

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 28TH DAY OF APRIL, 2014

BEFORE:

THE HON'BLE MR. JUSTICE K.N. PHANEENDRA
CRIMINAL REVISION PETITION NO. 2309/2013

BETWEEN:

Sri. Vincent Shanthakumar
S/o Late Joseph, Age: 56 years,
Occ: Dy.S.P., GESCOM,
Gulbarga, 2nd Cross,
Prashanth Nagar,
Stadium Road, Chitradurga,
Dist: Chitradurga. ... Petitioner

(By Sri. M.B. Gundawade, Adv.)

AND:

1. Smt. Christina Geetha Rani
W/o Vincent Shanthakumar,
Aged about 46 years,
Occ: Housewife,
R/o Behind CSI Telugu Church,
Fort, Bellary,
Dist: Bellary.

2. Anna Vindhya
D/o Vincent Shanthakumar,
Age: 10 years, Occ: Student,
Represented by minor Guardian
Mother i.e. Respondent No.1,
R/o Behind CSI Telugu Church,
Fort, Bellary, Dist. Bellary. Respondents

(By Sri. Rajashekar R. Gunjalli, Adv. for
Sri. C.S. Patil, Adv.)

THIS CRIMINAL REVISION PETITION IS FILED UNDER SECTION 397 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO SET ASIDE THE ORDER DATED 14.06.2012 PASSED BY II ADDITIONAL CIVIL JUDGE AND J.M.F.C., BELLARY IN CRIMINAL MISC. NO.460/2011 FOR REGISTRATION OF SEPARATE CRIMINAL MISC. ON I.A. NO.VI MAY KINDLY BE ORDER TO BE SET ASIDE.

THIS CRIMINAL REVISION PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.02.2014, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The present Revision Petition is filed for quashing of the entire proceedings in Criminal Misc. No.

460/2011 directing the registration of a separate Criminal Misc. case on I.A. No.VI passed by the II Additional Civil Judge and J.M.F.C., Bellary dated 14.06.2012.

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

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

3. In order to appreciate and find out whether the said provision under Section 31 which is purely penal in nature, can be invoked by the party who obtained an order under Section 23 of the DV Act,

it is just and necessary to have the brief factual matrix of this case.

4. The respondents herein Smt. Christina Geetha Rani – wife and daughter of the petitioner herein have filed a complaint under Section 12 of the DV Act and also made an application for grant of interim maintenance. Vide order dated 07.01.2012 the learned Second Additional Civil Judge and J.M.F.C., Bellary passed an exparte interim order granting maintenance of Rs.8,000/- to the respondents. Simultaneously, notice was also ordered to be issued to the petitioner. During the pendency of the petition, the respondent – wife filed another application under I.A. No.3 and the Court passed an order on 30.03.2012 directing Drawing Officer of the petitioner who is working as Dy.S.P., GESCOM, Gulbarga for deduction of an amount of

Rs.8,000/- monthly from the salary of the petitioner and to deposit the same before the Court. The respondents have also filed another application under Section 31 of the said Act for the purpose of taking cognizance for non-payment of the interim maintenance against the petitioner. Without providing an opportunity to the petitioner, the learned Magistrate has passed an order on 14.06.2012 directing the Office to register a separate Criminal Misc. Case against the petitioner under Section 31 of the DV Act. The said order was called in question on several grounds. The respondents appeared before this Court through their Counsel and contested the proceedings.

5. I have heard the arguments of the learned Counsel for the petitioner and as well as the respondents.

6. Learned Counsel for the petitioner contended before this Court that the order passed by the learned Magistrate impugned under the petition is not legally sustainable. The registration of the case under Section 31 on the basis of I.A. No.VI filed by the respondents is against to the provisions of the Act and the same is liable to be quashed. It is also contended that the Drawing Officer of the petitioner has been deducting monthly maintenance of Rs.8,000/- and sending the same by way of D.D. to the Court directly before 5th of every month. Therefore, the passing of the orders on 14.06.2012 is against to the principles of natural justice.

