainendra Singh*** (supra) and the judgments discussed therein in which the Supreme Court has dealt with the issue of concealment of a material fact relating to the involvement of a candidate in a criminal offence. The Supreme Court held that information with respect to the involvement in a criminal case affects the character and antecedents of the candidate which is one of the most important criteria to test whether the

selected candidate is suitable for the post. The particulars of the concealed offences in those cases are as under:

Name of the case		**Criminal offence concealed**
Delhi Administration Through Its Chief Secretary v. Sushil Kumar, (1996) 11 SCC 605	-	Section 304/324/34 IPC
Commr. of Police v. Dhaval Singh, (1999) 1 SCC 246	-	147/342/327/504 IPC
Regional Manager, Bank of Baroda v. Presiding Officer, Central Govt. Industrial Tribunal, (1999) 2 SCC 247	-	307 IPC
Kendriya Viyalaya Sangathan v. Ram Ratan Yadav, (2003) 3 SCC 347	-	323/341/294/506-B/34 IPC
Secy. Deptt. Of Home Secy. A.P. v. B. Chinnam Naidu, (2005) 2 SCC 746	-	Various provisions of IPC and Andhra Pradesh Public Examinations (Prevention of Malpractices and Unfair Means) Act, 1997
R. Radhakrishnan v. Director General of Police, (2008) 1 SCC 660	-	294(b) IPC
UOI v. Bipad Bhanjan Gayen, (2008) 11 SCC 314	-	376/417 IPC
Kamal Nayan Mishra v. State of MP, (2010) 2 SCC 169	-	323/341/294/506-B/34 IPC
Daya Shankar Yadav v. UOI, (2010) 14 SCC 103	-	323/504/506 IPC
Commissioner of Police v. Sandeep Kumar, (2011) 4 SCC 644	-	325/34 IPC
State of West Bengal v. S.K. Nazrul Islam, (2011) 10 SCC 184	-	148/323/380/448/427/506 IPC
Ram Kumar v. State of UP, AIR 2011 SC 2903	-	324/34/504 IPC

Jainendra Singh v. State of UP, - 147/323/336 IPC
(2012) 8 SCC 748

8.2. In ***Jainendra Singh*** (supra) and other cases discussed therein, the candidates were accused of offences in respect of which the FIR was lodged against them and they concealed the same at the time of seeking the appointment. It was in that context that the Supreme Court laid down the principles relating to the consequences of concealment of a criminal offence relating to the involvement of a candidate in a criminal case which had an effect on the antecedents and character of the candidate. However, in the present case as the appellant is not accused of any offence in the case under Section 12 of the DV Act. Secondly, there was no concealment by the appellant in the bio-data form. Thirdly, the appellant is involved in a case of civil nature under Section 12 of the DV Act which does not effect her antecedents or suitability to the post for which she was selected.

8.3. It is well settled that judicial precedent cannot be followed as a statute and has to be applied with reference to the facts of the case involved in it. The ratio of any decision has to be understood in the background of the facts of that case. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has to be remembered that a decision is only an authority for what it actually decides. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of one case cannot be mechanically

applied to another case without regard to the factual situation and circumstances of the two cases. In ***Bharat Petroleum Corporation Ltd* v. *N.R. Vairamani*,** (2004) 8 SCC 579**,** the Supreme Court had held that a decision cannot be relied on without considering the factual situation. The Supreme Court observed as under:-

> *"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Mac Dermott observed: (All ER p. 14 C-D)*
>
> *"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge…"*
>
> *This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585*
>
> *10. In Home Office v. Dorset Yacht Co. [(1970) 2 All ER 294 : 1970 AC 1004 : (1970) 2 WLR 1140 (HL)] (All ER p. 297g-h) Lord Reid said, "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in Shepherd Homes Ltd. v.Sandham (No. 2) [(1971) 1*

WLR 1062 : (1971) 2 All ER 1267] observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament." And, in Herrington v.British Railways Board [(1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

This extract is taken from Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani, (2004) 8 SCC 579 at page 585

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

9. ***Whether the respondents adopted fair procedure for appointment and cancellation of the appointment of the appellant***

9.1. Question 12 of the bio-data form as well as Question 12(i) of the attestation form are again reproduced hereunder:-

Question 12 of Bio-Data Form - ***Whether involved in any Criminal case / Law suit at any time?***

Question 12(i) of Attestation Form - ***Is any case pending against you in any Court of law at the time of filling up this Attestation Form?***

9.2. Since Question 12 of the attestation form covers all types of cases pending in any Court of law, we see no reason in asking a question relating to criminal case and law suit in the bio data form.

9.3. We have gone through the attestation forms of the Indian Administrative Service as well as Delhi Judicial Service. The para 12 of the attestation form taken from the candidates of Indian Administrative Services at the time of interview is reproduced hereunder:

> "12.(a) Have you ever been arrested? Yes/No
> (b) Have you ever been Prosecuted? Yes/No
> (c) Have you ever been kept under detention? Yes/No
> (d) Have you ever been bound down? Yes/No
> (e) Have you ever been fined by a Court of Law? Yes/No
> (f) Have you ever been convicted by a Court of Law for any offence? Yes/No
> (g) Have you ever been debarred from any examination or rusticated by any University or any other educational authority/institution? Yes/No
> (h) Have you ever been debarred/disqualified by any Public Service Commission/Staff Selection Commission for any of

their examination/selection? Yes/No

(i) If any case pending against you in any court of law at the time of filling up this attestation Form? Yes/No

(j) Is any case pending against you in any University or any other educational authority/institution at the time of filling up this Attestation Form? Yes/No

(k) Whether discharged/expelled/withdrawn from any training institution under the Govt. or otherwise? Yes/No

(l) If the answer to any of the above mentioned question is 'Yes', give full particulars of the case/arrest/detention/fine/conviction/sentence/ punishment etc. and/or the name of the case pending in the Court/ University/Educational Authority etc. at the time of filling up this form? Yes/No"

9.4. The para 12 of the attestation form of Delhi Judicial Service examination is reproduced hereunder:

> "(a) Have you ever been arrested, prosecuted, kept under detention, or bound down/convicted by a court of law for any offence, or debarred/disqualified by any Public Service Commission from appearing at its examination/selection, or debarred educational authority/Institution?
>
> (b) **Is any case pending against you in any court of Law**, University or any other educational authority/institution at the time of filling up this attestation form. If the answer to (a) or (b), is "Yes" full particulars of the case, arrest, detention, fine, conviction, sentence etc. and the nature of the case pending in the court/University/Educational authority etc. at the time of filling up this form, should be given."

9.5. In both the attestation forms reproduced above, the information is sought with respect to any case pending in any Court as sought by the respondent in Query 12 of the attestation form. However, there is no separate question as to the pendency of a

criminal case or law suit as sought by the respondent in the bio data form.

9.6. The normal practice appears to be to seek information relating to all pending legal cases in the attestation form for verification to enable the employer to verify the character and antecedents of the candidate to ascertain his/her suitability for the post. Such queries are ordinarily not made in the bio data form. Logically, the query as to the pending criminal cases is not part of the bio data of a person.

9.7. The learned counsel for the respondent submitted that the appellant should have disclosed all cases pending before any Court in answer to Question 12 of the bio-data form. If the respondents wanted to seek information relating to all cases pending in Courts, the respondent could have sought information relating to all cases pending in any Court as in Question no.12(e) of the attestation form. We, therefore, see no justification to first seek limited information in question no.12 of the bio data form and then seek exhaustive information in the attestation form. Question no.12(e) of the attestation form would certainly include criminal cases as well as law suits.

9.8. The respondent's contention that all legal proceedings pending before a Court of law would fall either in the category of a *"criminal case"* or *"law suit"* is absolutely misconceived. There can be many category of cases which would neither fall in the category of *"criminal case"* nor in the category of a *"law suit"* such as writ petitions, appeals, applications, execution petitions,

revision petitions, review applications, etc. do not fall in the category of either a *"criminal case"* or a *"law suit"*.

9.9. Question 12 in the bio-data form is ambiguous and confusing. It has two parts, first relating to involvement in any "criminal case" and second part relating to involvement in any "law suit". The term law suit is a technical word and since it has been used along with the term criminal case, a candidate can confuse same having a meaning related to the first word. Secondly, assuming that the respondent meant 'law suit' to be a "suit", it is not defined in Code of Civil Procedure except to a limited extent in Section 26 of the Code of Civil Procedure that the suit shall commence on the institution of a plaint. Suit is ordinarily understood as a proceeding in a civil Court although it is capable of a very wide connotation depending upon the context in which it is used. Section 2(l) of the Limitation Act defines the suit in a limited way that it excludes applications and appeals. Taking the aforesaid definitions, the term suit would exclude appeals, revision petitions, review applications, application for restoration of a suit, execution petitions, writ petitions, election petitions, property tax matters, Income tax matters, Excise matters, Sales Tax matters and other proceedings under special laws. Taking this interpretation, a candidate against whom no civil suit is pending but large number of appeals, execution petitions, revision petitions, writs and other petitions/applications are pending, may give a true answer that no civil suit is pending but what is the value/worth of such limited information to the respondents when the employer wants

information about all cases pending in Courts. It cannot be disputed that in the present context, there is no difference in the category of cases which fall within the meaning of 'suits' and the others which are not suits. We see no wisdom in seeking information only with respect to a suit and not the other proceedings. It appears that no mind has been applied while framing Question no.12.

9.10. We also see no wisdom in using a technical word 'law suit' in Question no.12 because a person who does not have a background of law and is not conversant with the Court procedure, may not understand the meaning of the term "law suit". Can the employer use such technical words in the bio data form? Let us test this. If the respondent had put a question "Whether any suit pending against you is barred by *res judicata*?", or "Whether any suit has abated in law?" Such questions can of course put in a written test for judicial service or public prosecutors but such questions cannot be put in a bio data form in a case like the present one. Secondly, if at all such a question had to be used, it should have been defined in the bio data form as to what is the meaning of the word. But the difficulty is that the respondents are themselves not clear as to the meaning of criminal case as well as law suit. It was the duty of the respondents to have defined these words in the bio data form and, at least explained to this Court as to what is the meaning of these words. But we are pained to note that despite specific question repeatedly put to the learned counsel for the respondents, could not explain the meaning of the word "law suit"

except saying that the proceedings under Section 12 of the DV Act is a law suit and all proceedings pending in the Court of Law other than criminal cases are law suits. Since the question 12 of the bio-data form is ambiguous and vague, the benefit of doubt as to its meaning would go to the appellant.

9.11. In ***Daya Shankar Yadav* v. *Union of India***, (2010) 14 SCC 103, the Supreme Court noticed that the questions 12(a) and (b) of the verification form were ambiguous and vague and could lead to hardship and mistakes. The Supreme Court held that the employer cannot dismiss, discharge or terminate the employee for misunderstanding a vague and complex question and giving a wrong answer. The Supreme Court suggested to make questions simple, clear and straight forward. Relevant portion of the said judgment is reproduced hereunder:

> ***"19.*** *The appellant submitted that in this case Questions 12(a) and (b) in the verification form were complex, ambiguous, tangled, involved and confusing for the following reasons:*
>
> *(i) Question 12(a) involved three distinct and separate issues. The first relates to criminal prosecution and conviction. The second relates to disqualification by Public Service Commission. The third relates to debarment from examinations by universities/educational authorities.*
>
> *(ii) The first part of Question 12(b) sought information relating to pendency of cases. The second part of Query 12(b) was not a query, but an instruction common to Queries (a) and (b), as to how further information should be given if the answer to the query was "yes".*
>
> *(iii) There was a variation between the English*

version and the Hindi version of Question 12(a) and the words "restricted by any university or other education institution", in Query 12(a) appear to have been erroneously printed instead of the words "rusticated by any university or other educational institution".

