IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REFERENCE NO. 6 of 2015

IN

SPECIAL CRIMINAL APPLICATION NO. 5313 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE

MR. JAYANT PATEL

and

HONOURABLE MR.JUSTICE N.V.ANJARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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SUO MOTU....Applicant(s)

Versus

USHABEN KISHORBHAI MISTRY....Respondent(s)

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Appearance:

SUO MOTU for Applicant

MR SAMIR DAVE, ADVOCATE for Respondent No.1

MR MITESH AMIN, PUBLIC PROSECUTOR for State

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CORAM: **HONOURABLE THE ACTING CHIEF JUSTICE MR. JAYANT PATEL**

and

HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 27/11/2015

CAV JUDGMENT

(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JAYANT PATEL)

1. Special Criminal Application No. 5313 of 2015 out of which the present reference is made by learned single Judge to the Division Bench of this Court is preferred by the petitioners seeking to quash and set aside the complaint being Case No. 1992 of 2009 filed by respondent no.2 therein under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act") which has been filed before the court of Metropolitan Magistrate at Ahmedabad.

2. When the said matter came up before the learned single Judge of this Court (J.B. Pardiwala, J.) taking up Special Criminal Applications (quashing) on 15.9.2015, the learned single Judge was pleased to pass the following order.

> *"1. By this application under Article 226 of the Constitution of India, the petitioners- original accused, have prayed for the following reliefs;*
>
> *(A) Your Lordships be pleased to admit and allow this petition;*
>
> *(B) Your Lordships further be pleased to quash and set aside the complaint being Case No.1992 of 2009 filed by the respondent no.2 herein under the provisions of the Protection of Women From Domestic Violence Act before the Ld. Metropolitan Magistrate, Court No.1, Ahmedabad,*

in the facts and circumstances of the case and in the interest of justice.

(C) Pending admission, hearing and final disposal of this petition, Your Lordships be pleased to stay the further proceedings/investigation in connection with the complaint being Case No.1992 of 2009 filed by the respondent no.2 herein under the provisions of the Protection of Women From Domestic Violence Act before the Ld. Metropolitan Magistrate, Court No.1, Ahmedabad in the interest of justice.

(D) Any other and further orders which Your Lordships deem fit and proper be kindly passed in the interest of justice.

2. *These very petitioners had, in fact, preferred Criminal Misc. Application No.7749 of 2009 praying for the same reliefs and the said application was disposed of by this court vide order dated 24th August, 2015, which reads as under:*

"By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicants original accused seek to quash the proceedings of the Case No.1992 of 2009 filed by the respondent no.2 under the provisions of the Protection of Women from Domestic Violence Act, 2005, pending in the Court of the learned Metropolitan Magistrate Court No.1, Ahmedabad.

Mr.Dave, the learned advocate appearing for the applicants seeks permission to withdraw this application with a liberty to file appropriate proceedings before the appropriate forum in accordance with law.

Permission as prayed for is granted. This application is disposed of as not pressed.

I clarify that I have otherwise not gone into the merits of the matter."

3. *The learned counsel appearing for the applicants had thought fit to withdraw the Criminal Misc. Application No.7749 of 2009 in view of the decision of this Court rendered by a learned Single Judge in the case of Narendrakumar alias Nitinkumar Manilal Shah vs. State of Gujarat & Anr., 2014 (2) GLR 1353 wherein the learned Single Judge has taken the view that the proceedings under the provisions of the Protection of Women From*

the Domestic Violence Act, 2005 are not criminal in nature and, therefore, the remedy would be to invoke civil jurisdiction and not the criminal jurisdiction of the High Court under Article 226 of the Constitution of India or under section 482 of the Code. It appears that a coordinate bench, vide order dated 27th July, 2015 passed in the Special Civil Application No.15687 of 2014 dissented with such view. Although, there is a reference of Narendrakumar (supra) in para-2(ii) of the judgment, yet I do not find anything in the judgment on the basis of which it could be said that Narendrakumar (supra) has been held to be per incuriam or not a good law.

4. *Whether a writ proceeding is civil or criminal, depends on the nature of relief claimed and grounds for such relief. "Civil Proceedings" or "Criminal Proceedings" are not defined anywhere. The Constitution of India does not define the expression, "Civil Proceeding" nor does the General Clauses Act. The two proceedings are entirely different and distinct, though at times it may overlap to some extent. But the distinction between the civil proceedings and criminal proceedings is well defined.*
5. *In Halsbury's Laws of England, Fourth Edition, Vol. 11, Criminal and Civil proceedings have been distinguished thus :-*

   "Civil proceedings have for their object the recovery of money or other property, or the enforcement of a right or advantage on behalf of the plaintiff: criminal proceedings have for their object the punishment of a person who has committed a crime. Criminal proceedings are not to be used as a means of enforcing a civil right. Whether conduct amounts to a crime may be determined by ascertaining whether the conduct in question is followed by criminal or civil proceedings. If the proceedings will result in the punishment of a party, the conduct in question will be a crime notwithstanding that it may be a matter of small consequence. Where an act is commanded or prohibited by statute, disobedience is prima facie criminal unless criminal proceedings manifestly appear to be excluded by the statute. An act may be prohibited or commanded by a statute in such a manner that the person contravening the provision is liable to a pecuniary penalty which is recoverable as a civil debt; in such an instance contravention is not a crime."

6. *In State of U.P. v. Mukhtar Singh, AIR 1957 All 505, the Division Bench of the Allahabad High Court considered the nature of the proceedings under Article 226 of the*

Constitution of India. One of the Judges, Beg, J. explaining the nature of proceedings, held that whether a proceeding is civil or not, depends on the nature of the subject-matter of the proceeding and its object and not on the mode adopted or the form provided for enforcement of right. According to His Lordship, a proceeding which deals with the right of civil nature and otherwise of civil nature does not cease to be so just because the party chooses resort to Article 226 of the Constitution for enforcement of such right. The fact that a right has been created by the Constitution or the forum for its enforcement prescribed by it should not make any difference, if the subject-matter of the right sought to be agitated in the proceedings is itself of a civil nature, and the object of the proceedings is merely the enforcement of such a right, and not punishment of a wrong. On the other hand, Desai, J. constituting the Division Bench was of the view that a proceeding under Article 226 for a writ is not a civil proceeding. According to His Lordship, much confusion has resulted from the assumption, for which there is no warrant at all, that jurisdiction is either civil or criminal. There are several kinds of jurisdictions and there is no foundation for the view that civil and criminal jurisdiction exhaust the list of jurisdictions that can be conferred upon a High Court. According to Desai, J., Article 225 retains the civil, criminal, testamentary, intestate and matrimonial jurisdiction conferred upon the High Courts under the Letters Patent and Article 226 confers additional jurisdiction and since it is the additional jurisdiction, it must be different from the jurisdictions viz. civil or criminal. (see M/s Nagpur Cable Operators Association vs. Commissioner of Police, Nagpur, AIR 1996 Bombay 180)