7. The main contention of the learned Counsel is that, there is no protection order passed under Section 18 of the Act but order was passed under

Section 23 of the Act. Unless the protection order is passed under Section 18 of the Act, Section 31 does not come into play and the same cannot be invoked. It is also contended that as per the orders dated 30.03.2012 (a direction to the Drawing Officer) was not made known to the petitioner but the amount being deducted and sent to the Court. Therefore, there was no intentional violation of any orders passed by the Trial Court. The petitioner had deposited an amount of Rs.24,000/- on 25.06.2012 through D.D. before the Trial Court as maintenance amount and the said amount is pertaining to three months i.e. from January 2012 to March 2012. The respondent has also accepted the same. Further, it is argued before the Court by the learned Counsel that at the most the said order is executable but not punishable for violation of the same.

8. Per contra, the learned Counsel for the respondents strenuously contended that, even after coming to know about the said order passed by the Trial Court awarding interim maintenance of Rs.8,000/-, the petitioner has not been regularly paying the said amount. Therefore, for violation of the same, an application under Section 31 was also filed. He contends that the Act provides an empowerment to the respondents' to execute the said order for recovery of the maintenance amount but also empowers to initiate Criminal Proceedings for violation of the order. Mere right to recover is there, will not absolve the petitioner from the rigor of Section 31 of the Act. They are independent and distinct provisions which enable the parties to get the benefit whatsoever within the ambit of the said provision. Therefore, he contended that the

action taken by the learned Magistrate does not call for any interference at the hands of this Court.

9. The learned Counsel for the petitioner has also relied upon a Ruling of the **Hon'ble High Court of Rajasthan between Smt. Kanchan Vs. Vikramjeet Setiya reported in 2013 CRL.L.J. Page 85** in which the Court has held as follows :

“In the instant case, wife filed an application for maintenance u/Ss 12 and 23 of the Act. Husband was directed to pay maintenance. Wife filed petition u/S. 31 of the Act for execution of breach of order of monetary relief. Application u/S 31 lies when there is a breach of protection order or an interim protection order. The term protection order defined in S.2(o) means an order made in terms of S.18, S.18 does not deal in monetary relief. Monetary relief as defined in S.2(k) are to be granted by way of proceeding u/S. 12 and 23. In such case, wife should apply to Magistered u/S. 20 for execution

of order and if the provisions of S.20 are of no help then the Court would have to fall back to procedure under S. 28, which lays down that the Courts shall be governed by general provisions of Code of Criminal Procedure, S. 23 provides for procedure for disposal of an application u/Ss. 12 and 23, but for execution of order a resort has to be had u/S. 125 Cr.P.C. Held, henceforth all orders of monetary relief under the provisions of Act of 2005 shall be executed in manner provided under S.125 Cr.P.C. but with certain modifications”.

As against this Ruling, the learned Counsel for the respondents also drawn my attention to another Ruling which is reported in –

MPLJ-2010-1-196 of High Court of Madhya Pradesh between Sunil @ Sonu Vs. Sarita Chawla - the Hon’ble High Court of Madhya Pradesh after considering several provisions of this Act has held at paragraph 3 that:

“From perusal of the record, it is evident that the interim order passed by the learned trial Court regarding the payment of maintenance was confirmed by the appellate Court as the appeal was dismissed on account of delay. The interim order was not further challenged. Thus, same has attained finality. Now the only question, which requires consideration is whether the interim order passed by the learned trial Court, whereby the maintenance was awarded is a protection order and on account or breach of protection order, the proceedings can be initiated against the petitioner under Section 31 of the Act. Section 18 of the Act empowers the Court for passing a protection order against a respondent, who commits any act of domestic violence. In exercise of the powers conferred by Section 37 of the Act and Central Govt. has framed the Rules. As per rule 6 every application of the aggrieved person under section 12 of the act is required to be filed in Form 11, Sub-clause III of Form No.1 deals with economic violence according to which not providing money for maintaining of food, clothes, medicine, etc. is amounting to the

economic violence for which the Court is empowered to pass a protection order. As per Sub-Section (1) of Section 28 of the Act the proceedings are required to be governed by the provisions of Criminal Procedure Code. As per sub-section (2) of section 28, the Court is not prevented from laying down its own procedure for disposal of the case where no amount of maintenance has been paid by the petitioners, no illegality was committed by the learned trial Court in initiating the proceedings under section 31 of the Act”.