(iv) The second part of Query 12(b) as also the nature of Queries 12(a) and 12(b) contemplated the declarant employee to answer Queries 12(a) and (b) in monosyllable answers of "yes" or "no"; and only if the declarant answered Query 12(a) as "yes", he had to give further particulars. If an employee answers Query 12(a) by the word "yes" it would really mean that he has been arrested, prosecuted, kept under detention and bound down/fined/and convicted by a court of law even if he has not been subjected to all those processes.

(v) The first part of Query 12(a) is capable of being interpreted in two ways. One way of reading it is: "whether the declarant had ever been arrested, or prosecuted, or kept under detention, or bound down/fined, or convicted by a court of law for any offence", thereby requiring the declarant to state whether he was subjected to any one of those events/processes. Another way of reading it is: "whether the declarant has been arrested, prosecuted, kept under detention, bound down/fined, and convicted by any court of law for any offence" thereby requiring the declarant to state whether he had undergone all those events/processes with reference to a criminal offence. The above questions can confuse not only a person with basic education, but may even confuse a person legally trained to assume that he has to answer "yes" only if he had been convicted and not otherwise.

***20.** We agree that the English version of the questions were involved and confusing. If the queries in 12(a) and (b) in this case had been split into separate questions with instructions, to provide clarity and precision, there would have been no room for controversy. For example, if Questions 12(a) and (b) had been split up into five*

separate questions with a note as follows, there would have been no confusion or ambiguity:

(a) Have you ever been arrested or prosecuted or kept under detention?

(b) Have you ever been bound down or fined or convicted by a court of law for any offence?

(c) Have you ever been debarred or disqualified by any Public Service Commission from appearing in any of its examinations or selections?

(d) Have you ever been debarred from taking any examination by any university, or expelled or rusticated from any educational institution?

(e) Whether any case is pending against you in any court or before any university/educational authority/institution at the time of filling up of this verification roll?

Note: If the answer to any of the above queries is "yes", then give details.

21. If the object of the query is to ascertain the antecedents and character of the candidate to consider his fitness and suitability for employment, and if the consequence of a wrong answer can be rejection of his application for appointment, or termination from service if already appointed, the least that is expected of the employer is to ensure that the query was clear, specific and unambiguous. Obviously, the employer cannot dismiss/discharge/terminate an employee, for misunderstanding a vague and complex question, and giving a wrong answer. We do hope that CRPF and other uniformed services will use clear and simple questions and avoid any variations between the English and Hindi versions. They may also take note of the fact that the ambiguity and vague questions will lead to hardship and mistakes and make the questions simple, clear and straightforward."

Recording of reasons

9.12. An important requirement of a fair procedure is to consider all the relevant material and give reasons for the decision. It is well settled that even in administrative matters, the reasons are required to be given by the administrative authority. The reasons are live links between the mind of the decision maker and the belief formed. Reasons convey judicial idea in words and sentences. Reasons are rational explanation of the conclusion. Reason is the very life of law. It is the heart beat of every belief and without it, law becomes lifeless. Reasons also ensure transparency and fairness in the decision making process. The reasons substitute subjectivity by objectivity. Recording of reasons also play as a vital restraint on possible arbitrary use of the power.

9.13. We do not find compliance of the same in this case as no reasons have been given in the order of cancellation of appointment as to how the case under Section 12 of the DV Act is a criminal case. Relevant case law in this regard is given here under:

9.14. In ***Cyril Lasrado v. Julaiana Maria Lasrado***, (2004) 7 SCC 431, the Supreme Court held that recording of reasons is one of the fundamentals of good administration and failure to give reasons amounts to denial of justice. Relevant portion of the said judgment is reproduced hereunder:

> ***"12.*** *Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union [(1971) 1 All ER 1148 : (1971) 2 QB 175 : (1971) 2 WLR 742 (CA)] observed: (All ER p. 1154h) "**The giving of reasons is one of the fundamentals of good***

> ***administration**." In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120] it was observed: "**Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.**" Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision..."*
>
> (Emphasis supplied)

9.15. In ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan,*** (2010) 9 SCC 496, the Supreme Court held that judicial trend has always been to record reasons by the administrative authorities which felicitate the process of judicial review of the Courts. The Supreme Court summarized the principles relating to the recording of reasons. Relevant portion of the said judgment is reproduced hereunder:

> ***"12.** The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in A.K. Kraipak v. Union of India [(1969) 2 SCC 262 : AIR 1970 SC 150] .*
>
> ***15. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties,***

must speak. It must not be like the "inscrutable face of a sphinx".

28. *In Gurdial Singh Fijji v. State of Punjab [(1979) 2 SCC 368 : 1979 SCC (L&S) 197] this Court, dealing with a service matter, relying on the ratio in Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87] , held that "rubber-stamp reason" is not enough and virtually quoted the observation in Capoor[(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87] to the extent that: (Capoor case [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87] , SCC p. 854, para 28)*

"28. ... Reasons are the links between the materials on which certain conclusions are based and the actual conclusions." (See AIR p. 377, para 18.)

30. *The English version of the said principle given by the Chief Justice is that: (H.H. Shri Swamiji case[(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : AIR 1980 SC 1] , SCC p. 658, para 29)*

"29. ... 'reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself'." (See AIR p. 11, para 29.)

46. *The position in the United States has been indicated by this Court in S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] in SCC p. 602, para 11 : AIR para 11 at p. 1988 of the judgment. This Court held that in the United States the courts have always insisted on the recording of reasons by administrative authorities in exercise of their powers. It was further held that such recording of reasons is required as "the courts cannot exercise their duty of review unless they are advised of the considerations underlying the action under review". In S.N. Mukherjee [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : 1991 SCC (L&S) 242 : (1991) 16 ATC 445 : AIR 1990 SC 1984] this Court relied on the decisions of the US Court in Securities and Exchange Commission v. Chenery Corpn.[87 L Ed 626 : 318 US 80*

(1942)] and Dunlop v. Bachowski [44 L Ed 2d 377 : 421 US 560 (1974)] in support of its opinion discussed above.

47. Summarising the above discussion, this Court holds:

(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 andAnya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process"."

(Emphasis supplied)

9.16. In ***Ravi Yashwant Bhoir v. District collector, Raigad***, (2012) 4 SCC 407, the Supreme Court again summarized the law relating to recording of reasons as under:-

"Recording of reasons

38. It is a settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order.

39. *In Shrilekha Vidyarthi v. State of U.P. [(1991) 1 SCC 212 : 1991 SCC (L&S) 742 : AIR 1991 SC 537] , this Court has observed as under: (SCC p. 243, para 36)*

"36. ... Every State action may be informed by reason and it follows that an act uninformed by reason, is arbitrary. The rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is the trite law that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

40. *In LIC v. Consumer Education and Research Centre [(1995) 5 SCC 482 : AIR 1995 SC 1811] this Court observed that the State or its instrumentality must not take any irrelevant or irrational factor into consideration or appear arbitrary in its decision. "Duty to act fairly" is part of fair procedure envisaged under Articles 14 and 21. Every activity of the public authority or those under public duty must be received and guided by the public interest. A similar view has been reiterated by this Court in Union of India v. Mohan Lal Capoor [(1973) 2 SCC 836 : 1974 SCC (L&S) 5 : AIR 1974 SC 87] and Mahesh Chandra v. U.P. Financial Corpn. [(1993) 2 SCC 279 : AIR 1993 SC 935]*

41. *In State of W.B. v. Atul Krishna Shaw [1991 Supp (1) SCC 414 : AIR 1990 SC 2205] , this Court observed that: (SCC p. 421, para 7)*

"7. ... Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of sound system of judicial review."

42. *In S.N. Mukherjee v. Union of India [(1990) 4 SCC 594 : 1990 SCC (Cri) 669 : AIR 1990 SC 1984] , it has*

been held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication dispensed with, the authority must record reasons for its decision.

43. *In Krishna Swami v. Union of India [(1992) 4 SCC 605 : AIR 1993 SC 1407] this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne out from the record. The Court further observed: (SCC p. 637, para 47)*

"47. ... Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."

44. *This Court while deciding the issue in Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd. [(2010) 13 SCC 336 : (2010) 4 SCC (Civ) 904] , placing reliance on its various earlier judgments held as under: (SCC pp. 345-46, para 27)*

"27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice

delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.

*'3. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind.' [**Ed.**: As observed in State of Rajasthan v. Sohan Lal, (2004) 5 SCC 573, p. 576, para 3.]*

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected."

***45.** In Institute of Chartered Accountants of India v. L.K. Ratna [(1986) 4 SCC 537 : (1986) 1 ATC 714 : AIR 1987 SC 71] , this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held: (SCC p. 558, para 30)*

"30. ... In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under Section 22-A of the Act. To exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member.

It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a 'finding'. Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding."

46. *The emphasis on recording reason is that if the decision reveals the "inscrutable face of the sphinx", it can by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out the reasons for the order made, in other words, a speaking out. The inscrutable face of the sphinx is ordinarily incongruous with a judicial or quasi-judicial performance."*

(Emphasis supplied)

10. ***Whether the appellant can be denied the employment on the ground of pendency of an application under DV Act?***

10.1. The respondents have not at all applied its mind to the question as to whether the appellant can be denied the employment on the ground of pendency of an application under DV Act. Upon query by this Court, Mr. M.G. Abhyankar, General Manager (HR) admitted that the copy of the application under Section 12 of the DV Act was not before the respondent either at the time of cancellation of the provisional appointment or at the time of rejection of the appeal. As such, the appointment has been

cancelled and the appeal has been rejected without even caring to look into the copy of the application. What is more shocking is that on 26th September, 2012 when the appellant reported for joining she was told to furnish the copy of the application in pursuance to which she visited the office of the respondent on 28th September, 2012 to submit the copy but the same was refused and she was told that these documents are not required anymore meaning thereby that the decision was taken without considering the necessity of looking into the application. The appellant placed this fact in her e-mail dated 28th September, 2012, copy whereof is on record and not denied by the respondent.

10.2. The appellant has placed on record the copy of the application under Section 12 of the DV Act which arises out of a matrimonial discord between the appellant's brother, Rohit Kaushik and his wife, Suman Sharma who were married on 11th May, 2011 and they separated on 10th July, 2011 due to temperamental incompatibility. On 11th April, 2012, Suman Sharma filed a complaint under Section 12 of the Domestic Violence Act before the Metropolitan Magistrate, Karkardooma Courts seeking protection order under Section 18; residence order under Section 19; maintenance order under Section 20 and compensation under Section 22. The complainant impleaded her husband, Rohit Kaushik and her seven relatives, namely, father-in-law, mother-in-law, sister-in-law and four uncles. The petitioner is the sister-in-law and the main allegation against her in para 2(i) is that six days before '*Karvachoth*', the appellant and her mother

dragged the complainant out of the bedroom and pushed her on the water bucket in the bathroom and the complainant got an electric shock whereupon the MCB tripped.