7. *The Division Bench of the Bombay High Court in J.P. Sharma v. The Phalton Sugar Works Ltd., AIR 1964 Bom 116, while dealing with the proceedings under Article 226 of the Constitution held as under :-*

"The next argument of Mr. Joshi is that all proceedings under Article 226 are either civil or criminal. When a person asks for a writ of Habeas Corpus, that is a criminal proceeding. But when a person asks for any other writ than the Habeas Corpus, the proceedings are necessarily civil proceedings. The proceedings started under Article 226 are not proceedings under any Act, but are proceeding to quash the orders made under certain Acts, or for orders restraining the officers to take action under certain Acts. They are, therefore, civil proceedings and not proceedings under the Act. It is not possible to accept

the argument. Mr. Joshi admits that the proceedings for the issue of a writ of Habeas Corpus is a criminal proceeding. He admits that it is criminal proceeding because it is a relief asked against the arrest or retention of a person in contravention of the provisions of the criminal law. If that be so, we see no reason why we should hold that even though the relief asked is a relief against an order made under taxation laws or enforcement of the taxation laws against a person, the proceedings should not be revenue in nature. On the other hand, it would be logical to hold that the nature of the relief which is asked for in each case under Art.226 should be determinative of the nature of that proceeding. If the relief asked is against the exercise of powers under criminal law, the proceedings would be criminal proceedings. If the relief asked is for enforcement or in exercise of a civil right to prevent infringement of a civil right, the proceedings will be civil in nature. Similarly, if the relief is sought in relation to the enforcement of the taxation law, the proceedings would be revenue in nature. It is difficult to accept the contention of Mr. Joshi that proceedings under Art.226 are either civil or criminal in nature. On the other hand, we agree, with respect, with the view taken by the Patna High Court that the writ application may be a civil proceeding according to the nature of the application and the questions raised and decided in the proceedings. In the instant case, as already stated, the assessee sought to get quashed the notices issued under Section 34 of the Income-tax Act, and also prayed for an order restraining the Income-tax Officer from taking any action in enforcement of the notices. In other words, in the proceedings under the Income-tax Act, as already stated, are revenue in nature. The writ proceedings with which we were dealing, therefore, were revenue in nature."

8. The question whether a writ proceeding under Article 226 of the Constitution of India is a civil proceeding or criminal proceeding is considered at great length in the judgment of the Apex Court in I.S.A. Narayan Row v. Ishwarlal Bhagwandas, AIR 1965 SC 1818. The Apex Court observed thus :-

> *". . . . . The expression "civil proceedings" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A*

criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts as civil and criminal. . . . . "

The Supreme Court further observed in the said report as under :-

". . . . .The character of the proceedings, in our judgment, depends not upon the nature of the Tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration - express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc."

9. The Supreme Court, in the case of Somabhai Mathurbhai Patel vs. New Shorrock Mills, 1983 GLH 273, has taken the following view;

While we are not inclined to grant special leave at this stage, we, however, record our disapproval of the way in which the learned Single Judge has dealt with the judgment of Hon. M. C. Trivedi, J which dealt with the identical point and which judgment was binding on the learned Judge. It is not open to a learned Single Judge to reject the ratio of the decision of another learned Single Judge of the same High Court by merely saying that attention of M. C. Trivedi J. was not invited to the decision of Supreme Court which may have an impact on the point under examination. Judicial comity demands and this Court has often reiterated that in that event the matter should be referred to a larger

Bench. But in this case, learned Judge has observed that he is unable to agree with the view taken by M. C. Trivedi, J. because in his view the question was directly covered by an earlier decision of this Court, That aspect of the matter itself needs examination. Therefore, if the matter at any stage goes back to the High Court and the same question is raised in the interest of justice it should be heard by a Division Bench. Mr. Kaji, learned Advocate for the petitioner made another grievance that the relief was granted in the absence of a pleading in the plaint on the question of tenancy as covered by Section 13(1)(f) of the Bombay Rent Act as applicable in Gujarat. Mr. Arun Mehta, learned Advocate for respondent appearing on caveat conceded that as the matter be remanded to the District Judge, Nadiad, plaintiff will seek permission for appropriate amendment of the plaint. If such an application is made, learned Judge may deal with it according to law and it should not be understood that this Court has directed such an amendment being made.

With these observations, the special leave petition is dismissed.

10. In view of such conflict, I am of the view that the matter should be heard by a Division Bench so that this issue can be resolved once and for all.
11. Let this matter be placed before the Hon'ble the Acting Chief Justice for appropriate order."

3. The aforesaid shows that the view taken by the another learned single Judge (G.R.Udhwani, J.) in the case of Narendrakumar @ Nitinbhai Manilal Shah & Ors v. State of Gujarat & Anr, in Misc. Criminal Application No. 19853 of 2013 with Misc. Criminal Application No.18703 of 2013, reported at 2014 (2) G.L.R. 1353 was brought to the notice of the learned single Judge as well as another decision of another learned single Judge (N.V. Anjaria, J.)

in the case of Rameshbhai Ramjibhai Desai in Special Civil Application No. 15687 of 2014, wherein different view was found as taken by another learned single Judge. It appears that the learned single Judge having found conflict in the above-referred two decisions of the two learned single Judges, has observed that the matter be heard by a Division Bench so that the issue can be resolved once and for all. Under the circumstances, the present reference before the Division Bench of this Court.

4. Considering the facts and circumstances, the office to give Reference number to the present proceedings as Criminal Reference Number in Special Criminal Application No. 5313 of 2015.

5. We have heard Mr.Samir Dave, learned counsel appearing for the respondent and Mr.Mitesh Amin, learned Public Prosecutor, appearing for the State.