10. Now, let me consider in view of the above said submissions made by the learned Counsel and the decisions cited by the learned Counsel whether any interim order of maintenance apart from the provisions for recovery of the said amount, whether it is punishable under Section 31 of the Act for any breach or violation of the orders passed under Section 23 of the Act and whether any order passed under Section 23 of

the Act is deemed to have been passed under Section 18 of the Act and whether it amounts to protection order in order to attract Section 31 of the Act.

11. In the decisions cited supra, the Rajasthan High Court after analyzing the provisions of sections 2(o), 2(k), 20, 23, 31 of DV Act and Section 125 of the Cr.PC has come to the conclusion that Section 18 does not deal with the monetary relief and therefore any violation of the order passed other than under Section 18 of the DV Act does not empower the Court to take cognizance u/s.31 of the Act. Section 23 provides procedure for disposal of the application for maintenance and if there is any violation of the said order recourse has to be taken as provided u/s.125(3) of Cr.PC. the Kerala High Court decisions cited above, discussing the same provisions has held that – even the

interim maintenance order passed u/s.23, if it is violated, it virtually amounts to protection order deemed to have been passed under Section 18. Therefore, the speedy remedy not only available u/s.125(3) of Cr.PC, but also Section 31 can be invoked to punish the violator of the order of the Court u/s.23.

12. The divergent views expressed by the above said two High Courts, in my opinion, has to be appreciated or analyzed by re-looking and evaluating the provisions of the Act, with reference to the aims and objects of the said Act and also the purpose of introducing the said new enactment.

13. Before advertent to referring to the relevant provisions of the said Act, it is just and necessary to bear in mind the object of introducing the above said enactment. The Protection of Women from Domestic

Violence Act, 2005 being one of the first in the sphere has concretely dealt with the problems of Domestic Violence taking into consideration all the related laws has attempted to reduce a numerous ancillary problems generally faced by other legislations. This piece of legislation is well placed and social scenario is clearly reflective of the mindset of the Indian men. The fundamental rights protected the – citizens. The main object of the Act is to protect the constitutionally guaranteed rights of the women. The all encompassing nature of the legislations is elucidated among the other positive aspects of this law. Therefore, the Act is thus, a vital piece of legislation is in addition to the other legislations legislated by the parliament and as well as State legislatures from the feminist perspective of the law.

14. In the Indian patriarchal set up, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of the Domestic Violence. From a feminist stand point, it could be said that the occurrence of domestic violence against women may be under different set of facts and circumstances. The Act was brought in order to protect all types of Domestic Violence against women including the economic violence. The objects and reasons considered before enacting the Act, by keeping in view Articles 14, 15 and 21 of the Constitution of India that is to say the right to liberty which includes right to live in a respectable status and dignity. Such a right to life should not be in any manner taken away except by the procedure established by law and the procedures recognized as a result of judicial precedents. Even such right cannot be taken away without providing fair, just

and reasonable opportunity to the parties to the proceedings. The Act also considers the physical act and mental act of the persons against the women, which violates any of her rights, as provided under this particular Act. Several decisions of the Supreme Court emphasized the right to life, which includes right to live with human dignity. If any such right is violated, it amounts to not only violation of the right guaranteed under the Constitution or under any enactment like the present DV Act, but also a human right. The right to dignity would also include right against being subjected to humiliating sexual acts, insulting a women, creating economic crisis and also making the life of the women miserable. Therefore, in order to cover all these problems to the women, Domestic Violence Act is enacted. Whenever the court deal with any of the provisions of this Act, the Court should bear in mind

the laudable object and aspirations of the Constitution and to give such interpretation to the provisions, which support the above said objects in introducing the said enactment.