10.3. The complainant, Suman Sharma and her husband, Rohit Kaushik resolved all their disputes by a settlement dated 17th December, 2012 whereupon the complaint was disposed of on 30th March, 2013. In terms of the said settlement, the parties dissolved their marriage by mutual consent vide decree of divorce and Rohit Kaushik paid a sum of Rs.13,50,000/- to the complainant. The copies of the first motion has been placed on record by the appellant whereas copies of the complete order sheets of the complaint have been placed on record by the respondent. The complainant as well as her husband Rohit Kaushik have deposed on oath before the learned District Judge that they married on 11th May, 2011 and separated on 10th July, 2011 due to temperamental incompatibility. In the order dated 15th January, 2013 passed by the learned Additional District Judge accepted the said statement. Para 4 of the order dated 15th January, 2013 is reproduced hereunder:

> *"4. As per the averments contained in the petition and material available on record, it is apparent that the marriage between the petitioners was solemnized on 11/05/2011 according to Hindu rites and ceremonies at Delhi. No child was born out of the said wedlock. The petitioners have been living separately since 10/07/2011 due to temperamental incompatibility. All the efforts made by the parties to sort out their differences and reconciliation failed."*

10.4. The allegation of the complainant against the appellant on the face of it appears to be false as the complainant had separated from her husband on 11th July, 2011 and therefore, the parties were not staying together during '*Karavachoth*' which fell near Diwali in October/November, 2011. This appears to be one of the cases of matrimonial discord where the aggrieved wife has made complaint against the husband and all her family members and levelled all sorts of allegations.

10.5. Let us assume, that the appellant had disclosed the proceeding under Section 12 of DV Act in the Bio data form. Could the respondent cancel her appointment in that event? Answer is clearly "No". The appellant cannot be denied employment as no criminal case was pending against her and proceedings under the DV Act do not adversely affect her character/antecedents and her suitability for the post. Even in respect of the criminal case, it is well settled that appointment can be denied only in cases in which the criminal case has such affect on the character and antecedents of the candidate that they are not suitable for the post.

10.6. On careful consideration of all the relevant documents placed on record by the parties, it is clear that the complaint under DV Act filed by the appellant's sister-in-law – Suman Sharma against her husband and the relatives containing false averments is not a 'material' fact and does not in any manner effect her suitability to the post in question. However, the concerned

authorities neither considered the complaint and the other documents. There was no application of mind at any stage. The records placed on record do not show any such consideration.

10.7. In matrimonial disputes, the tendency of the wife is to implicate all the family members of the husband including the married brothers and sisters who are living separately from the husband.

10.8. In ***Sheoraj Singh Ahlawat*** **v.** ***State of U.P.,*** (2013) 11 SCC 476, the Supreme Court observed that in matrimonial cases there has been tendency to involve as many members of the family of the opposite party as possible and that such tendency needs to be curbed.

10.9. In ***Geeta Mehrotra*** **v.** ***State of U.P.***, (2012) 10 SCC 741, allegations of torture and harassment were made against the appellants, the sister-in-law and brother-in-law. The Supreme Court held that merely general allegations of mental and physical torture were made without mentioning any such specific incident and thereby quashed the proceedings against the appellants. The Court further observed that in cases of matrimonial disputes, the Courts are expected to be cautious while considering whether the FIR discloses commission of an offence or there is over implication by involving the entire family of the accused (husband) to settle score. The Court referred to ***G.V. Rao*** **v.** ***L.H.V. Prasad,*** (2000) 3 SCC 693 and ***B.S. Joshi*** **v.** ***State of Haryana***, (2003) 4

SCC 675. The relevant portion of judgment in ***Geeta Mehrotra*** (supra) is reproduced hereunder:

> *"21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [(2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that: (SCC p. 698, para 12)*
> *"12. There has been an outburst of matrimonial disputes in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their 'young' days in chasing their 'cases' in different courts."*
> *The view taken by the Judges in that matter was that the courts would not encourage such disputes.*
> *xxx xxx xxx*
> *25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the*

FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. ***Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.****"*

(Emphasis supplied)

10.10. In ***Preeti Gupta* v. *State of Jharkhand***, (2010) 7 SCC 667**,** the Supreme Court while discussing Section 498-A IPC observed that it is a matter of common experience that most of the complaints are filed in the heat of the moment over trivial issues without proper deliberations. The Court further observed that tendency of over implication of all the family members is reflected

in a very large number of cases. The relevant portion of the judgment is reproduced hereunder:

> ***"30.*** *It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.*
>
> *xxx xxx xxx*
>
> ***32.*** *It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations.* ***We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern****.*
>
> *xxx xxx xxx*
>
> ***34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.***
>
> ***35.*** *The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. ...*
>
> *xxx xxx xxx*
>
> ***36.*** *Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of*

common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.

***37.** Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislature. **It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases**. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."*

(Emphasis supplied)

11. ***Whether the respondents applied their mind on the relevant questions at the time of cancellation of the appointment dated 9th October, 2012?***

11.1. The respondent has submitted the original record before this Court which have been examined. The record reveals that the attestation form dated 24th September, 2012 was examined by the Manager (HR) on 26th September, 2012 and she prepared a note in which she pointed out that the appellant has not disclosed the

proceedings under the DV Act in the bio-data form and she sought the advice of the GM (HR) as well as PSHQS as to whether the offer of appointment was valid and her joining be carried out. The matter was thereafter examined by the Senior Manager (HR) who observed in his note dated 28th September, 2012 that *"though the proceedings under the DV Act are quasi-civil in nature but they are conducted as criminal cases and the appellant has suppressed the material fact pertaining to the criminal case in which she was added as one of the accused and therefore he proposed to regret the joining to the appellant."* However no reasons have been given as to how the proceeding under Section 12 of the DV Act was a criminal case. The note of the Senior Manager (HR) was approved by the Executive (Law), AGM (HR), GM (HR), GM (HR-Law), GM (HR-SAP & Admin.), ED (HR & CC) and Director (HR). The Executive (Law) also noted that the pendency of the case has been viewed as a material fact in the proposal and the candidature needs to be rejected as per Clause 20 of the terms and conditions and the offer of appointment be withdrawn/cancelled.

11.2. The record produced by the respondents does not show any deliberations made by the officers of the respondent as to what is the nature of proceedings under DV Act i.e. whether civil or criminal; and whether the proceedings under the DV Act would affect the character and suitability of the appellant to the required post. It appears that the officers had only the copy of the notice received by the appellant which was attached to the attestation

form. The officers did not even consider it proper to call for the copy of the application to find out the nature of the proceedings against the appellant. The officers took the decision only on the basis of the observations made by the Senior Manager (HR) in his note dated 28th September, 2012 that though the proceedings are quasi-civil in nature but the proceedings are conducted as criminal cases and therefore, the appellant is involved in a criminal case. This observation by itself is contrary to the well settled law and no officer cared to look into it. The Executive (Law) as well as the GM (HR-Law) who are expected to know the law did not care to look into the nature of the proceedings under DV Act.

11.3. It appears that none of the officers were aware of the nature of proceedings under DV Act and they also did not take care to either look into the law themselves or seek legal opinion in the matter. As such, the whole proceedings before taking the decision of cancellation of the appointment have been conducted carelessly without looking into the law and the observations of the Senior Manager (HR) that the appellant was involved in criminal case is based on surmises and conjectures. The decision making process of the respondent is therefore, clearly deficient. The respondents were expected to first take a correct view of the applicable law for which they had to either look into the law themselves or if in doubt, they could have taken a legal opinion. However, the officers neither knew the law nor cared to look into the law nor thought it proper to seek a legal opinion. A wrong view of the law

was taken and then applied to the case which was bound to lead to a wrong decision.

11.4. The respondents have relied upon ***Tata Cellular* v. *Union of India***, (1994) 6 SCC 651. In ***Rashmi Metaliks Limited and Another v. Kolkata Metropolitan Development Authority and Others,*** (2013) 10 SCC 95 the Supreme Court summarized the grounds upon which an administrative action is subject to judicial review as under:

> ***"9.****Tata Cellular [(1994) 6 SCC 651] states thus: (SCC pp. 677-78, para 77)*
> *"77. The duty of the court is to confine itself to the question of legality. Its concern should be:*
> *(1) Whether a decision-making authority exceeded its powers?*
> *(2) committed an error of law,*
> *(3) committed a breach of the rules of natural justice,*
> *(4) reached a decision which no reasonable tribunal would have reached or,*
> *(5) abused its powers.*
> *Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*
> *(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
> *(ii) Irrationality, namely, Wednesbury [Associated Provincial Picture Houses Ltd. v.Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] unreasonableness.*

(iii) Procedural impropriety…"

11.5. Applying the above principles to the present case, we hold the order of cancellation of the present appeal of the appellant to be illegal, irrational as well as suffering from procedural impropriety.

12. ***Whether the CMD applied his mind on the grounds raised by the appellant in her appeal?***

12.1. On 15th October, 2012, the appellant preferred a departmental appeal against the order of cancellation of appointment dated 9th October, 2012 before the Chairman and Managing Director of BHEL on various grounds inter alia that the appellant was not involved in any criminal case and therefore, there is no concealment of any material fact in the bio-data form dated 18th June, 2012; the proceedings under the DV Act is the result of matrimonial discord between the appellant's brother and his wife which is not a criminal case; there was no intentional/deliberate concealment of any material fact as the appellant voluntarily disclosed the information relating to the complaint under the DV Act in the attestation form dated 24th September, 2012; the appellant bonafidely believed that no criminal case was pending against her; and in ***Commissioner of Police*** **v.** ***Sandeep Kumar***, (2011) 4 SCC 644, the Supreme Court condoned the minor indiscretions and granted relief to the candidate who had concealed the involvement in a FIR whereas in the present case in the present case, no FIR had been registered against the appellant.

12.2. The appeal dated 15th October, 2012 marked by Director (HR) to Executive Director (HR & CC) who marked it to General Manager (HR & Law) who marked it to Executive (Law). The Executive (Law) prepared a note dated 9th November, 2012 that the recruitment section may consider the representation of the appellant and in particular whether the pendency of a case under Section 12 of the DV Act was a material fact. The relevant portion of the comments of the Executive (Law) dated 9th November, 2012 are reproduced hereunder:

> ***"3. In the light of the aforesaid judgment the withdrawal of candidature of Miss Nidhi Kaushik seems to be sustainable. Recruitment Section may also see/ consider the representation of Miss Nidhi Kaushik and in particular reconfirm whether pendency of case under Section 12 of the Act is a material fact."***

12.3. The detailed note dated 9th November, 2012 of the Executive (Law) of BHEL was put up before AGM (HR – RMX) who observed that the candidate herself considered the Court notice of the case under DV Act as a 'material' fact and chose to suppress it at the interview stage and declare it at the next stage for reporting of the joining. It was further observed that the company had earlier considered the issue and had concluded that the material suppressed was a material fact and there is no provision for review by the recruitment section. The relevant portion of the note date 14th November, 2012 of the AGM (HR – RMX) is reproduced hereunder:

> *"From the above, it may be seen that* ***the candidate herself considered the Court Notice a 'material'fact and chose to suppress it at interview stage and declare it at the next stage of reporting for joining****. She also declared in the bio-data form that the statements 'in this form are true and complete' when she had actually suppressed the information that a Court Notice had been issued to her.* ***The Company had earlier considered the issue and had concluded that the information suppressed was a material fact, since no exceptions to the type of criminal case/law suit has been specified****.*
> *As regards, review by Recruitment section in view of the candidate's assurance of the best efficiency and diligence towards duties (Ref: Para 18), we wish to state that* ***there are no provisions under which this may be done****."*
>
> (Emphasis supplied)

12.4. The note dated 14th November, 2012 of AGM (HR – RMX) was approved by the ED (HR & CC) and Director (HR) on 23rd November, 2012 whereupon the letter dated 5th December, 2012 was issued to the appellant.