6. The factual controversy of the present case can be summarized as under:-

6.1 As per the petitioners of Special Criminal Application No. 5313/15, the marriage of respondent no.1 herein had taken place with Dharmesh Kishorbhai Luhar at Mahuva, District-Bhavnagar. The original petitioner no.1 is the mother-in-law and original petitioner nos. 2 and 3 are

brother-in-law and sister-in-law respectively. Respondent no.1 herein is the complainant wife. A child, namely, Krishna is also born to the respondent no.2 and as per the petitioners, respondent no.2 left the matrimonial home and took away the daughter with her and since 5.7.2007, she is residing separately. On 16.4.2009, husband Dharmesh Kishorebhai Luhar has filed a petition under Section 13(1) of the Hindu Marriage Act before the Family Court at Ahmedabad seeking dissolution of marriage and the same is registered as Family Suit No. 501 of 2009. The Family Court has issued summons to the respondent therein-respondent no.2 in the main matter which is served upon her on 7.5.2009. On 16.5.09, as per the petitioners, a complaint is lodged by respondent no.2 with Odhav Police Station being C.R. I-184 of 2009 for the offence under Sections 498-A and 114 of Indian Penal Code. On 24.6.2009, the petitioners preferred an application being Criminal Misc. Application No. 7191 of 2009 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as "the Code"), before this Court for quashing of the said complaint and this Court allowed the said petition. On 11.6.2009, the present complaint being 1992 of 2009

under the Act is filed by the respondent no.2 before the learned Metropolitan Magistrate Court, Ahmedabad and summons are issued in the said complaint. As per the petitioners, Criminal Misc. Application No. 7749 of 2009 under Section 482 of the Code was also preferred by the petitioners for quashing of the said complaint, but on 24.8.2015, in view of the decision of this Court in the case of Narendrakumar (supra), the said petition was withdrawn with liberty to file appropriate proceedings before the appropriate forum. Under the circumstances, the petitioners have preferred the present petition before this Court.

7. Before we further consider the matter, we may, at the first instance, consider the dissenting views of the two Hon'ble Judges in the case of Narendrakumar (supra) and in the case of Rameshbhai R. Desai (supra). In the case of Narendrakumar (supra), the learned single Judge, after considering the scheme of the Protection of Women from Domestic Violence Act, 2005 including the objects and reasons of the Act, recorded the reasons from paras-15 to 17 as under:-

> *"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-sec.(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.*

*16. The decision relied upon by learned Counsel for the petitioners in **Inderjit Singh Grewal (supra)** does not address the question as above. It merely invokes Section 468 of Cr.P.C. in a case arising under D.V.Act. Therefore, cannot be cited as an authority laying down the proposition of law discussed by this Court as above.*

> *17. In above view of the matter, no substance is found in these petitions. The petitions fail and are summarily dismissed."*

8. The aforesaid shows that the learned single Judge found that civil remedies are provided under the Act to the aggrieved person. The learned single Judge did record that breach of the protection order is considered as an offence punishable under Section 31 of the Act and the same is also made cognizable and non-bailable under Section 32. But under the other provisions of the Act, there is no reference to the expression "offence or crime" and, therefore, would not fall within the scope and ambit of Section 4(2) of the Code. The learned single Judge found that Section 4(2) of the Code is to be understood for an offence as defined under Section 2(n) of the Code, then only, the scheme of the Code including the provision of Section 482 of the Code can be applied, but not in relation to civil proceedings. The learned single Judge found that applicability of the Code as per Section 28 of the Act would not *ipso facto* attract Section 482 of the Code and, therefore, the learned single Judge ultimately found that the remedial measures under Section 482 of the Code would not be available to the petitioners and the petition was dismissed.

9. Whereas another learned single Judge of this Court (N.V. Anjaria,J.), in the case of Rameshbhai R. Desai (supra), after considering the submissions observed in paras 5 to 12 as under:-

> *"**5.** For examining the submission that on the basis of **Narendrakumar (supra),** this petition could be filed and is entertainable, the said decision may be adverted to beforehand. In that case the Court addressed these two questions-(i) whether Domestic Violence Act provides for civil remedies?, (ii) If yes, whether Section 482 of Code of Criminal Procedure can be applied for quashing of such civil proceedings?*
>
> ***5.1** The petitioners in **Narendrakumar (supra)** had prayed for the quashment of the proceedings instituted under the provisions of the Protection of Women from Domestic Violence Act, 2005 (hereinafter mentioned as the Domestic Violence Act for sake of brevity). While the facts are not available from the judgment, the proceedings under the Domestic Violence Act were prayed to be quashed and set aside at their threshold, that is at the stage of initiation itself, by seeking an exercise of powers of the High Court under Section 482 of the Code of Criminal Procedure, 1973. The question dealt with in the present case is remarkably different and differentiable.*
>
> ***6.** It may be true that various relief contemplated to be provided for, to the aggrieved person-the woman creates civil rights. Section 17 of the Act confers right on women to reside in a shared household, which is defined under the Act; Section 18 is with regard to granting of various protection orders against the facts of domestic violence; Section 19 empower the Magistrate to pass residence orders while disposing of application under Section 12(1) of the Act; section 20 is for granting of monitory reliefs to the aggrieved persons whereunder the Court may award amount under different heads; Section 21 deals with the orders of custody of any child or children to the aggrieved person. Under Section 22, in addition to the above relief, Magistrate can pass compensation orders. All these reliefs can be prayed for by an aggrieved person*

by filing an application to the Magistrate. At the same time, examination of the Scheme of the Domestic Violence Act, it would be seen, as discussed hereinafter, the remedial avenue and the machinery to secure the relief is made available under the Code of Criminal Procedure, 1973.

6.1 *Section 12 which falls under Chapter IV in the Act Procedure for Obtaining Order and Reliefs, provides that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person can present an application to the Magistrate seeking one or more relief under the Act. Section 27 of the Domestic Violence Act deals with the jurisdiction which reads as under&*

> ***27. Jurisdiction-****(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-*
>
> *(a) the person aggrieved permanently or temporarily resides or carries on business or is employed;*
>
> *(b) the respondent resides or caries on business or is employed; or*
>
> *(c) the cause of action has arisen,*
>
> *shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.*
>
> *(2) Any order made under this Act shall be enforceable throughout India.*

6.2 *Section 28 is about the procedure which being also relevant, is reproduced hereinbelow&*

> ***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.