15. It is also to be borne in mind, Domestic Violence Act is the Act which recognises one amongst several factors that hinders women in their progress. Therefore, where the progress of the women is hindered or paralyzed, that Act should be condemned and rights should be zealously protected. It is a well known Sanskrit say; even in Manu's era that -

“where the women are praised and worshiped, there lies the Gods” (yathra naryasthu pujyanthe, ramanthe, thatra devatha).”

Once Sri Jawaharlal Nehru, former Prime Minister of India, said:

“the civilization of the country can be assessed only by considering the respect given to the women in that country”.

Culminating all the above said factors, the court has to analyse the provisions in a very laudable objectives and with purposeful interpretation, in order to protect the rights of Women guaranteed under the Act.

16. While interpreting the provisions of law, it should be borne in mind the words of a particular statute, even when there is a doubt about their meaning, they are to be understood in the sense in which they best harmonise with the subject of the enactment. Their meaning is found not so much in a strictly grammatical or etymological propriety of language to be understood nor even in its popular use, as in the subject, or in the occasion on which they are used, but the object to be attained. Grammatically, the

words may cover a case; but whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words as applied to the subject-matter with regard to which they are used, unless there is something which renders it necessary to read them in a sense which is not their ordinary sense in the language as so applied considering the main object of the enactment.

17. It is also to be borne in mind '**the principles of interpretation**' if it gives choice in between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, then we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that parliament would

legislate only for the purpose of bringing about effective result. Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

18. Bearing in mind, the above said golden principles, now this Court is bound to interpret the provisions of the Protection of Women from Domestic Violence Act in order to ascertain whether the Exparte interim maintenance order passed u/s.23 of the Act, in order to protect the women from economic violence is enforceable not only by executing the said order under

other provisions of the Act but also punishable u/s.31 of the code.

19. Section 2 is the interpretation clause of this Act, defines certain words and phrases to be understood in the meaning given to them in the Act itself unless otherwise requires. Section 2 defines – Definitions - In this Act, unless the context otherwise requires, –

“Section 2(g) ‘Domestic Violence’ has the same meaning as assigned to it in Sec.3;”

The Domestic Violence described u/s.3 has to be understood and interpreted as per Sec.3 of the Act only and not otherwise.

“Section 2(k) ‘Monetary relief’ – means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the

expenses incurred and the losses suffered by the aggrieved person as a result of the Domestic Violence;”

The wordings used in this particular Section pre-supposes that there must be an act of a person resulting in Domestic Violence, then for the protection of the said Domestic Violence a monetary relief as contemplated u/s. 20 of the Act can be granted by the Court. Sec. 20 defines what are the monetary relief. The said provision reads as follows:

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

(a) the loss of earnings;

- (b) the medical expenses;*
- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under Section 125 of the Cr.PC or any other law for the time being in force.*

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

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

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in

charge of the police station within the local limits of whose jurisdiction the respondent reside.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”

20. Section 20 (d) of the Act specifically mentions that the granting of maintenance for the aggrieved person or/as well as children, if any, including an order under or in addition to an order of maintenance u/s.125 of the Cr.PC or any other law for the time being

in force. This particular provision can be exercised only after the Magistrate comes to the conclusion that the Domestic Violence has been occurred and committed by the respondent and then only the Magistrate considering the status of the wife or the children can order for maintenance as by way of monetary relief. Therefore, the occurrence of the Domestic Violence is a pre-condition under this definition clause. The Domestic Violence as stated in provision 2(k) of the Act shall be read along with sec.3 and 18 of the Act.

21. The next important provision is Section 3 of the Act which defines the definition of Domestic Violence which reads as follows:

“3. Definition of Domestic Violence – For the purposes of this Act, any act, omission or omission or conduct of the respondent shall constitute domestic violence in case it —

(a) harms or injures or endangers the health, safety, life, limb or well being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”

22. This particular provision defines the expression of Domestic Violence, in short, it can be said that any act or omission, commission or conduct of the respondent shall amount to Domestic Violence in

certain circumstances specifically enumerated in the above said provision. It includes causing physical abuse, sexual abuse, verbal or emotional or economic abuse which are also explained in this sec. In determining any act of commission, omission or conduct of respondent constitute a Domestic Violence, the court has to consider the over all facts and circumstances of the case and the facts shall be the guiding factor.