12.5. The record of BHEL submitted before this Court reveals that:

12.5.1. The appellant's appeal to the CMD was never put up before the CMD.

12.5.2. The appeal was considered by the same officers who had earlier taken the decision to cancel the offer of appointment.

12.5.3. There is no authorization by the CMD in favour of the officers who considered the appeal.

12.5.4. The record further reveals that none of the grounds raised by the appellant in the appeal were considered by any of the officers before whom the file was put up, namely that the proceedings under the DV Act are civil in nature; the appellant was not involved in any criminal case; she bonafidely believed that no criminal case was pending against her and in any case there was no intentional/deliberate concealment of any material fact as the appellant voluntarily disclosed the information relating to the complaint under Domestic Violence Act in the attestation form dated 24th September, 2012.

12.5.5. Although the Executive (Law) in his comments dated 9th November, 2012 specifically called upon the HR (Dept.) to consider whether the pendency of the case under Section 12 of the DV Act was a material fact, the HR (Dept.) clearly refused to consider it.

12.5.6. The observation that the candidate herself considered the concealment to be material is false as the appellant never made such admission.

12.5.7. As such, it is a clear case of non-application of mind by the respondent on the appeal filed by the appellant.

12.6. The decision making process of the respondent at the stage of cancellation of the offer of appointment as well as at the stage of appeal suffer from illegality, irrationality and procedural impropriety and therefore, this case warrants judicial review.

12.7. It is also noted that the complaint under Section 12 of the Domestic Violence Act was not before the authorities either at the stage of cancellation or at the stage of deciding the appeal.

12.8. The respondents' submission that the appeal was rejected after full deliberations is false as the officers refused to consider the appeal on merits.

12.9. The observations made by the Supreme Court in ***Commissioner of Police*** **v.** ***Dhaval Singh****,* (1999) 1 SCC 246 squarely apply to the present case. In ***Commissioner of Police*** **v.** ***Dhaval Singh****,* (1999) 1 SCC 246*,* the respondent while seeking public appointment was alleged of concealment of material fact relating to pendency of criminal case against him. However, before any order of appointment could be made, respondent wrote to the concerned officer and disclosed the material fact. The Supreme Court held that since the respondent voluntarily disclosed the pending criminal case, the order of cancellation of candidature despite such disclosure is without proper application of mind. The relevant observations of the Court are reproduced hereunder:-

> *"5. That there was an omission on the part of the respondent to give information against the relevant column in the Application Form about the pendency of the criminal case, is not in dispute. The respondent, however, voluntarily conveyed it on 15-11-1995 to the appellant that he had inadvertently failed to mention in the appropriate column regarding the pendency of the criminal case against him and that his letter may be treated as "information". Despite receipt of this communication, the candidature of the respondent was*

cancelled. A perusal of the order of the Deputy Commissioner of Police cancelling the candidature on 20-11-1995 shows that the information conveyed by the respondent on 15-11-1995 was not taken note of. ***It was obligatory on the part of the appellant to have considered that application and apply its mind to the stand of the respondent that he had made an inadvertent mistake before passing the order. That, however, was not done. It is not as if information was given by the respondent regarding the inadvertent mistake committed by him after he had been acquitted by the trial court — it was much before that. It is also obvious that the information was conveyed voluntarily. In vain, have we searched through the order of the Deputy Commissioner of Police and the other record for any observation relating to the information conveyed by the respondent on 15-11-1995 and whether that application could not be treated as curing the defect which had occurred in the Form. We are not told as to how that communication was disposed of either. Did the competent authority ever have a look at it, before passing the order of cancellation of candidature? The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material.*** *The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."*

(Emphasis supplied)

13. ***<u>Consequences of refusing to follow well settled law</u>***

13.1. If an authority does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts.

13.2. The respondents have dared not to follow the well settled law relating to the nature of proceedings under Section 12 of the

DV Act. Reference in this regard may be made to the provisions of the DV Act and the catena of the judgments in which it is clearly held that the proceedings under Section 12 of the DV Act are civil in nature. The respondents did not controvert any of the provisions or the judgments and termed them as irrelevant meaning thereby that the binding law is irrelevant for them. The consequence of an authority not following the well settled law amounts to contempt of Court. Reference in this regard may be made to the judgments given below.

13.3. In ***East India Commercial Co. Ltd.*** **v.** ***Collector of Customs,*** **Calcutta,** AIR 1962 SC 1893, Subba Rao, J. speaking for the majority observed reads as under:

> *"This raises the question whether an administrative tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared under Art. 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority including inappropriate cases any Govt. within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High*

Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. ***We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."***

(Emphasis supplied)

13.4. The above legal position was reiterated in ***Makhan Lal* v. *State of Jammu and Kashmir***, (1971) 1 SCC 749, in which Grover, J. observed (at page 2209)—

"The judgment which was delivered did not merely declare the promotions granted to the respondents in the writ petition filed at the previous stage as unconstitutional but also laid down in clear and unequivocal terms that the distribution of appointments, posts or promotions made in the implementation of the communal policy was contrary to the constitutional guarantee of Article 16. ***The law so declared by this Court was binding on the respondent-State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not in the previous petition.***

(Emphasis supplied)

13.5. In ***Baradakanta Mishra Ex-Commissioner of Endowments* v. *Bhimsen Dixit,*** (1973) 1 SCC 446, the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as under:-

> ***"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law"***
>
> (Emphasis supplied)

13.6. In **Re: *M.P. Dwivedi*, (1996) 4 SCC 152**, the Supreme Court held as under:-

> ***"22.*** *... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.* ***We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."***
>
> (Emphasis supplied)

13.7. In ***T.N. Godavarman Thirumulpad v. Ashok Khot,*** (2006) 5 SCC 1, the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial system rests and observed as under:-

> ***"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial***

***system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with.*"**

(Emphasis supplied)

13.8. In ***Maninderjit Singh Bitta* v. *Union of India,*** (2012) 1 SCC 273**,** the Supreme Court held as under:-

"26. *...* ***Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests.*** *The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs…*

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29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. *Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. ...* ***Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a***

sufficient ground of defence in a contempt proceeding. *Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period."*

(Emphasis supplied)

13.9. In ***Priya Gupta* v. *Addl. Secy. Ministry of Health and Family Welfare and others,*** (2013) 11 SCC 404, the Supreme Court held as under:-

> ***"12.*** *The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. East*

India Commercial Co. Ltd. v. Collector of Customs [AIR 1962 SC 1893] and Official Liquidator v. Dayanand [(2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] .) (SCC p. 57, paras 90-91)

13. *These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.*

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19. *It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court.* ***To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained.*** *Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature*

which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. Such distinction, if permitted, shall be opposed to the basic rule of law.

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23. *... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified…"*

(Emphasis supplied)

13.10. In ***Hasmukhlal C. Shah*** **v.** ***State of Gujarat,*** (1978) 19 Guj LR 378, a Division Bench of Gujarat High Court after examining several decisions on the point, observed:

"11…in Government which is ruled by laws there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of

law under the Constitution might be rendered a futile exercise…"

13.11. In ***State of Gujarat* v. *Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya***, 1982 CriLJ 2255, the Division Bench of the Gujarat High Court summarized the principles as under:-

> ***"11.*** *From the above four decisions, the following propositions emerge:*
> ***(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;***
> ***(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;***
> ***(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."***
>
> (Emphasis supplied)

13.12. In ***C.T. Subbarayappa* v. *University of Agricultural Sciences, Bangalore*, (1998) 5 Kant LJ 263,** the Karnataka High Court held as under:

> ***"8.*** *It was expected that after declaration of the law by this Court regarding powers of the Board of Regents vis-*

a-vis the recommendations of the Selection Committee based on merits, the Board will function in accordance with the Constitutional mandates and the requirements of law, but it seems the members of the Board had hardly any regard for the rule of law and the decisions rendered by this Court. In the case of Baradakanta Mishra v. Bhimsen Dixit [(1973) 1 SCC 446 : AIR 1972 SC 2466.] , it has been held that such an action can very well be held as coming within the principles underlying the law of contempt.

9. In the above view of the matter, though I am not proposing to direct initiation of contempt proceedings for the present, it is high time that the University authorities be warned that if they, in future, are found to be acting in violation of the law declared by the Courts, then they may be subjected to appropriate contempt proceedings. At the same time it is necessary to direct the Registrar of the University to always acquaint the members of the Board of Regents and other University authorities about the law declared by this Court and the Supreme Court for its strict adherence and compliance. It should be taken to be the duty of the Registrar to place before the members of the Board of Regents all the relevant judgments of the Court as and when meetings are held dealing with the relevant subjects. *In conclusion, for the reasons stated above the appointment of the second respondent as Assistant Professor as contained in order dated 18-12-1995 (Annexure-E) is quashed and the Board of Regents is directed to reconsider the question of appointment to the said post out of the three names recommended by the Selection Committee in accordance with the Statute 30 and law declared by this Court. This should be done within six weeks from today. Till that time the second respondent is permitted to continue on the post, which will be subject to the final decision of the Board of Regents.*

(Emphasis supplied)

13.13.In ***Parmal Singh* v. *Union of India***, WP(C) No.7231/2011 decided on 29th September, 2011, the Division Bench of this Court taking note of the judgment of the Supreme Court in ***Baradakanta Mishra*** (*supra*) directed the authorities to apply the principles of law to other similarly situated persons. This Court further imposed punishment of censure against the officer in default with directions to keep the copy of the judgment in his service book to be considered as and when his case was considered for promotion by the DPC. The Division Bench held as under:-

> *"8. If a general issue of law affecting large number of persons is decided by a Court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on the others.*
> *9. The note extracted herein above says that the Ministry of Finance has agreed to extend the implementation of the Court judgment to only those applicants who approach the Court and not the others.*
> *10. The decision creates an artificial distinction not recognized by law for the reason it would be arbitrary to say that law means*
> *A for those who go to the Court, and it means*
> *B for those who do not.*
> *11.* ***While disposing of the writ petition and directing the respondents to treat the mandamus issued vide order dated 9.10.2009 passed in WP (C) No. 12258/2009 as the mandamus issued in the instant writ petition, we censure Sh. Pritam Lal, Under Secretary, (Pr-V), Government of India, Ministry of Home Affairs and direct that a copy of this decision would be placed in his service book and as and when his case is placed***

before a Departmental Promotion Committee, it be highlighted that this Court has censured Sh. Pritam Lal, Under Secretary (Pr-V).*"*

(Emphasis supplied)

13.14. In ***EX-CT Nardev*** **v.** ***UOI,*** (2011) 180 DLT 328 (DB), the Division Bench of this Court, in which one of us (J.R. Midha, J.) was a member, applied the aforesaid principles of law to a service matter and held as under:

> ***"15.*** *The instant case manifests such conduct of the respondents. The present adjudication has been necessitated only because the respondents have failed to abide with the dicta laid down by this Court in the judgment passed as back as in 2002 and subsequently.*
>
> ***16.*** *It, therefore, needs no elaboration that* ***failure to abide by the principles laid down by the Supreme Court as well as by this Court in the aforenoticed binding judicial precedents would render the authorities liable for proceedings under the Contempt of Court Act.*** *We have brought this noteworthy aspect to the notice of the respondents and are refraining from taking further action on this occasion.*
>
> ***17.*** *There is yet another aspect to this matter.* ***The failure of the executive to abide with the well settled legal principles generates unwarranted and frivolous litigation. This very issue has also been considered inHead of Deptt. Air Force Station v. R.K. Giri through LRs. (supra).***
>
> ***18.*** *For the reasons and the ratio of the aforenoticed judicial precedents, we are of the view that the present writ petition was wholly unnecessary and the respondents should have voluntarily taken the initiative to grant such relief to the petitioners to which they were entitled in view of the rule position as well as the principles of law laid down by this Court which had been affirmed by the Division Bench as well as by the*