6.3 *Under Section 27 above, the jurisdiction is vested with the Court of Judicial Magistrate of First Class or the Metropolitan Magistrate as the case may be. The Magistrate here is to be understood as a Magistrate defined under Section 2(i) of the Act. Section 28 expressly says about governing procedure to be under the Cr.P.C., though leeway is permitted to the Magistrate to adopt its own procedure for disposal of application under Section 12 or under Section 23(2) of th Act, this is to permit due elasticity in the procedure to meet with the object and purpose of the Act, nature of disputes to be dealt with under the Act and the relief to be granted.*

6.4 *Magistrate is defined under Section 2(i) and means the Judicial Magistrate of the First Class or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 (2 of 1974) in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place.*

6.5 *Section 31(1) of the Act provides for penalty for breach of protection order by respondent. Sub-section (2) again says that the offence under sub-section (1) as far as practicable be tried by the Magistrate who has passed the order, the breach of which is alleged to have been caused by the accused. Sub-section (3) says that while framing charges under sub-section (1) the Magistrate may also frame charge under Section 498-A of the Indian Penal Code, 1860 or any other provision of IPC or Dowry Prohibition Act, 1961, if the facts of the case disclose commission of any such offence. The offence under sub-section (1) of Section 31 is treated to be cognizable offence under Section 32 of the Act. as regards the proof of this offence, according to sub-section (2) of Section 32, upon the sole testimony of the aggrieved person the Court may conclude that the offence under Section 31(1) has been committed.*

6.6 *The Protection of Women from Domestic Violence Rules, 2006 framed under Section 37 of the Act, stand in tune with the aforesaid statutory provisions. Referring to some of the relevant Rules in this regard, Rule 15, Rule 6 provides for applications which are made under Section 12 of the Act, to be made to the Magistrate in the prescribed form. Rule 15 dealing with breach of the protection orders stands in consonance with the parent*

provision under Section 31 and 32 of the Act. They taken together firmly suggest that the machinery to secure the enforcement of relief under the Act is under the Criminal Procedure Code.

6.7 *Except that the relief which may be availed to the aggrieved person under the Act is civil in nature, in the entire scheme of the Act for seeking and securing these relief, the remedies are provided for before the Criminal Courts. An Application for various relief under Section 12 is to be filed before the 'Magistrate' who is defined. Section 27 of the Act deals with jurisdiction to provide that the Court of the Judicial Magistrate of the First Class or the Metropolitan Magistrate having the jurisdiction within the local limits as provided under the Section, shall be the competent court to grant the protection order. The protection orders are the orders under Section 18. Section 18 says that the Magistrate after giving the aggrieved person opportunity of hearing, passed order under sub-clauses (a) to (g).*

6.8 *Vis-a-vis the above provisions under the Act, reverting to the provisions of the Code of Criminal Procedure, Section 6 of the Code of Criminal Procedure, 1973 may be referred to which mentions the class of Criminal Courts. According to this Section, besides the High Courts and Courts constituted under any law, there shall be Criminal Codes of following classes in every stake. (i) Court of Session, (ii) Judicial Magistrate of the First Class and in any Metropolitan Magistrate, (iii) Judicial Magistrate of the Second Class and (iv) Executive Magistrate. Section 4(1) of the Code provides that trial of the Indian Penal Code and other laws shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code. Section 5, the savings clause, provides as nothing contained in this Court shall, in absence of a specific provision to the contrary affect any special law for the time being in force or any special jurisdiction of power conferred or prescribed by any law for the time being in force.*

6.9 *The Domestic Violence Act of 2005 is a statute of its own kind designed to provide an umbrella of protection to the women who are victims of domestic violence. This law is enacted with a blend of provisions where the relief available under the provisions of the Act are of civil nature but the machinery provided for in the Act to secure the relief is envisaged under the Criminal Procedure Code. The very object of providing a speedy*

remedy and effective protection of rights can be said to have guided the Legislature to engraft the penal and procedural provisions of the Code of Criminal Procedure for enforcement of relief under the Act and for enjoyment of rights availed to the aggrieved person.

7. *The Kerala High Court in* ***Baiju son of Chandran Nair Vs Latha*** *in* ***Criminal Misc. Application No.969 of 2011*** *decided on 09th June, 2011 considered the question whether the court of Magistrate while discharging functions under the Domestic Violence Act, 2005, is a criminal court inferior to court of Session and the High Court. The Court also addressed whether the judgment of Court of Session in an appeal filed under Section 29 of the Act is amenable to the revisional powers of the High Court under Sections 397(1) and 401 of the Code of Criminal Procedure, 1973. The application in which the above questions were considered, was filed under Section 482, Cr.P.C. The contention on behalf of the petitioners before the Kerala High Court was inter alia that as the Magistrate empowered under the Act, exercises duties, functions and powers which are of a civil nature and hence it cannot be said that Magistrate while acting under the provisions of the Act, becomes an inferior criminal court for the purpose of Sections 397 and 401 of the Code. It was also the case canvassed that the judgment and order in appeal under Section 29 of the Act cannot be subjected to challenge under Section 397(1) of the Code because the Domestic Violence Act, 2005 does not expressly provide so.*

7.1 *The Kerala High Court after considering its own other decisions and decisions of other High Courts, concluded that even though the relief if the Magistrate is required and authorized to grant under certain provisions of the Act are of a civil nature, it cannot be said that the Magistrate while exercising those functions is not acting as a criminal court. It observed that under Section 29 appeal is provided to lie before the Court of Sessions and not to the Sessions Judge. It ruled that An appeal is provided to the Court of Session under Sec.29 since the court of the Magistrate whose order is under challenge is criminal court inferior to the Court of Sessions..*

7.2 *As regards amenability of judgment of the Court of Session in appeal under Section 29 of the Act it was observed, and held by the Kerala High Court that the appeal is governed by the provisions of the Code though right of appeal is provided by Sec.29 of the Act. The Act*

does not say that judgment of the Court of Session is subject to challenge before any other court. Under Section 397(1) of the Code, High Court may call for and examine the records of any proceeding before any inferior criminal court. It was stated that a Court of Session is a criminal court inferior to the High Court for the purpose of exercise of revisional power under Sec.397(1) and 401 of the Code. Sec.397(1) of the Code empowers the courts specified therein to call for records of the inferior criminal court and examine them for the purpose of satisfying themselves as to whether a sentence, finding or order of such inferior court is legal, correct or revisional power is to give the superior criminal courts supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment which has resulted on the one hand in hardship to individuals. The power of revision is supervisory in character enabling the superior courts to call for records of the inferior criminal courts and examine them for the purpose of satisfying themselves that the sentence, finding, order of proceeding of such inferior court is legal, correct or proper. The decision of the Kerala High Court lays down a correct proposition and deserves to be followed.