23. So far as this case is concerned, sec.3 comprises of economic abuse as one of the Domestic Violence, alleged to have been committed by the respondent. The economic abuse as defined above at sec.3(iv)(a) which deals with the act of the respondent depriving the wife or the children any economic or financial resources this also includes that the act of the

respondent if it amounts to deprivation of all or any economic financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of the court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any. If this particular provision is interpreted according to the intention of the legislators it amounts to the act or omission of the respondent in creating no access to the family money to the wife or children and also preventing or access to any amount or any money to be payable to them as ordered by any court of law or otherwise.

Therefore, this section implies that the abusing partner maintains full control of the family finances and also prevents the wife or the children from reaping the family finances or any amount ordered by the Court. In my

opinion, refusing to pay the victim the court ordered maintenance amount or monetary benefit as noted above to the wife or the children amounts to an economic abuse. In this particular case, as I have already narrated that the court has ordered ex parte interim maintenance to the wife against the husband. Therefore, it is manifest that refusing to pay the said amount to the wife and preventing the wife from reaping that money and preventing the wife from having access to the said court order maintenance amounts is a Domestic Violence as per sec.3 of the Act.

24. Now, coming to the another important provision Sec.12 of the Act. The above said section provides the aggrieved person or a Protection Officer or any other person on behalf of the aggrieved party can make an application to the Magistrate seeking one or the other reliefs under this Act.

25. The plain reading of this particular section enumerates how the application has to be filed and how the court has to grant the relief sought for and what are all the reliefs which are included in this particular provision. Particularly this provision empowers and enable the aggrieved person to claim any of the relief under this particular Act. This section also contemplates as to how and in what form and in what manner, the application has to be filed. U/s.12(5) of the Act, a time limit is also fixed directing the Magistrates who deal with the subject matter to make all his endeavor to dispose of such application within a period of 60 days from the date of its hearing. This clearly indicates the intention of the legislators that the remedy must be speedy accessible inexpensive so far as the victims are concerned. When an application u/s.12

is filed and an order of maintenance is sought, then the Magistrate has to consider that application as if, it is filed u/s.12 of the Act.

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

“Sec.23. Power to grant interim and ex parte orders-

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

(2) If the magistrate is satisfied that the application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or,

as the case may be, Section 22 against the respondent.”

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

himself that the Domestic Violence has been committed as defined u/s.3 of the Act. So far as this particular case is concerned, the Magistrate has passed an order ex parte awarding interim maintenance in favour of the wife. Therefore, it goes without saying that the act or omission of the respondent deemed to have been caused Domestic Violence in exploiting wife by means of causing economic abuse or the economic violence on the wife. However, the aggrieved party can challenge the said order by means of an application u/s.29. Until and unless the order passed u/s.23 is set aside or modified, the same can be enforced and executed in accordance with law.

28. Therefore, on plain reading of this sec. 23 coupled with the definition of Domestic Violence u/s.3 r/w sec.2(o) and (k) of the Act, it is manifestly clear that the economic abuse is also a Domestic Violence. In this

background, the court has to understand whether the order passed u/s.23 is covered under the Domestic Violence for protection as contemplated u/s.18 of the Act. Section 18 of the Act – Protection Orders - reads as follows:

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

- a) committing any act of domestic violence;*
- b) aiding or abetting in the commission of acts of domestic violence;*
- c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;*
- d) attempting to communicate in any form, whatsoever, with the aggrieved person,*

including personal, oral or written or electronic or telephonic contact;

- e) alienating any assets; operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate,*
- f) causing violence to the dependants, other relatives or any person who gives the aggrieved person assistance from domestic violence;*
- g) committing any other act as specified in the protection order.”*