Supreme Court. Valuable judicial time has been wasted. The petitioners, positioned as they are, can ill afford this kind of litigation. The respondents are therefore liable to pay costs of this litigation. However, it is clear that ***in case the judicial pronouncements are not complied with and action taken at the earliest by the respondents, we would be compelled to take more serious view in the matter.***

(Emphasis supplied)

13.15. In ***Head of Department, Air Force Station Amla*** **v.** ***Ram Kumar Gir***, III (2010) ACC 279**,** the Air Force raised a plea of sovereign immunity in a case of motor accident compensation arising out of a road accident. This Court noted that the law was well settled by the judgment of the Supreme Court that the doctrine of sovereign immunity has no application in respect of the compensation cases under Motor Vehicles Act. Taking note of ***Baradakanta Mishra*** (supra), this Court issued a notice to the Attorney General to look into the matter and consider the implication of the government refusing to follow the well-settled law. Relevant portion of the said order is reproduced hereunder:-

"*34. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.*

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36. ***Before passing any further order in this matter, this Court would like the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of***

sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. *The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future."*

(Emphasis supplied)

In pursuance to the above notice, the Law Ministry issued a memorandum to the effect that sovereign immunity should not be pleaded by the Government in any case for compensation arising out of motor vehicle accident involving the government vehicles on government duty. The relevant portion of the order dated 28th May, 2010 passed in the above matter is reproduced hereunder:-

"1. The learned counsel for the appellant submits that the Air Headquarters, Department of JAG (Air) has issued as circular dated 12th May, 2010 to all its departments directing them not to raise the plea of sovereign immunity in any case of motor vehicle accident. It has been further directed that if any such case has been filed, the same may be withdrawn. Copy of the said circular has been placed on record.

2. The learned counsel for the appellant further submits that the Solicitor-General of India has advised the Law Ministry to issue a memorandum to the effect that the sovereign immunity should not be pleaded by the Government in cases for compensation arising out of motor vehicle accidents involving the use of Government vehicles on Government duty. The learned counsel for appellant submits that the memorandum is expected to be issued shortly."

14. ***False and misleading statements by the respondents***

The appellant impleaded Chairman and Managing Director of BHEL as respondent no.2, Director (HR) as respondent no.3 and General Manager (HR) as respondent no.4. Respondents no.2 to 4 filed a reply dated 6th April, 2013 and additional reply dated 23rd August, 2013 supported by an affidavit of Shri B. Shankar, Executive Director (HR & CC) before the Writ Court. Respondent nos.2 to 4 also filed a synopsis dated 21st November, 2013 supported by an affidavit of Shri B. Shankar, Executive Director (HR & CC) and an additional synopsis dated 22nd February, 2014. The respondents have made the following false and misleading statements in the replies dated 6th April, 2013 and 23rd August, 2013 as well as the synopsis dated 21st November, 2013 and 22nd February, 2014 which are as under:-

14.1. ***The appellant is involved in a criminal case in under DV Act in which she is accused of having committed offence of attempt to murder which is punishable under Section 307 with imprisonment for a period of 10 years. The appellant was accused No.4 in the said criminal case. The appellant has admitted that a criminal case is pending against her in the attestation form dated 24th September, 2012.***

All the aforesaid statements are absolutely false and incorrect. As discussed above, domestic violence is not an offence under the DV Act. Secondly, the proceedings under Sections 12 and 18 to 23 of the DV Act are purely civil proceedings and the learned Magistrate did not and could not have taken cognizance of Section 307 IPC and therefore, no criminal case was pending

against the appellant. Thirdly, the appellant was respondent no.4 and not accused no.4 as deposed by respondents in their affidavit. Fourthly, the appellant never admitted the pendency of a criminal case in the attestation form.

14.2. ***In para 2.11 of the reply dated 6th April, 2013, the respondents stated that the appellant's appeal against the respondent's cancellation letter dated 9th October, 2012 was considered and dismissed by Chairman and Managing Director vide letter dated 5th December, 2012.***

This statement is absolutely false and incorrect as the appellant's appeal to the Chairman and Managing Director was never considered by the Chairman and Managing Director of BHEL. The original records produced by the respondents before this Court reveal that the appellant's appeal was never put up before the Chairman and Managing Director. The records also do not reveal any authority by the Chairman and Managing Director to the officers of BHEL to consider the appeal which was addressed to the Chairman and Managing Director. Mr. M.G. Abhyankar, General Manager (HR) admitted before this Court on 19th May, 2014 that the appellant's appeal was not considered by the Chairman and Managing Director. The appellant's appeal was considered by the same officers who had earlier taken the decision to cancel and appellant's offer of appointment. The respondents have also admitted this fact in para 8 of the synopsis dated 22nd April, 2014 where it is stated that the appeal was considered by eight senior officers of BHEL and rejected by the Director (HR).

This clearly shows that the statement made in para 2.11 of the reply is false.

The original records produced by the respondents further reveal that the appellant's appeal was not considered on merits. Although the Executive (Law) had observed in his note dated 9th November, 2012 that the HR Department may consider whether pendency of application under Section 12 of the DV Act is a "material fact", AGM (HR-RMX) declined to consider this important aspect on the ground that the appellant herself considered the Court notice under DV Act to be material and therefore, it was concluded that the notice under DV Act was a "material fact". We do not find any admission of the appellant in this regard and the observation clearly appears to be perverse. The AGM (HR-RMX) further observed that there was no provision for review by the recruitment section and therefore, declined to consider any of the grounds raised by the appellant. It is thus clear from the record that the respondents rejected the appeal of the appellant without considering it on merits and therefore the statement made before this Court the appellant's appeal was considered and rejected after due deliberation is absolutely false. This Court would not have known the truth if the original records would not have been called and perused.

14.3. ***Concealment of material facts.***

The respondents are also guilty of concealment of material fact from this Court that the appellant's appeal was not put up before the Chairman and Managing Director; there was no

authorization by the Chairman and Managing Director to the officers to consider the appeal and the appeal was considered by the same officers who had initially cancelled the appellant's offer of appointment and further that the appeal was not even considered on merits and none of the grounds raised by the appellants were even looked into.

14.4. ***The respondents misled this Court***.

The respondents attempted to mislead this Court by raising a frivolous defence with respect to the nature of proceedings under Section 12 of the DV Act and the catena of judgments referred to and relied upon by the appellant. The law with respect to the nature of proceedings under Section 12 of the DV Act is clear and unambiguous from the relevant provisions as well as the catena of judgments of the Supreme Court and various High Courts including this Court that the proceedings are civil in nature; domestic violence is *per se* not an offence; the Civil Court, Family Court and Criminal Court have concurrent jurisdiction to entertain and try the application under Section 12; the Court can formulate its own procedure to conduct the proceedings under Section 12 and the DV Act is not in derogation with other laws and that the appellant had to invoke the offences under IPC by a separate action. The respondents however, did not controvert or respond to any of the provisions or the judgments referred to hereinabove and still took a stand that the case under Section 12 of the Domestic Violence Act is a criminal case and attempted to meet the settled position of law by calling it irrelevant. This is a clear attempt to

mislead this Court. Anyway we are not misled and we hold that the law is well settled and submissions of the appellant with respect to the nature of proceedings under DV Act were relevant and the respondent's plea of same being irrelevant was to mislead this Court.

14.5. The respondents submitted before this Court that the appellant is accused of a serious offence of domestic violence to attempt to kill her sister-in-law under Section 307 IPC. To make good this argument, the respondents were required to place the correct law before this Court as to what is the meaning of 'criminal case', 'an offence' and 'accused of an offence'. However, the respondents failed in its duty and instead only reference was made to the meaning of the word 'Criminal' in Black Law Dictionary mentioned in para 7 of the synopsis dated 21st November, 2013. Since no reference was made by the respondent to the definition of 'offence' and 'accused of offence' and other relevant provisions of Cr.P.C., the appellant also did not make any submissions in reply. It appears that the respondents took a chance to test the legal knowledge of this Court. It took us some time to take out the relevant provisions of Cr.P.C., IPC, General Clauses Act and the relevant judgments mentioned above but we would like to place on record that so far as the respondents are concerned they have utterly failed in their duty to place the correct law before this Court.

14.6. The appellant's offer of appointment was cancelled by the respondent vide letter dated 9th October, 2012 on the sole ground

that the proceedings under Section 12 of the DV Act is a criminal case which has been concealed by the appellant. The stand taken by the respondents before the writ Court in its reply dated 6th April, 2013 and additional reply dated 23rd August, 2013 was also on the same lines that the appellant is accused of a serious offence of domestic violence of attempt to murder her sister-in-law which was suppressed by her. However, in the synopsis filed by the respondents before this Court, an additional ground was taken that even if the proceedings under Section 12 of the DV Act is not a criminal case, it would fall within the term 'law suit'. First of all, no additional ground can be urged which was not there in the original order of cancellation of appointment. Secondly, the additional ground urged is contradictory and inconsistent to the first ground. Thirdly, no submissions were made by the learned counsel at the time of hearing as to what is the meaning of the term 'law suit' and how it would cover the proceedings under Section 12 of the DV Act. This is yet another attempt to mislead this Court.

14.7. The relevant portions of the replies dated 6th April, 2013, additional reply dated 23rd August, 2013, synopsis dated 21st November, 2013 and 22nd February, 2014 are reproduced hereunder:-

14.7.1. **Relevant extract of the reply dated 6th April, 2013**

> "**PRELIMINARY OBJECTIONS**
>
> 1. ...While appearing for interview she filed Bio-Data form on 18.6.2012, wherein she made a deliberate false declaration in response to the specific query No.12

wherein she declared that she was not involved in any criminal case/law suit. ... **Later on petitioner herself admitted that the criminal case was pending against her, while signing the Attestation Form on 24.9.2012**...

...

2. **She did not disclose that she is accused No.4 in Criminal Case No.V-175/12** in which Summons dt.12.4.2012 (Annexure R-6) were issued to her by the Court of MM but she deliberately and falsely indicated in the Bio-data Form on 18.6.2012 that there is NO case pending against her. .... It appears that the case involved alleged serious offences of Domestic Violence of attempt to murder Smt. Suman Sharma, complainant...

...

4. Moreso, the appeal filed by the petitioner to the Chairman & Managing Director of respondent Corporation has since been dismissed vide letter dt.5.12.2012...

PARAWISE REPLY:

1.1 ...It is submitted that the **petitioner has deliberately and intentionally concealed facts pertaining to criminal case pending against her, while filling up her BIODATA. ... The petitioner therefore, suppressed the pendency of this criminal case against her in her Bio-data from dt. 18.6.2012 (Annexure R-5). ... she did not disclose that she was arrayed as Accused No.4...**

1.2 ...On this date **the petitioner was in knowledge of the fact that she was under Trial of a criminal offence against her...**

1.3 ... The Petitioner's contention that on 18.6.2012 there was no criminal case nor law suit pending against her is patently wrong and contrary to the documents on record. In fact the Petitioner has made herself liable for the offence of perjury by making false statement on oath

before this Hon'ble Court.

...

1.5 ... in the present case the trial is still pending and the allegation is attempt to murder the complainant by her husband and relatives, including the Petitioner.

REPLY TO BRIEF FACTS:

2.2 ...The Petitioner submitted the Bio-data Form but **concealed the factum of pendency of criminal case against her**.