7.3 *It is not incongruous that the statute is of civil nature, and/or the relief available under the provisions may also relate to civil rights, but the machinery to procure the relief and the rights is provided to be before criminal court. The instances are Section 155 of the Gujarat Municipalities Act, 1960 or Section 16(1) of the Indian Telegraph Act. The remedial avenues under such laws is before the Magistrate. The further question to be probed is whether court of Magistrate before whom the remedy is provided, is an inferior or subordinate criminal court to be amenable to the appellate or revisional jurisdiction in the hierarchy of higher courts under the Code of Criminal Procedure. Here a distinction may again arise-whether a court of Magistrate which is otherwise one of the hierarchical courts under Section 6 of Cr.P.C. is a persona designate under the statute concerned or he functions as part of a criminal court in the hierarchy of such courts provided under Cr.P.C. In case of later, such court would be an inferior criminal court and would be amenable to normal appellate and revisional jurisdiction envisaged under the Criminal Procedure Code.*

8. *In* ***Dargah Committee, Ajmer Vs. State of***

***Rajasthan, [AIR 1962 SC 574]**, the Supreme Court dealt with a question whether magistrate acting under Section 234 of Ajmer Merwara Municipalities Regulations, acts as a inferior criminal court to the High Court. Under the said provision, the proceedings for recovery of tax were provided before the Additional Tehsildar & Magistrate of Second Class. Against order passed by the magistrate, appellant preferred criminal revision application before the sessions court, Ajmer, the revision was dismissed upon which the revisionist moved the High Court of Judicature for Rajasthan in its revisional jurisdiction, before which preliminary objection was that the criminal revision application was incompetent since the magistrate who entertained respondent No.2s application made under Section 234, was not an inferior criminal court under Section 439 of Criminal Procedure Code. The Supreme Court held that looking to Section 234, it was clear that proceedings initiated thereunder before a magistrate were not more than recovery proceedings. The Supreme Court took note that all the questions which may legitimately be raised against the validity of the notice served under Section 153 for carrying out the repairs or against the validity of the claim made by the Committee under Section 222 to recover the sum as a tax, could be and ought to be raised in an appeal provided under Section 93(1) of the said Act and if appeal is not preferred or is dismissed, then all those points are treated concluded and can no more be raised in the proceedings under Section 234. It was observed that that is why the nature of inquiry contemplated by Section 234 was very limited and it prima facie partook the character of ministerial inquiry rather than judicial inquiry*

***8.1** The Supreme Court held that the magistrate who entertained the application under Section 234 was not an inferior criminal court. The court stated,*

> *If at all, this would at best be a proceeding of a civil nature and not criminal. That is why, we think, whatever may be the character of the proceeding, whether it is purely ministerial or judicial or quasi-judicial, the Magistrate who entertains the application and holds the enquiry does so because he is designated in that behalf and so he must be treated as a persona designata and not as a Magistrate functioning and exercising his authority under the Code of Criminal Procedure. He cannot therefore be*

regarded as an inferior criminal court. That is the view taken by the High Court and we see no reason to differ from it.

***8.2** An Allahabad High Court decision in **Saman Ismaeel Vs. Rafiq Ahmad and anr.[2002 Cri.L.J. 3648]** may also be referred in which case, with reference to the provisions of Muslim Woman (Protection of Right on Divorce] Act, the High Court of Allahabad having regard to the preamble of the Act and the statement of objects and reasons held that they clearly show that the Act had been passed with the purpose to provide maintenance to a divorce muslim woman. The scheme of the Act, it was observed, which extends to only seven sections showed that the complete procedure for conducting the proceedings for challenging the correctness of the order of the Magistrate have not been provided. On the basis of the provisions of the said Act, the High Court stated that the Act makes reference to a Magistrate and the Code of Criminal Procedure, 1973 at several places. In that Act also, Section 2(c) defines that a Magistrate would mean a Magistrate of First Class exercising jurisdiction under the Code of Criminal Procedure, 1973. The provisions of Domestic Violence Act, its Scheme and the connotation Magistrate to be one under the Cr.P.C. are quite comparable.*

***9.** Coming to **Narendrakumar (supra)** again at this stage of discussion, attentively seen, it rather leans towards the reasoning adopted hereinabove, when it observed in paragraph 15.3 that 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-sec.(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..*

***9.1 Narendrakumar (supra)** does not lay down even impliedly much less expressly, that in a case where order of the Judicial Magistrate is subjected to Appeal under Section 29 of the Act, judgment and order passed by the Sessions Court in Appeal could be challenged in a writ*

*proceedings. **Narendrakumar (supra)** does not efface the remedy of Appeal or Revision under the hierarchy of criminal courts as per the provisions of the Code of Criminal Procedure which is made applicable to the proceedings of the Domestic Violence Act. It is not possible to stretch the ratio of **Narendrakumar (supra)** so as to comprehend the same to be anything else than what it comprehend in paragraph 15.7. It has to be stated that ratio of the said decision was in the context of and confined to its own facts and the questions framed by the Court to be addressed.*

***9.2** For **Narendrakumar (supra)** suffice it is to say that the nature of relief available under a particular law and the machinery to secure the relief may be different and for both, the legislature may make provisions under different nature of laws-civil and criminal. Their co-existence need not be read to create a conflict of any kind in their operation or application.*

***10.** The scheme of the Protection of Women from Domestic Violence Act, 2005, as surveyed hereinabove, suggests that right from the initiation of the proceedings, the remedial machinery is provided before the court of Magistrate of First Class before whom application under Section 12 of the Act would lie, and against the order made by the Magistrate, appeal is provided to the Court of Session under Section 29 of the Act. This is in the background of an express provision under Section 27 providing for jurisdiction investing the same with the Court of Judicial Magistrate of First Class or the Metropolitan Magistrate, as the case may be, as well as Section 27 providing that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the Code of Criminal Procedure, 1973.*

***10.1** The legislature has implanted the provisions of Code of Criminal Procedure, 1973 (2 of 1974) not only for procedural purpose under the Sections which deal with relief orders, but also for the purpose of remedy of appeal, etc. Considering the relevant provisions under the Domestic Violence Act dealing with the application to the Magistrate, jurisdiction, procedure, appeal as well as provisions under Sections 31 and 32 of the Act dealing with the penal aspects and the cognizance and proof, it becomes manifest that though the statute in question in general is one of civil kind and the relief available thereunder is of civil nature, the jurisdiction of the*

Magistrate and the Court of Session, are under the Code of Criminal Procedure, 1973. They are explicitly made so to operate.