29. Section 18 of the Act provides the Magistrate has discretion either - after providing opportunity of being heard and on being prima facie satisfied that Domestic Violence has taken place, then only he can pass a protection order prohibiting the respondent from

committing any act of domestic violence. That means to say that on materials available on record, the Magistrate has to satisfy himself that the respondent has committed an act of Domestic Violence in order to prevent or prohibit the abuser or the violator from committing domestic violence and in order to protect the victim, such an order has to be passed. The wordings used that the court can protect the victim from Domestic Violence has to be understood in such a manner that any order passed by the court under any of the provisions of this Act in order to protect the rights of the victim and prohibit the respondent from committing Domestic Violence though it is not specifically mentioned under this particular provision nevertheless it encompasses all such acts, omissions, commissions of the respondent committed under any of the provisions of this Act can be taken in to consideration

and orders can be passed in order to protect such rights of the victims.

30. As I have already dealt with and discussed the economic abuse as defined under sec.3 of the Domestic Violence Act, amounts to a Domestic Violence as defined u/s.3. In order to prevent or prohibit the commission, omission or such act is far from abusing the victim or from preventing her reaping of any maintenance amount as ordered by the court, it exactly falls under the definition of Domestic Violence, therefore the court can pass such orders u/s.23 in order to prevent or prohibit the respondent from committing such Domestic Violence by directing him to pay such maintenance amount as necessary under the facts and circumstances of the case. Therefore, the order passed u/s.23 though not specifically passed u/s.18 of the Act,

nevertheless, on harmonious reading of section 3, 18 and 23, it gives such a meaning that the maintenance order passed u/s.23 amounts to protect the victim from Domestic Violence particularly from economic abuse. Therefore, it can be safely held that the order passed u/s.23 is also deemed to have been passed u/s.18 of the Act for all practical purposes.

31. Having thus come to such conclusion that, the order passed by the Magistrate in this case awarding maintenance in favour of the respondent herein under Section 23 of the Act is enforceable under other provisions of this Act particularly for recovery. Sec. 28 in this regard reads as follows:

“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.”

32. This particular provision empowers the court to invoke the procedures under Cr.PC for the purpose of implementing or enforcing the orders passed under Sections 12, 18, 19, 20, 21, 22, 23 and 31 of the Act. The second provision to sub clause (2) of 20 also empowers the court irrespective of the procedures contained in Cr.PC the court itself can lay down its own procedure for disposal of the application u/s.12 or sec.2 of section 23. The intention of the legislature must be that, in order to protect the rights of the aggrieved women and to provide a speedy and real justice, the Magistrates are also to be given power to adopt their own procedure where no

other procedure is contemplated in this act in spite of certain procedures are provided under Cr.PC., but without violating the principles of natural justice. Therefore, it goes without saying that in order to implement the order passed u/s.23 the court can have recourse to the Cr.PC virtually for the purpose of executing its order. It is in that manner it is to be understood sec.125 of the Cr.PC can be invoked by the learned Magistrate for the purpose of enforcing the orders passed u/s.23 of this particular Act, that means to say that the provisions contained u/s.125(3) of Cr.PC are made applicable as far as possible only for enforcing the orders u/s.23. Section 125(3) in fact reads as follows:

“If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due

in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month's [allowance for the maintenance or the interim maintenance and expenses of Proceeding, as the case may be,] remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

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

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

34. Sec. 28 also provides and empowers the court to follow certain procedures in order to invoke or enforce the powers u/s.31 of DV Act. This specific provision in my opinion is an additional provision provided to empower the court to follow such procedure in order to enforce its orders. It is only with reference to the procedural aspects, the court has to adopt those provisions under Cr.PC which are as far as applicable in order to enforce the orders under this Act. Though this remedy of enforcing the order passed u/s.23 as contemplated u/s.125(3) of Cr.PC is available nevertheless, it is only a remedy for recovery of the amount. Sec.125(3) or any other provision under Cr.PC does not say the non-payment of the maintenance amount is an offence but the DV Act introduced an independent separate provision which declares certain acts committed by the abuser under

the Act which falls u/s.31 of the Act as offences. In this background now let me see Sec.31 of the Act which reads as follows:

“31. Penalty for breach of protection order by respondent.”-(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who has passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under Section 498-A of the 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.”