2.6 to 2.10 ...**This Attestation Form revealed pendency of the criminal case against Petitioner** but she is now feigning ignorance of pendency of criminal case...

2.11 In reply to Para 2.11 it is submitted that **the Petitioner's appeal against the Respondent's cancellation letter dt.9.10.2012 was considered and dismissed by the Respondent No.2 vide letter dt.05.12.2012** (Annexure R-8).

PARAWSIE REPLY TO THE GROUNDS:

3.1 ... It is submitted that **the petitioner had deliberately and intentionally concealed the factum of criminal case pending against her under Domestic Violence Act.** The petitioner was served vide Court Summons dt.12.4.2012 in the criminal case under Domestic Violence Act. **The petitioner suppressed the pendency of the criminal case** in her Bio-data form dt.18.6.2012...

...

3.6 ...**The petitioner herein is involved in criminal case** where the Complainant had alleged in her complaint before Metropolitan Magistrate that there was attempt to kill the Complainant if demand of the dowry is not met..."

(Emphasis supplied)

14.7.2. **Relevant extracts of additional reply dated 23rd August, 2013**

"3. That the respondent, BHEL has ascertained particulars of the said Court case V-175/2012 and **found that she was involved in a serious offence** against her sister-in-law, Ms. Suman Sharma, who had filed complaint against her and others..."

4. That the Petitioner in her Rejoinder has falsely reiterated that she was not engaged in any Criminal case or law suit pending against her and she did not make false allegation deliberately at the time of submission of the bio-data on 18.6.2012, which is found to be false and misleading. The definition of 'Domestic Violence' as contained in Section 3 of the Domestic Violence Act reads as under ... **Obviously the acts of 'Domestic Violence' and 'offences' punishable under the Criminal Law..."**

(Emphasis supplied)

14.7.3. **Relevant extracts of synopsis dated 21st November, 2013 of the respondents before this court**

"**Legal Submissions:**

6. In her Appeal and submissions made by her Counsel in the Court she stressed that Domestic Violence was not in criminal Court. **This plea is obviously irrelevant,** as the Declaration made by her on 18.6.2012 (at Page 182) was that she was involved in "any criminal case/law suit at any time". Further the query No.12(h)(i) in Attestation Form (at page 196) was generic and it asked whether "Is any case pending against you in any Court of Law" to which reply was 'Application pending in Domestic Violence Act'. Certainly the Court of Domestic Violence was a Court of Law. It is not necessary to decide whether it was a criminal court, as she had made declaration with respect to both "criminal case/law suit" in Bio-data and also with respect to any case pending in Court of law in Attestation Form (Page 196). Without prejudice to the

above it is pertinent to submit that **the case was being tried by Metropolitan Magistrate and in the allegation of 'Domestic Violence' was 'criminal' as it is attempt to murder. ...**

7. **Further under Section 32 of the Act the Court of 'Domestic Violence' takes 'cognizance' of Criminal Offence**. The word **'Criminal'** is described by Blacks Law Dictionary to mean (i) "having the character of crime, in the nature of a crime <criminal mischief> connected with the administration of penal justice <the criminal Courts>. **In this case the allegation against the Appellant was attempt to Murder and the case of Appellant was being tried by a M.M.** This case was settled later on in March, 2013 when the complainant got payment of Rs.13.5 lacs. However, till then the case was pending trial when the False Declaration was made on 18.6.2012 and even when provisional letter of appointment was cancelled/withdrawn by Respondent on **9.10.2012.**

8. In this case it is not necessary to decide whether it was criminal case because she had made an omnibus declaration in her bio-data dt.18.6.2012 that no criminal case/law suit was pending, which have been conclusively proved to be **false** to her own knowledge, as she had received Court Summons dt.12.4.2012 and had attended the D.V. Court on 4.6.2012. This false declaration was made with criminal intent to conceal and to defraud BHEL so that was she could get appointment in Bharat Heavy Electricals Ltd. (BHEL), which is a 'Maharatna' Company of the Govt. of India, whose Management would not recruit any person whose integrity is doubtful and who has tainted antecedents. ...

...

10. Legally no public employment can be given to fraudulent persons, who have the audacity to make false declaration about any litigation against them. The technical defence that the case Domestic Violence (of attempt to murder) was not criminal case is neither

tenable nor even relevant as the declaration related to any case in Court of law...."

(Emphasis supplied)

14.7.4. **Relevant extracts of synopsis dated 22nd February, 2014 of the respondents before this Court**

"6. ... She was 27 years of age residing in Delhi at the time of filing the Bio-data on 18.6.2012 wherein she made a false declaration that she was not involved at any time in any criminal case/law suit, which was found to be *false*, as she was summoned and had appeared in the Domestic Violence Court Karkardooma on 4.6.2012 in which **she was accused of having committed alleged crime of *'attempt to murder'* her sister in law**, which **case** was pending till 30.3.2013 i.e. even *after* cancellation of her letter of appointment letter on **9.10.2012** (page 204). This case was settled on 30.3.2013 (Page 303) after payment of Rs.13.5 lacs to complainant, as initial instalment. Hence it was *not* a 'trivial' offence/case, as claimed as by her.

7. The various judgments cited by the Appellant during oral arguments could be broadly summarised as under:-

a) Judgments whether the Domestic Violence Court (in which Appellant case was pending) is a Criminal or Civil Court?

...

c) Cases of Semi-Literate persons, coming from village back-ground or who were in the age group of 19-20 years and pleaded bonafide mistake.

It is submitted that the judgments with regard to cases covered under (i) above are irrelevant, as this case is *not* dependent upon whether Domestic Violence Court is criminal or civil. It was a case of *false declaration* by Appellant which declaration was of generic nature i.e. in respect to *both* criminal and/or civil cases. **Moreover, various Section of Domestic**

Violence Act are of criminal nature e.g. as Section 28 of the Domestic Violence Act says Criminal Procedure Code will apply and the DV Court is presided by Metropolitan Magistrate. Section 23 (grant of interim & exparte orders), Sections 31, 32 & 34 of the Act deal with criminal matters. But this issue is *not relevant*, since here Nidhi Kaushik had made *false declaration* saying that she was not involved in any criminal case or civil suit at any time. ...

As regards category (iii) type of cases it is submitted that **the appellant was not involved in a 'trivial' dispute. Certainly it is proved on record that the complainant had alleged the Appellant that she had tried to commit *murder* of her sister in law, which is a very serious offence and attracts imprisonment for a period of 10 years under Section 307 IPC.**

...

8. ...**the cancellation of provisional appointment of Appellant was made after due deliberations and further her Appeal was considered by *8(eight) Sr. Officers of BHEL* when her Appeal was rejected by Director (HR).** The office notes have been filed alongwith Affidavit dt.20.1.2014. **Hence there is *full and exhaustive consideration ...*"**

(Emphasis supplied)

15. ***Consequences of filing false affidavit***

15.1. In ***Dhananjay Sharma* v. *State of Haryana,*** (1995) 3 SCC 757, the Supreme Court held as under:-

> *"38...The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting*

the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. ***Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice.***

(Emphasis supplied)

15.2. In ***Murray & Co.*** **v.** ***Ashok Kr. Newatia,*** (2000) 2 SCC 367, the Supreme Court held as under:-

*"****While it is true that the statement made in the affidavit has been introduced as and by way of a denial but the fact remains that such a statement has in fact been made in an affidavit before this Court. The litigant public ought to be extremely careful and cautious in the matter of making statements before courts of law.*** *Whether, however, the respondent has obtained a definite advantage or not is wholly immaterial in the matter of*

commission of offence under the Act, though the same would be a relevant factor in the context of punishment to be imposed against a contemner..."

(Emphasis supplied)

16. ***Ethics in Litigation - Duty not to deceive or mislead***

16.1. The most basic obligation of the litigant and his lawyer is not to deceive or mislead the Court. This responsibility extends to every function including the presentation and interpretation of facts, drafting of pleadings and documents, legal argument and other submissions to, or communications with the Court. The duty not to intentionally mislead or deceive is only the bare minimum required of the advocate and solicitor. As an officer of the Court, he is expected to advance the public interest in the fair administration of justice even if this would jeopardise his client's interests. Hence, he is required to inform the Court of all relevant decisions and legislative provisions of which he is aware whether the effect is favourable or unfavourable towards the contention for which he argues. In the same context, he is prohibited from advancing submissions, opinions or propositions which he knows to be contrary to the law. He is bound not to make any statements which are inaccurate, untrue and misleading.

16.2. In ***D.P. Chadha* v. *Triyugi Narain Mishra*, (2001) 2 SCC 221,** the Supreme Court held as under:-

*"**22. ... A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself**. It needs a high degree of probity and poise to strike a balance and arrive at the*

place of righteous stand, more so, when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. ***However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent.*** *In such a situation the wrong of the intention and impropriety of the conduct is more than apparent..."*

(Emphasis supplied)

16.3. This Court is of the view that the respondents did not fairly state the facts but stated them in such a way as to mislead the Court as to true facts and thereby abused the process of law. The respondent did not disclose all the material facts fairly and truly and stated them in distorted manner and thereby misled the Court. The respondents have attempted to overreach and mislead this Court by false and untrue statements and withholding true information which would have a bearing in the matter. The respondent's conduct to mislead the Court not only injured the appellant but also caused most mischievous consequence to the administration of justice i.e. namely abuse of the process of Court.

The respondent has attempted to impede or undermine or obstruct the free flow of the holy stream of justice, which has caused serious damage to the institution. The law does not require the Court to sit back with folded hands and fail to take any action in the matter. We cannot, therefore, condone the deliberate attempt to mislead the Court.

17. ***Frivolous litigation***

17.1. In ***Urban Improvement Trust, Bikaner* v. *Mohan Lal***, 2009 (13) SCALE 671, the Supreme Court showed a serious concern that frivolous and unjust litigation by the Government and statutory authorities are on increase. The Supreme Court observed as under:-

> *"4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They cannot behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice, for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.*
>
> *5. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions*

to obstruct the path of justice. We may refer to some of the decisions in this behalf.

5.1) In Dilbagh Rai Jarry v. Union of India [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

> *"The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of*

government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

5.2) In Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.Rs. [(1979) 4 SCC 176] held:

> *"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable..."*

5.3) In a three Judge Bench judgment of Bhag Singh and Ors. v. Union Territory of Chandigarh through LAC, Chandigarh: [(1985) 3 SCC 737]:

> *"3.... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."*

6. Unwarranted litigation by governments and statutory

authorities basically stem from the two general baseless assumptions by their officers. They are:

> *(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.*
>
> *(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision. The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to*

eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to bona fide and needy litigants."

17.2. In the recent case of ***Subrata Roy Sahara* v. *Union of India,*** MANU/SC/0406/2014, J.S. Khehar, J. observed that the Indian judicial system is grossly afflicted with frivolous litigation and this abuse of the judicial process is not limited to any particular class of litigants and the State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions.

> ***150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?...***
>
> *xxx xxx xxx*
>
> *152.* ***This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just***

because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. *In private litigation as well, the concerned litigant would continue to approach the higher Court, despite the fact that he had lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigant's perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise.*

153. ***Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. …***

(Emphasis supplied)

18. **Imposition of costs**

18.1. In ***Ramrameshwari Devi*** **v.** ***Nirmala Devi***, (2011) 8 SCC 249, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

"43. ...We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to

ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

xxx xxx xxx

52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

xxx xxx xxx

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings…

xxx xxx xxx

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. *The Appellants in the instant case have harassed the Respondents to the hilt for four*

decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation…."