10.2 *The Court of Judicial Magistrate or the Metropolitan Magistrate on whom jurisdiction is vested under this Act are the courts mentioned under Section 6 of the Criminal Procedure Code. The Court of Session mentioned in Section 29 of the Act is the Court of Session under Section 6(1) read with Section 9 of Cr.P.C. A Magistrate dealing with the matters under the Domestic Violence Act and a Sessions Judge entertaining and deciding appeal under Section 29 of the Act are clothed with all the powers of the criminal courts under the Code they have all attributes, power and functional sphere of criminal courts under the Code. They are the classes of courts to be treated as inferior criminal courts, amenable to the revisional jurisdiction under Section 397(1) and Section 401, Cr.P.C.*

10.3 *In other words, court of Magistrate or Court of Session under the Domestic Violence Act are courts which exist and function under the Cr.P.C. They are vested with full-fledge adjudicatory as well as procedural powers under the Cr.P.C. Their functioning is not in a limited role. Neither the Magistrate of the First Class, nor the Court of Session under the Domestic Violence Act are persona designata. The ratio of the* ***Dargah Committee, Ajmer (supra)*** *applies with reverse logic.*

10.4 *The jurisdiction of the Magistrate or the jurisdiction of court of sessions under the Act therefore, are referable to and derived from the Code of Criminal Procedure. The Act in its provisions specifically mentions to be so. Against the orders of the Magistrate, appeal is provided under Section 29 of the Act to the Court of Session. Against the judgment and order in appeal under Section 29, no further appeal or revision is provided in the Act. The provisions of Code of Criminal Procedure, for the revisional powers under Section 397(1) and Section 401, Cr.P.C. would then attract and apply. The remedy of revision under the Cr.P.C. before the High Court has to be held to be available.*

11. *The impugned judgment and order, for the discussion and the reasons recorded above, is revisable by the High Court in exercise of its power under Section 397(1) read with Section 401 of the Code. The petitioner has the said remedy available. The impugned judgment and order in*

Criminal Appeal is pursuant to an adjudicatory exercise involving fact-finding inquiry and fact-based conclusions, deriving jurisdiction under Section 29 of the Act as above. It is not the case of erroneous or illegal assumption of jurisdiction, nor any jurisdictional error or irregularity could be demonstrated or existed in respect of the impugned judgment and order delivered in the Criminal Appeal, making out no case whatsoever for issuing the writ of certiorari.

12. In view of above, the proper remedy against the impugned judgment and order being of filing of Criminal Revision Application under Section 397(1) read with Section 401 of the Code of Criminal Procedure, 1973, writ jurisdiction of this Court by filing petition under Article 226 of the Constitution to set aside the impugned judgment and order could not have been invoked. The petitioner has to approach the revisional court availing the remedy of Revision Application."

10. The aforesaid shows that the learned single Judge, after considering the provisions of Sections 27, 28, 31 and 37 of the Act found that the machinery to secure enforcement of the relief under the Act is under the Code. It was also considered by the learned single Judge that appeal is provided to the Court of Session as per Section 29 of the Act. The learned single Judge did find that in the case of Narendrakumar (supra) the court did not efface the remedy of appeal or revision under the hierarchy of criminal courts as per the provisions of the Code which is made applicable to the proceedings under the Act. The learned single Judge further found that applicability of the provisions of the Code is by express

provision and, therefore, appropriate remedy against the impugned judgment and order is revision under Section 397(1) read with Section 401 of the Code and not under Article 226 of the Constitution when there is already a remedy available to approach before the revisional court.

11. Two important aspects need to be emphasized after considering both the above-referred decisions of two learned single Judges; one is that in the case of Narendrakumar (supra), the learned single Judge was examining the aspect of quashment of the proceedings instituted under Sections 18, 19, 20 and 21 of the Act, whereas in the case of Rameshbhai R. Desai (supra), the learned single Judge was examining the matter against the judgment and order passed by the Sessions Court under the Act which arose from the order passed by the learned Metropolitan Magistrate under the Act. It is hardly required to be stated that challenging the jurisdiction for initiation of the proceedings or quashing of the proceedings under the Act at the outset is an aspect which can be considered in contradistinction to the aspect of quashing of a judgment of an appellate court or even the order of the Magistrate passed after bi-parte hearing.

12. After having considered the above-referred background, we may now consider the scheme of the Protection of Women from Domestic Violence Act, 2005.

13. It is true that the Act provides for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. But at the same time, one has to keep in mind the express language used by the Parliament for giving literal meaning to the provisions of the Statute. In case of any ambiguity or in a case where the Court is unable to extract the literal meaning, the objects and reasons may be of any help. It is by now well-settled that the Court, while interpreting any provision of the Statute will first try to gather literal meaning and if literal meaning is not possible, or if an ambiguity arises on account of other provisions of the very Act, the Court may consider the objects and reasons for giving purposeful interpretation to any Statute or language of any section. But in cases where the language used by the Statute is unambiguous, the Court would go by the plain and simple meaning unless the constitutional validity of that particular Statute is challenged. Even in

the present case also, there is no challenge to the constitutional validity of any of the provisions of the Act. Therefore, while considering the scheme of the Act and the consequential remedial measures available, we will proceed on the basis of the sections and the language used in the sections of the Act as it exists.

14. Section 2 of the Act provides for various definitions. Section 3 provides for definition of domestic violence. Chapter III provides for powers and duties of the Protection Officers, service providers etc. Chapter IV provides for procedure for obtaining orders of reliefs. It is true that under Section 12, the language used is application to the Magistrate and not complaint to be filed before the Magistrate. But at the same time, application is to be made to the Magistrate and not to the Civil Judge. The term “Magistrate” is defined under Section 2(i) of the Act. The aforesaid shows that there is express reference to the jurisdiction of the Magistrate under the Code of Criminal Procedure in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place. Therefore, the Act says that initiation of jurisdiction before the Magistrate is by virtue

of the provisions of the Code. Section 19(3) of the Act provides for power with the Magistrate to require the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. Sub-section (4) of Section 19 provides that such order shall be deemed to be an order under Chapter VII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly. Sub-section (7) of Section 19 provides enabling power with the Magistrate to direct an officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order. Sections 27, 28 and 29 of the Act read as under:-

> " ***27. Jurisdiction-****(1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which-*
>
> *(a) the person aggrieved permanently or temporarily resides or carries on business or is employed;*
>
> *(b) the respondent resides or caries on business or is employed; or*
>
> *(c) the cause of action has arisen,*
>
> *shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.*
>
> *(2) Any order made under this Act shall be enforceable throughout India."*

> ***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.*
>
> ***29. Appeal.--*** *There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later."*

15. The aforesaid Section 27 shows the competence of the court of Judicial Magistrate of the first class or the court of Metropolitan Magistrate, as the case may be, for the competence to grant a protection order. Section 28 expressly provides that all proceedings under Sections, 12, 18, 19, 20, 21, 22 and 23 as well as offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure.