35. This section is a penal section which encompasses any type of protection order passed by the court if it is violated whether it is an *ex parte* interim order or orders on merits, it empowers the court to inquire into such violation in accordance with the procedure contemplated under Criminal Procedure Code, 1973 to punish such person for violation of the protection order or interim order with punishment which may extend to one year or fine of Rs.25,000/- or with both.

36. This section clearly empowers the court to punish the person who has violated the protection order or an interim protection order. Sub clause (2) of this section describes who is the Magistrate who can try the

offence as far as practicable, the same Magistrate who has passed the protection order has to try such an offence. This clearly discloses that the Magistrate who tries the abuser can take appropriate measures to provide opportunity to the accused in order to defend himself to show that he is not the violator of the order, and then pass appropriate orders. This particular section refers to the violation of the protection order or an interim protection order or even ex parte order. The learned Counsel strenuously contended so far as this section is concerned, the protection order passed u/s.18 are only made punishable under this particular provision of law as this section specifically says that there should be a breach of a protection order. The words "protection order" is only used u/s.18 of the Act. In order to answer this question, the court has to understand by harmonious and combined reading of

sec.3, sec.23 and sec.18 of the Act. Even at the cost of repetition, it can be said that the order u/s.18 can be passed by the Court may at its discretion after notice to respondent or even pass exparte order to prohibit the violator and to protect the rights of the victim whenever a Domestic Violence has been taken place. Domestic Violence as defined u/s.3 of the Act includes an economic abuse. As I have already discussed, economic abuse is also explained, i.e. preventing a victim from reaping the fruits of the relief granted by means of any order passed by the Court. In that manner, if the provisions are understood, the exparte interim maintenance order passed u/s.23, comes definitely within the ambit of sec.3 of the Act, because of the simple reason, that in order to prevent and avoid vagrancy and also to protect the women from domestic violence, the court can pass order of maintenance to

avoid economic abuse. Therefore, when it is said that in order to pass an order u/s.23 of the Act, there should be a domestic violence and in order to pass orders u/s.18 also there should be a domestic violence. Therefore, in my opinion, an order passed u/s.23 is nothing but a protection given to the victim u/s.18 prohibiting the abuser from economically abusing the victim. Therefore, any order passed u/s.23 of the Act is deemed to be passed u/s.18 also in order to attract the penal provision u/s.31 of the Act.

37. Sec. 36 of the Act also play a dominant role, for considering the other provisions under other laws for the time being in force. As I have already noted, Section125(3) of Cr.PC is also a mode authorized under this Act in view of sec.28, to enforce the maintenance order for recovery. Merely because Sec.125(3) Cr.PC is

there, it cannot be said that Section 31 cannot be invoked. Therefore, in this background, Section 36 of the Act play a dominant role which reads thus.

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

38. On plain reading of this section the entire enactment and the provisions shall be in addition to all other laws for the time being in force which are not derogatory to the provisions of the other laws. Therefore, it goes without saying that though such remedy of recovery of the maintenance amount is there u/s.125(3) nevertheless, Section 31 is also comes to the help of the victim. It should be borne in mind that a new enactment has been enacted knowing fully well u/s.125 of the Cr.PC, speedy remedy is available. Such

speedy remedy also found to be inadequate under the peculiar circumstances of certain cases, perhaps may be the reason that even an order u/s.125 of the Cr.PC in some cases became futile and fruitless because of the unscrupulous husbands by using their ingenious mind successfully avoided to pay maintenance even under the enforcement proceedings u/s.125(3), that may be the reason, that Section 31 introduced in this particular Act to make such violation of the protection order more stringent, as an offence punishable under this Section, after thorough study of all the existing laws and after taking due care and caution.