(Emphasis supplied)

18.2. In ***Maria Margarida Sequeria Fernandes*** **v.** ***Erasmo Jack de Sequeria,*** (2012) 5 SCC 370, the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences. The Supreme Court held as under:-

"82. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266, para 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. ***In appropriate cases, the Courts may consider***

ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.*"*

Summary of Principles of law

19. ***Nature of proceedings under DV Act***

19.1. DV Act was enacted to provide a remedy in civil law for the protection of woman from being victims of the domestic violence as noted in the Statement of Object and Reasons.

19.2. The object of the DV Act appears to be that Section 498A IPC dealing with the cruelty to the women is not an appropriate remedy because with the arrest of the husband and his family members, leads to such acrimony that it becomes difficult for the parties to live together again. Secondly, there was no provision to protect the women from further cruelty and to protect her being outstayed from matrimonial home. DV Act empowers the Magistrate to pass a protection order and appoint a protection officer to protect the women from further violence. The Magistrate is also empowered to pass an injunction order to restrain the women from being thrown out from her matrimonial home. The Magistrate is also empowered to pass appropriate orders for maintenance and compensation to the women. In proceedings under Section 12 of the DV Act, the Magistrate is empowered to award the reliefs under Sections 8 to 23 of the Act. Since the proceedings under Section 12 of the DV Act are civil in nature, it does not aggravate the situation which happens with the arrest of the husband and his family members under Section 498A IPC. The breach of the protection order under Section 18 amounts to an

offence under Section 31 of the DV Act. However, if there is no breach of the protection order under Section 18, the proceedings remain civil in nature.

19.3. The proceedings under Sections 12 and 18 to 23 of DV Act are purely civil in nature. The reliefs under Sections 18 to 22 of the DV Act can be sought in the Civil Court, Family Court or Criminal Court as they are civil in nature and have nothing to do with the conviction for any offence as provided in Section 26(1) of DV Act.

19.4. The Court dealing with proceedings under Sections 12, 18 to 23 can formulate its own procedure under Section 28(2) of the DV Act. Thus, any departure from the provisions of Code of Criminal Procedure does not vitiate the proceedings initiated under Section 12.

19.5. There is no reference to the expression "offence", "crime" or the like in DV Act except Sections 5, 31, 32 and 34 of the DV Act. Section 28 uses the word "offence" only in respect of Section 31 and the word "the proceedings" in respect of Sections 12 and 18 to 23 of the DV Act.

19.6. The opposite party in the proceedings under Section 12 of the DV Act is specifically named as respondent and not an accused. The respondent has been defined in Section 2(q) of the DV Act.

19.7. "Domestic violence" defined in Section 3 of the DV Act is *per se* not an offence under the Act and no punishment has been provided for the same.

19.8. The Act by itself does not make any act, omission or conduct constituting violence, punishable with any imprisonment, fine or other penalty. There can be no prosecution of a person under the provisions of this Act, for committing acts of domestic violence, as defined in Section 3 of the Act. No one can be punished under the Act merely because he subjects a woman to violence or harasses, harms or injures her or subjects her to any abuse whether physical, sexual, verbal, emotional or economic. No one can be punished under the provisions of the Act on account of his depriving a woman of her right to reside in the shared household.

19.9. Section 31 of the Act provides for punishment only if a person commits breach of protection order passed under Section 18 or an order of interim protection passed under Section 23 of the Act. Thus, commission of acts of domestic violence by themselves do not constitute any offence punishable under the Act and it is only the breach of the order passed by the Magistrate either under Section 18 or under Section 23 of the Act which has been made punishable under Section 31 of the Act. No criminal liability is thus incurred by a person under this Act merely on account of his indulging into acts of domestic violence or depriving a woman from use of the shared household. It is only the reach of the orders passed under Sections 18 and 23 of the Act, which has been made punishable.

19.10. The Court dealing with an application under Section 12 of D.V. Act cannot take cognizance of any offence under IPC because the proceedings under Section 12 of the D.V. Act are civil in nature

triable by a Civil Court, Criminal Court or Family Court. However, in the event of breach of a protection order, a fresh criminal case has to be instituted against the accused (either by an FIR or by a criminal complaint before the Court) and in that criminal case, at the stage of framing the charge, the Court is empowered to frame a charge under IPC or any other law if the facts disclose the commission of such offence. This fresh case under Section 31 would be a criminal case as the respondent would be accused of an offence under Section 31 of the DV Act and it would be tried by the Magistrate. This is clear from the reading of Section 31(2) and (3) of D.V. Act.

19.11. Section 36 of the DV Act provides that the provisions of the Act are in addition to and not in derogation of any other law. This means that in addition to DV Act, various other provisions under the general laws as well as specific statutes can be invoked by the aggrieved person. Section 5(e) of the DV Act expressly provides that the Magistrate upon receipt the complaint of domestic violence, shall inform the aggrieved person of her right to file a complaint under Section 498A of the Indian Penal Code wherever relevant.

19.12. The relevant provisions of DV Act have been time and again interpreted by the Supreme Court and the High Courts and the consistent view has been taken that the proceedings under Section 12 of the DV Act are civil in nature. Reference may be made to ***Indra Sarma*** (supra), ***Varsha Kapoor*** (supra), ***Shambhu Prasad Singh*** (supra), ***Sabana*** (supra), ***Bipin Prataprai Bhatt*** (supra),

Narendrakumar (supra***), Naorem Shamungou Singh*** (supra***) and Vijaya Baskar*** (supra***).***

20. ***<u>"Criminal case" mentioned in the bio-data form</u>***

20.1. The term "criminal case" used in the bio-data form means "the proceedings in respect of an offence alleged to have been committed by the candidate pending before a criminal court" as used in Section 6(2)(f) of the Indian Passports Act, 1967.

20.2. The term "offence" as defined in Section 2(n) Cr.P.C., Section 40 IPC and Section 3(38) of the General Clauses Act means an act or omission punishable by any law.

21. ***<u>The validity of an order has to be judged by the reasons stated in the order itself and can't be supplemented by fresh reasons later on.</u>***

The validity of an order has to be judged by the reasons stated in the order itself and not by anything else, otherwise an order bad in the beginning, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out. An affidavit can't be relied upon to improve or supplement an order. Reference may be made to the judgments of the Supreme Court in ***Gordhandas Bhanji*** (supra), ***Mohinder Singh Gill*** (supra), ***Pavanendra Narayan Verma*** (supra), ***East Coast Railway*** (supra), ***Rashmi Metaliks Limited*** (supra), ***Dipak Babaria*** (supra) and Kerala High Court in ***Kunjumon Thankappan*** (supra).

22. ***Recording of reasons***

An administrative authority is required to record reasons as held by Supreme Court in ***Cyril Lasrado*** (supra), ***Kranti Associates (P) Ltd.*** (supra) and ***Ravi Yashwant Bhoir*** (supra).

23. ***Tendency of implicating all family members of the husband in matrimonial disputes.***

In matrimonial disputes, the tendency of the wife is to implicate all the family members of the husband including the married brothers and sisters who are living separately from the husband and exaggerated versions of the incident are reflected in a large number of complaints. Experience shows that matrimonial laws are being misused by the offending spouse by naming each and every adult family member of spouse but when tempers cool and good sense prevails, the exaggerated versions are withdrawn. Reference may be made to the judgments of the Supreme Court in ***Sheoraj Singh Ahlawat*** (supra), ***Geeta Mehrotra*** (supra) and ***Preeti Gupta*** (supra).

24. ***Consequences of refusing to follow well settled law***

If an authority does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts. The consequence of an authority not following the well settled law amounts to contempt of Court as held by the Supreme Court in ***East India Commercial Co. Ltd.*** (supra), ***Makhan Lal*** (supra), ***Baradakanta Mishra*** (supra), ***M.P. Dwivedi*** (supra), ***T.N. Godavarman Thirumulpad*** (supra), ***Maninderjit Singh Bitta*** (supra), **Priya**

Gupta (supra) and various High Courts in ***Hasmukhlal C. Shah*** (supra), ***Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya*** (supra), ***C.T. Subbarayappa*** (supra)***, Parmal Singh*** (supra), ***Ex-CT Nardev*** (supra) and ***Head of Department, Air Force Station Amla.***

25. **Findings**

25.1. The proceedings under Section 12 of the DV Act filed by the appellant's sister-in-law are civil in nature as held by the Supreme Court and various High Courts in ***Indra Sarma*** (supra), ***Varsha Kapoor*** (supra), ***Shambhu Prasad Singh*** (supra), ***Sabana*** (supra), ***Bipin Prataprai Bhatt*** (supra), ***Narendrakumar*** (supra***), Naorem Shamungou Singh*** (supra***) and Vijaya Baskar*** (supra***)***.

25.2. The respondent has not controverted the provisions of the DV Act as well as the judgments mentioned above. The respondent's contention that the provisions of the DV Act and the judgments mentioned above are irrelevant is highly irresponsible. If the respondent could not controvert the settled position of law arising out of clear statutory provisions and the judgments, the respondent should have fairly conceded instead of labeling the submissions as irrelevant.

25.3. No criminal case was pending against the appellant at the time of submitting the bio-data form as she was not an accused of any offence in the proceedings under Section 12 of the DV Act and the Court dealing with the application was not holding a trial of any offence punishable by law.

25.4. The respondent's contention that the appellant is involved in a serious offence of domestic violence relating to attempt to murder under Section 307 IPC and the respondent is accused No.4 in the criminal case is false. The respondent's submission is contrary to law as well as facts on record.

25.5. The respondent has cancelled the appellant's provisional appointment on the sole ground that she was involved in a criminal case. However, at the time of hearing of this appeal, an additional ground was raised. Since the appellants provisional appointment was cancelled on the sole ground that the proceedings under Section 12 of the DV Act was a criminal case; the additional ground raised by the respondent at this stage before us can't be looked into in view of the principles laid down by the Supreme Court in ***Gordhandas Bhanji*** (supra), ***Mohinder Singh Gill*** (supra), ***Pavanendra Narayan Verma*** (supra), ***East Coast Railway*** (supra), ***Rashmi Metaliks Limited*** (supra), ***Dipak Babaria*** (supra) and Kerala High Court in ***Kunjumon Thankappan*** (supra).

25.6. An important requirement of a fair procedure is to consider all the relevant material and give reasons for the decision. It is well settled that even in administrative matters, the reasons are required to be given by the administrative authority as held by the Supreme Court in ***Cyril Lasrado*** (supra), ***Kranti Associates (P) Ltd.*** (supra) and ***Ravi Yashwant Bhoir*** (supra). We do not find compliance of the same in this case as no reasons have been given in the order as to how the case under Section 12 of the DV Act is a criminal case.

25.7. Clause 12 of the bio-data form is ambiguous and confusing because 'law suit' is a complicated technical word for a candidate who has not studied law and is not conversant with the legal procedures in Court. A person may confuse the term law suit *ejusdem generis* with the preceding word, 'criminal case'. The word law suit would certainly exclude many categories of litigations such as writ petitions, appeals, applications, execution petitions, revision petitions, review applications. Lastly, if the respondents have chosen to use an undefined word they should have defined the meaning in the bio-data form so that the candidate knows its meaning but the difficulty is that the respondent themselves do not know the meaning of the term law suit and therefore, they have not made any submissions as to its meaning before this Court. The respondents are also not aware as to the meaning of term 'criminal case' used in clause 12 of the bio-data form. The interpretation of the respondent is absolutely ambiguous and contrary to the well settled law. In view thereof, no adverse view can be taken against the appellant. Considering that Clause 12 of the bio-data form is ambiguous and vague, and will lead to hardship and mistakes, we hope that the respondent will use clear and straight questions in future. The respondents may take note of the attestation form of Indian Administrative Service and Indian Judicial Service reproduced above.