16. Two pertinent aspects need to be referred; one is that the legislature, for the purpose of proceedings under under Sections 12, 18, 19, 20, 21, 22 and 23 has given same treatment to the proceedings as if for trial of the offences under Section 31 of the Act. Therefore, distinction as considered by the learned single Judge of

this Court in the case of Narendrakumar (supra) is done away with by the express language of the Parliament. It is true that by virtue of sub-section (2) of Section 28, the court shall not be prevented from laying down its own procedure, but there again, it is only limited to disposal of an application under Section 12 or under Section 23(2). Therefore, the paramount intention of the Parliament for express language of interweaving provision of the Code to the proceedings under the Act cannot be said as diluted. Further, as per Section 29 of the Act, an appeal is provided to the court of Sessions which again strengthens the applicability of the Code to the proceedings under the Act.

17. At the first brush, one may find that if the proceedings are treated as if civil proceedings, the Code may apply but such general proposition would be uncalled for in a case where the Parliament, by express provision has applied the provisions of the Code to the proceedings under the Act. At this stage, we may also refer to the provisions of Sections 31 and 32 of the Act which reads as under:-

> *"**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 Magistrate 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.

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."

The breach of a protection order is an offence and is also made cognizable and non-bailable notwithstanding anything contained in the Code. But the relevant aspect is that proceedings for the trial of an offence under Section 31 are treated at par by the Parliament with the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of the Act as per the express language used under Section 28 of the Act. In view of the aforesaid discussion, the only inescapable conclusion could be that once the proceedings under Section 12 or 18 or 19 or 20 or 21 or

22 or 23 or 31 are or is initiated either jointly or independently by the order passed by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, the provisions of the Code would be applicable.

18. Even if the aforesaid is the conclusion, two incidental aspects may arise for further consideration; one is the stage at which the provisions of the Code would start operating, and another is the remedial measure available to any aggrieved person on account of such proceedings under the Act. If, for example, in a given case, the matter is before the protection officer and the report is yet to be submitted to the Magistrate or the report is prepared and the application is yet to be made before the Magistrate or that the application is made to the Magistrate, but the Magistrate has yet to pass judicial order of any type including for issuance of notice or protection order, in contradistinction to the cases where application is already made and the learned Magistrate has already passed a judicial order including to issue summons or notice to the respondents, in the cases of former, one may resort to the proceedings under Article 226 of the Constitution if such person is in a position to satisfactorily demonstrate before the Court that the

proceedings are beyond the scope and ambit of the Act, and therefore, be quashed. But under such circumstances also, the writ powers of this Court under Article 226 of the Constitution would be against contemplated action or an action to which the Code is to apply and therefore, it will be Special Criminal Application and not Special Civil Application because the High Court jurisdiction under Article 226 of the Constitution on criminal side is to be invoked. Whereas in the case of the latter, once the applicability of the Code has started or begun on account of the judicial order passed by the learned Magistrate including that of issuance of notice or summons, the remedial measures under the Code would be available to an aggrieved person as per the provisions of the Code. Even otherwise also, by way of self-imposed restriction in exercise of power under Article 226 of the Constitution, when there are express statutory remedies available, this Court would normally not entertain a petition under Article 226 of the Constitution and may relegate the parties to resort to the remedies as provided under the Statute, i.e., the Code.

19. In view of the discussion and the observations made by us herein above, once the provision of the Code has been

made applicable, it cannot be said that remedy under Section 482 of the Code would be unavailable to the aggrieved person. But the said aspect is again subject to self-imposed restriction of power of the High Court that when there is express remedy of appeal available under Section 29 before the court of Session or revision under Section 397, the Court may decline entertainment of the petition under Section 482 of the Code. But such in any case would not limit or affect the inherent power of the High Court under Section 482 of the Code. Hence, the view taken by the learned single Judge in the case of Narendrakumar (supra), cannot be said to be correct, since in the said case, proceeding under Sections 18, 19, 20 and 21 under the Act were already initiated and the applicability of the Code as per the above-referred observation and discussion had already started.

20. In the case of Rameshbhai R. Desai (supra), since the proceedings under the Act had already started and concluded, the applicability of the Code to such proceedings was an undisputed position. Not only that, but an appeal was preferred under Section 29 of the Act before the learned Sessions Judge and failed, against which a petition under Article 226 of the Constitution was

preferred. Once express remedy was available to the litigant under the Code and this Court has declined to entertain the petition under Article 226 of the Constitution, the view taken by the another learned single Judge cannot be said to be incorrect.

21. At this stage, we may usefully refer to the decision of the Apex Court in the case of **Mohit @ Sonu and another vs. State of U.P., reported at (2013) 7 SCC 789** and more particularly, the observations made at paras 25 to 32 which read as under:-

> *"25. In the light of the ratio laid down by this Court referred to hereinabove, we are of the considered opinion that the order passed by the trial court refusing to issue summons on the application filed by the complainant under Section 319 of Cr.P.C. cannot be held to be an interlocutory order within the meaning of sub-section (2) of Section 397 of Cr.P.C. Admittedly, in the instant case, before the trial court the complainant's application under Section 319 of Cr.P.C. was rejected for the second time holding that there was no sufficient evidence against the appellants to proceed against them by issuing summons. The said order passed by the trial court decides the rights and liabilities of the appellants in respect of their involvement in the case. As held by this Court in Amar Nath's case (1977) 4 SCC 137), an order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order as contemplated under Section 397(2) of Cr.P.C.*
>
> *26. In the instant case as noticed above, when the complainant's application under Section 319 of Cr.P.C. was rejected for the second time, he moved*

the High Court challenging the said order under Section 482 of Cr.P.C. on the ground that the Sessions Court had not correctly appreciated the facts of the case and the evidence brought on record. The complainant wanted the High Court to set aside the order after holding that the evidence brought on record is sufficient for coming to the conclusion that the appellants were also involved in the commission of the offence.