39. Having discussed the above said different provisions of the Act, in view of my reasons given above, I am of the firm and considered opinion that an order granting maintenance though u/s.23 of the Act, if it is

passed exparte or after hearing the parties to the proceedings and even after suffering that order, with knowledge of the order, if the respondent intentionally violates or abuses such an order, it shall be taken as an order deemed to have been passed to prohibit the domestic violence and to protect the victim u/s.18 of the Act, such violation is punishable u/s.31 of the Act, as long as such an order is enforceable, unless such order is vacated or cancelled by the competent court.

40. Now, coming to the order of the learned Magistrate on 14.6.2012. For violation of the interim order of maintenance, an application was filed u/s.31 of the Act by the wife, the learned Magistrate directed the office to register a separate Criminal Mis. case and accordingly a separate Crl.Mis. case was registered in Crl.Mis.No.460/2011. Such order which is called in

question before this Court. As could be seen from the above said order, the Magistrate though ordered to register a separate Cr1 Mis., but not taken any cognizance and issued any summons against the accused. Therefore, when the cognizance has not been taken and no process issued against the petitioner, this petition is virtually becomes premature one. The Magistrate who is empowered to take cognizance for the offence u/s.31 of the Act has to follow certain procedures as contemplated u/s.32 of the Act which reads as follows:

“32. Cognizance and proof –

(1) notwithstanding anything contained in the Criminal Procedure Code, 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.”

41. On perusal of the above said provision, it clears out the doubt that the offence u/s.31 of the DV Act is made non-bailable and cognizable one. Therefore, the Magistrate has to follow the procedures as contemplated under the Cr.PC while taking cognizance and issuing process that means to say, the Magistrate has to apply his mind while taking cognizance u/s.200 Cr.PC to the provisions of section 190(1)(A) of Cr.PC. The Magistrate must apply his judicious mind to ascertain whether there was any breach of any protection order, interim order or any enforceable ex parte order passed under this Act in order to take cognizance of the offence under the Act and thereafter, if necessary, the Magistrate can exercise powers u/s.202 of Cr.PC for the purpose of enquiring into the

matter by himself or sending it for inquiry and report. It can be said that before a Magistrate takes cognizance of an offence, he must apply his mind for the purpose of satisfying himself with regard to the constitution of an offence u/s.31 of the DV Act and then only he must take cognizance and proceed u/s.202 of Cr.PC if he finds sufficient material to issue process, then he has to issue process u/s.204 of Cr.PC. An order expressing his satisfaction with regard to the existence of a prima facie case u/s.31 of the Act to proceed against the accused is mandatory. The power u/s.203 of Cr.PC to dismiss the complaint can also be exercised if the Magistrate is not satisfied with regard to the prima facie constitution of any offence u/s.31 of the Act.

42. If the Magistrate takes cognizance and issues summons and after appearance of the accused before

the court, the Magistrate has to proceed to dispose of the case in accordance with law by applying summary procedure. However, if any other provisions under the Indian Penal Code i.e. u/s.498A IPC is also invoked by the party or any charges are framed under the said provision, the said offences have to be tried in the manner prescribed under the Cr.PC. The case u/s.31 of the Act, though can be tried summarily but the Magistrate has to adopt summons or warrant trial for the purpose of disposal of the case as expeditiously as possible depending upon the other penal provisions invoked by the complainant.

43. Section 28 also provides that the Magistrate can adopt a procedure of his own, but it should be understood that where the procedure is not at all contemplated by any law for the time being in force,

then only the Magistrate by adhering to the principles of natural justice can adopt his own procedure for the purpose of expeditious disposal of the case but normally he should adopt the recognized procedure under the Cr.PC.

44. With the above said observations, looking from any angle, the order of the learned Magistrate in registering a criminal case u/s.31 of the Act against the petitioner is not violative of any right of the petitioner herein and it is not against the provisions of any law for the time being in force. Therefore, this Revision Petition does not stand to the judicial scrutiny and the same is liable to be dismissed.

45. Accordingly, I pass the following order:

The Revision Petition filed u/s.482 Cr.PC is hereby dismissed.

Sd/-
JUDGE

PL