25.8. In the bio-data form as well as the attestation form, the respondents are seeking information about cases pending in Court. The criminal law ordinarily sets into motion by registration of an

FIR with the police. If the accused is arrested by the police, the candidate has to furnish the information in clause (a) of the attestation form. However, there can be cases where the accused has not yet been arrested. Let us take the example of a candidate against whom a complaint of serious offence of cheating and forgery has been made to the police but FIR has not yet been registered but the preliminary investigation has started and the candidate is aware of it or FIR has been registered but the accused has not been arrested or the accused is absconding or has taken anticipatory bail. This fact is very material which effects his character and suitability to the post but none of the questions in the attestation form covers this situation and therefore, the candidate is not bound to disclose the same. The respondents may therefore consider incorporating the additional questions in the attestation form: - "Whether any complaint been made against you to the police or has the police registered any FIR against you, in which you are accused or suspected to be an accused of any offence punishable by law?"; "Have you been declared proclaimed offender by any Court?"; and "Whether you have taken anticipatory bail from any Court."

25.9. The procedure adopted by the respondents for appointment as well as cancellation of the provisional appointment of the appellant and considerations of her appeal, was neither fair nor reasonable.

25.10. The proceedings under Section 12 of the DV Act arising out of the matrimonial discord between the appellant's brother and his

wife does not affect her suitability to the selected post and therefore, cannot be a ground for denying her the employment. The respondent could not show anything to the contrary.

25.11. The decision making process of the respondent at the stage of cancellation of appointment dated 9th October, 2012 as well as rejection of the appeal dated 5th December, 2012 is clearly deficient inasmuch as the respondents were not clear as to the nature of proceedings under the DV Act and they neither thought it proper to look into the law or even seek legal opinion. What is more shocking is that even now the respondents are not clear about the same. The respondents have taken a view that the proceedings under Section 12 of the DV Act is a criminal case which is contrary to the well settled law detailed above. That apart, the respondents did not apply their mind to any of the relevant questions. The respondent's Senior Manager (HR) in his note observed that the proceedings under Section 12 of the DV Act is a criminal case which was approved by all the officers up to the level of Director (HR) without caring to look into the law or even seeking a legal opinion in the matter.

25.12. The respondents have dared not to follow the well settled law relating to the nature of proceedings under Section 12 of the DV Act. Reference in this regard may be made to the provisions of the DV Act and the catena of the judgments in which it is clearly held that the proceedings under Section 12 of the DV Act are civil in nature. The respondents did not controvert any of the provisions or the judgments and termed them as irrelevant meaning thereby

that the binding law is irrelevant for them. The respondents are therefore liable for consequences laid down by the Supreme Court in ***East India Commercial Co. Ltd.*** (supra), ***Makhan Lal*** (supra), ***Baradakanta Mishra*** (supra), ***M.P. Dwivedi*** (supra), ***T.N. Godavarman Thirumulpad*** (supra), ***Maninderjit Singh Bitta*** (supra), **Priya Gupta** (supra) and various High Courts in ***Hasmukhlal C. Shah*** (supra), ***Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya*** (supra), ***C.T. Subbarayappa*** (supra)***, Parmal Singh*** (supra), ***Ex-CT Nardev*** (supra) and ***Head of Department, Air Force Station Amla*** (supra)**.**

25.13. The respondents have made false and misleading statements on oath that proceedings under Section 12 of the DV Act is a criminal case; the appellant was accused no.4 in the said criminal case; the criminal case related to serious offence of domestic violence of attempt to murder under Section 307 IPC; the appellant admitted that a criminal case was pending against her in the attestation form dated 24th September, 2012; and the appeal filed by the appellant to the Chairman and Managing Director of the respondent corporation considered and dismissed after deliberations by the CMD vide letter dated 5th December, 2012. All the aforesaid statements are absolutely false and incorrect. As discussed above, domestic violence is not an offence under the DV Act. Secondly, the proceedings under Sections 12 and 18 to 23 of the DV Act are purely civil proceedings and therefore, no criminal case was pending against the appellant. Thirdly, the appellant was respondent no.4 and not accused no.4 as deposed by respondents in

their affidavit. Fourthly, the appellant never admitted the pendency of a criminal case in the attestation form. Lastly, the appeal filed by the appellant was dismissed by the same officers who had cancelled the provisional appointment without even considering the grounds raised by the appellant. The records do not show any deliberation as the appeal was not even considered on merits. The respondents are guilty of concealment of material facts from this Court.

25.14. The respondents misled this Court and failed to disclose material facts. The respondents stated before the Writ Court as well as this Court that the appeal filed by the appellant before the Chairman and Managing Director of the respondent corporation was dismissed vide letter dated 5th December, 2012. Ordinarily, the Courts believe the statements made on affidavit. Very often, the Court do not even call for the record. This course is adopted on the presumption that the government would present a true and faithful account of the events. However, this Court called upon the respondents to produce the original records. On perusal of the said records, it was noticed that the appeal filed by the appellant was not dismissed by the Chairman and Managing Director of the respondent corporation but by the same officers who had earlier cancelled the provisional appointment of the appellant. As such, the statement made by the respondent before the Writ Court as well as before this Court is false and incorrect. The respondents had a positive duty to disclose all relevant and material facts which they failed.

25.15. The record produced by the respondents does not show any deliberations made by the officers of the respondent as to what is the nature of proceedings under DV Act i.e. whether civil or criminal; and whether the proceedings under the DV Act would affect the character and suitability of the appellant to the required post. It appears that the officers had only the copy of the notice received by the appellant which was attached to the attestation form. The officers did not even consider it proper to call for the copy of the application to find out the nature of the proceedings against the appellant. The officers took the decision only on the basis of the observations made by the Senior Manager (HR) in his note dated 28th September, 2012 that though the proceedings are quasi-civil in nature but the proceedings are conducted as criminal cases and therefore, the appellant is involved in a criminal case. This observation by itself is contrary to the well settled law and no officer cared to look into it. The Executive (Law) as well as the GM (HR-Law) who are expected to know the law did not care to look into the nature of the proceedings under DV Act. It appears that none of the officers were aware of the nature of proceedings under DV Act and they also did not take care to either look into the law themselves or seek legal opinion in the matter. As such, the whole proceedings before taking the decision of cancellation of the appointment have been conducted carelessly without looking into the law and the observations of the Senior Manager (HR) that the appellant was involved in criminal case is based on surmises and conjectures. The decision making process of the respondent is

therefore, clearly deficient. The respondents were expected to first take a correct view of the applicable law for which they had to either look into the law themselves or if in doubt, they could have taken a legal opinion. However, the officers neither knew the law nor cared to look into the law nor thought it proper to seek a legal opinion. A wrong view of the law was taken and then applied to the case which was bound to lead to a wrong decision.

25.16. We are of the opinion that the respondents have failed to discharge its duty to make a full and candid disclosure in the Court, in this case. We would be failing in our duty if we did not place on record the displeasure of the Court with regard to the conduct of the respondent corporation. We deprecate the conduct adopted by the respondents in an attempt to mislead the court

25.17. According to the Respondents, BHEL is a '*maharatna'* company of the Government and the management is very particular not to employ any person with doubtful integrity and tainted antecedents. However, we are shocked and pained to note that in resisting a small claim, the respondents have resorted to making false and misleading statement on oath and have dared to refuse to follow the law well settled by the Apex Court as well as by this Court, which has pricked our conscience. The respondents have failed in their duty to be fair and reasonable. It appears that something has gone seriously wrong in working of the Legal and HR departments of the respondents. The respondents need to do serious introspection.

25.18. The respondents have filed an affidavit dated 20th January, 2014 in which they have disclosed that initially 150 posts were advertised but management subsequently reduced the number to 100. Out of 100 candidates, 94 candidates joined the training. After the training, written test and interview only 88 persons were found fit for absorption into service. In the synopsis dated 22nd April, 2014, it is stated that it is not practicable to train the appellant. It is noted that vide order dated 3rd December, 2012, the learned Single Judge had directed the respondents to keep the one post of Supervisor Trainee (HR) of general category vacant till the next date of hearing. On the next date of hearing i.e. 15th April, 2013, counsel for respondents made a statement that in case the petitioner's succeeds in the writ petition or there are any further orders of the Court, the petitioner will be appointed by respondent no.2. In view of the said statement, the learned Single Judge vacated the interim order dated 3rd December, 2012. This Court is of the view that in view of the statement made by respondents before the Writ Court on 15th April, 2013, the respondents cannot now refuse to appoint the appellant.

26. **Conclusion**

26.1. In the facts and circumstances of this case, the appeal is allowed and the impugned judgment dated 4th September, 2013 is set aside. The order of cancellation of the offer of appointment of the appellant and the letter dated 5th December, 2012 dismissing the appellant's appeal are hereby quashed. The provisional offer of

appointment of the appellant dated 3rd September, 2012 is restored. The respondent BHEL shall complete all the formalities and issue the final offer of appointment to the appellant within five days and the appellant shall report for joining the respondent on 2nd June, 2014 at 10:00 am. The respondents shall pay a costs of Rs.50,000/- to the appellant.

26.2. Next question arises as to what action should be taken against the respondents with respect to the false statements made on oath and refusal to follow the well settled law by the Apex Court and this Court. It cannot be gainsaid that the judgments mentioned above are binding on the respondents who could not have bypassed or disregarded them except at the peril of contempt of this Court. This cannot be said to be a mere lapse. It is a fit case for ordering inquiry or initiating proceedings for contempt of court. However, before taking further action in this matter, this Court would like the Secretary, Ministry of Heavy Industries & Public Enterprises and the CMD of BHEL to look into this matter and consider the implication of the respondents' refusal to follow the well-settled law, making false statements on oath, making wrong submissions on facts and misleading this Court. The learned ASG is requested to assist this Court in this matter.

27. List on 30th May, 2014 for response from the Secretary, Ministry of Heavy Industries & Public Enterprises and CMD of BHEL. A senior officer from the office of Secretary, Ministry of Heavy Industries & Public Enterprises shall remain present with

complete instructions. The CMD of BHEL shall take an independent view in the matter without the aid and advice of the officers involved in taking decision of the cancellation of the appellant's appointment/rejection of the appeal and shall depute a senior officer with complete instructions to attend the Court.

28. The Executive Director (HR & CC) of BHEL, who has filed the affidavits containing false and misleading statements shall remain personally present in Court on 30th May, 2014 to show cause why action be not taken against him. He shall also disclose the names of other officers responsible for the lapses.

29. Copy of this judgment be given *dasti* to the Standing Counsel for Union of India, who shall have the same delivered to the Secretary, Ministry of Heavy Industries & Public Enterprises and CMD of BHEL without any delay. The Standing Counsel shall also send a copy of this judgment to the Secretary (Law & Justice) and U.P.S.C. for considering the suggestions of this Court to incorporate additional questions in the attestation form for appointments in government and statutory bodies.

30. Copy of this judgment be also sent to the Registrar General of this Court to consider the above suggestions.

31. The original record of BHEL (two files) be returned back to the respondents after retaining a photocopy of the same on record. The record of the writ court as well as the LCR be returned back forthwith.

32. Considering the principles of law discussed in this judgment, copy of this judgment be sent to the Principal District & Sessions Judge and the Delhi Judicial Academy.

33. Pending application is disposed of as infructuous.

J.R. MIDHA, J.

P.K. BHASIN, J.

MAY 26, 2014
aj/dk/dev