27. In our considered opinion, the complainant ought to have challenged the order before the High Court in revision under Section 397 of Cr.P.C. and not by invoking inherent jurisdiction of the High Court under Section 482 of Cr.P.C. May be, in order to circumvent the provisions contained in sub-section (2) of Section 397 or Section 401, the complainant moved the High Court under Section 482 of Cr.P.C. In the event a criminal revision had been filed against the order of the Sessions Judge passed under Section 319 of Cr.P.C., the High Court before passing the order would have given notice and opportunity of hearing to the appellants.

28. So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned,the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged.

29. Courts possess inherent power in other statute also like the Code of Civil Procedure (CPC), Section 151 whereof deals with such power. Section 151 of CPC reads:

> ***"151. Saving of inherent powers of court.--*** *Nothing in this Code shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court."*

30. This Court in the case of Padam Sen and Anr. v. State of Uttar Pradesh, AIR 1961 SC 218 regarding inherent power of the Court under Section 151 CPC observed: (AIR p.219, para 8)

> *"8. ...The inherent powers of the Court are in addition to the powers specifically conferred on the Court by the Code. They are complementary to those powers and therefore, it must be held that the Court is free to exercise them for the purposes mentioned in Section 151 of the Code when the exercise of those powers is not in any way in conflict what has been expressly provided in the Code or against the intentions of the Legislation. It is also well recognised that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code."*

31. In a Constitution Bench decision rendered in the case of Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, AIR 1962 SC 527, this Court held that : (AIR p. 537, para 43)

> *"43. ... The inherent jurisdiction of the Court to make orders ex debito justiciae is undoubtedly affirmed by S.151 of the Code but inherent jurisdiction cannot be exercised so as to nullify the provision of the Code of Civil Procedure. Where the Code of Civil Procedure deals expressly with a particular matter, the provision should normally be regarded as exhaustive."*

32. The intention of the Legislature enacting the Code of Criminal Procedure and the Code of Civil Procedure vis-?is the law laid down by this Court it can safely be concluded that when there is a

specific remedy provided by way of appeal or revision the inherent power under Section 482, Cr.P.C. or Section 151, C.P.C. cannot and should not be resorted to."

22. We may also refer to certain decisions of other High Courts for which references were made by the learned counsel appearing for both the sides.

23. In the case of **State of Uttar Pradesh and others v. Mukhtar Singh and others, reported at AIR 1957 All.505**, the question did not arise for consideration before the Apex Court about the proceedings to be faced by the aggrieved person, whether civil or criminal. So far as the application before the Magistrate is concerned, even if it is considered that civil rights of a woman were being pursued by her, the fact remains that the other side, that is, the respondent is to face the proceedings to which the Code applies and, therefore, such distinction to such type of proceedings had not fallen for consideration before the Allahabad High Court. Hence, we are of the view that the above decision would not be applicable in the present case.

24. In the decision of Delhi High Court in the case of **Varsha Kapoor v. UOI and others, in Writ Petition (Crl) No. 638 of 2010,** the question of constitutional validity of

Section 2(q) of the Act was under challenge and the observations were made that remedy is provided by the present Act to civil rights of women, but thereby it cannot be said that applicability of the Code would be lost to the proceedings already initiated under the Act. Hence, the said decision cannot be made applicable to the facts of the present case.

25. In the decision of Kerala High Court in the case of **Dr. V.K. Vijayalekshmi Amma v. Bindu V and others in Crl. MC No. 2225 of 2009**, it was found that after the proceedings were initiated under Section 12 by the learned Magistrate, there are adequate remedies before the Magistrate and, therefore, it was observed that it is not for the High Court to exercise extraordinary inherent powers and to quash the proceedings.

26. In another decision of Kerala High Court in the case of **Harshkumar and Another v. State of Kerala and Others, reported at 2011 (3) KHC 15,** it was held that the Magistrate exercising functions under the Act acts as a Criminal Court inferior to the Court of Sessions and the High Court. It was also held that the order passed by the Court of Sessions in an appeal under Section 29 of the Act is revisable by the High Court in exercise of the

power under Section 397(1) and 401 of the Code, and therefore, exercise of power under Section 482 of the Code was declined.

27. In view of the aforesaid observations and discussion, the following conclusions:

(i) The provisions of the Act provide for remedial measures for civil rights of women but the machinery provided is through criminal court.

(ii) Initiation of proceedings under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 of the Act would begin only when the Magistrate has passed any judicial order including of issuance of notice for hearing.

(iii) Any person affected by any proceedings under the Act, prior to initiation of proceedings under Section 12 of the Act may prefer Special Criminal Application under Article 226 of the Constitution if as per him, the proceedings are beyond the scope and ambit of the Act or without any authority in law. But this Court, while entertaining the petition under Article 226 of the Constitution may decline entertainment of the petition by

way of self-imposed restriction in exercise of the judicial powers or may decline entertainment of the petition in exercise of its sound judicial discretion.

(iv) Once proceedings are initiated under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 either independently or jointly on account of any judicial order passed by the learned Magistrate including issuance of notice, such proceedings shall be governed by the Code of Criminal Procedure coupled with the power of the Court under Section 28(2) to lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23 of the Act.

(v) Once the applicability of the Code of Criminal Procedure has started on account of any judicial order passed by the learned Magistrate including issuance of notice either under Section 12 or 18 or 19 or 20 or 21 or 22 or 23 or 31 of the Act independently or jointly, remedial measures to the aggrieved person as provided under the Code of Criminal Procedure, 1973 can be said as available. But the higher forum under the Code of Criminal Procedure, may be the Court of Session or the

High Court, may decline entertainment of such proceedings considering the facts and circumstances of the case and as per the settled principles of law and in accordance with law.

(vi) The aforesaid remedial measures provided under the Code of Criminal Procedure would also include the powers of this Court under Section 482 of the Code, but the Court may, in a given case, decline entertainment of the petition when there is express remedy provided under the Code of Criminal Procedure or no case is made out to prevent the abuse of process of any Court, or no case is made out to secure the ends of justice.

28. In view of the aforesaid conclusions, we find that Special Criminal Application No. 5313 of 2015 shall now be placed before the learned single Judge for examining the merits of the matter in accordance with law.

29. The Reference stands disposed of.

(JAYANT PATEL, ACJ.)

(N.V.ANJARIA, J.)

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