

2025 LiveLaw (SC) 599

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.**

CRIMINAL APPEAL NO. 2688, 2689 OF 2025; May 19, 2025

(Arising out of Petition for Special Leave to Appeal (Crl.) No. 9493, 13896 of 2024)

Shaurabh Kumar Tripathi *versus* Vidhi Rawal

Protection of Women from Domestic Violence Act, 2005 - Power of High Courts to quash complaints under Section 12(1) or orders under Sections 18 to 23 using inherent powers under Section 482 CrPC (now Section 528 BNSS) - Held, High Courts can exercise inherent powers under Section 482 CrPC (Section 528 BNSS) to quash proceedings under Section 12(1) of the DV Act, 2005, or orders under Sections 18 to 23, to prevent abuse of process or secure the ends of justice. The notion that Section 482 CrPC is inapplicable due to the predominantly civil nature of DV Act proceedings is incorrect. However, High Courts must exercise caution and restraint, intervening only in cases of patent illegality or abuse of process, given the DV Act's purpose as welfare legislation to protect women from domestic violence. A cautious approach is recommended to avoid undermining the Act's objectives. The civil nature of DV Act proceedings does not preclude the application of Section 482 CrPC. (Paras 37, 39)

Judiciary - Duty to Correct Errors - Continuous Learning for Judges - In this judgment, authored by Justice Abhay S. Oka, it was noted that he had previously participated in a High Court decision holding that the remedy under Section 482 of the CrPC could not be used to quash proceedings under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005. This view was subsequently overruled by a Full Bench of the High Court. The Court underscored the duty of judges to rectify errors in appropriately constituted proceedings and emphasized the ongoing learning process inherent in judicial roles. (Para 38)

[Arising out of impugned final judgment and order dated 09-05-2024 in MCRC No. 52308/2022 passed by the High Court of Madhya Pradesh at Indore]

For Petitioner(s): Mr. Vinay Navare, Sr. Adv. Mr. Kuldeep Rai, Adv. Ms. Nandini Rai, Adv. Mr. Aryan Dev Pandey, Adv. Mr. Mayur Narang, Adv. Mr. Km. Rimjhim Pandey, Adv. Mr. Alok Mishra, Adv. Mr. Ranjan Nikhil Dharnidhar, AOR

For Respondent(s): Mr. Anurag Tandon, AOR Mr. Pankaj Thakkar, Adv.

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.
2. The main question involved in the appeals is whether the High Court can invoke its inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the CrPC') or Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS') to quash proceedings initiated under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act, 2005').

FACTUAL ASPECTS

3. The two connected appeals involve a challenge to the common order passed by the High Court rejecting the appellants' prayer to quash proceedings initiated under Section 12(1) of the DV Act, 2005. The appellant in the Criminal Appeal arising out of SLP(Crl)

9493 of 2024, Shaurabh Kumar Tripathi, is the respondent's brother-in-law whereas the appellants in the Criminal Appeal arising out of SLP(Crl) 13896 of 2024, Prateek Tripathi, Vivekanand Tiwari and Mira Tiwari, are the respondent's husband, father-in-law and mother-in-law respectively. Prateek Tripathi married the Respondent, Vidhi Rawal, on 12th December 2019 as per Hindu rites and rituals at Dewas. After two years of marriage, on 8th December 2021, the respondent made a complaint to the Station House Officer at the Police Station Women Consultancy Centre, Dewas, against Prateek Tripathi, and Vivekanand Tiwari alleging that dowry was demanded by them. On 7th January 2022, the respondent lodged FIR No.3 of 2022 at P.S Mahila Thana, Dewas under Section 498A, 504, 506 and 34 of the IPC against the appellants alleging mental and physical harassment on account of non-payment of dowry. The respondent claimed that on her return from work in Johannesburg, South Africa, the appellants tortured her, demanding a sum of Rs. 20 Lakh cash and a top model SUV car.

4. Aggrieved by the threats, the respondent on 2nd March 2022 filed an application against the appellants bearing MJCR No. 215/2022, before the District and Sessions Judge, Dewas, Madhya Pradesh, under Section 12 of the DV Act, 2005. She claimed that Prateek Tripathi would beat her and throw her out of the house while they were abroad. The respondent prayed for reliefs provided under Sections 18, 19, 20, 21, 22 and 23 of the DV Act, 2005. The appellants filed two separate petitions under Section 482 of the CrPC to quash the application under Section 12 of the DV Act, 2005. By the impugned judgment and order, the High Court dismissed the quashing of the petitions on the ground that the proceedings under Section 12 of the DV Act, 2005, being of a civil nature, cannot be quashed.

SUBMISSIONS

Appellants

5. The learned senior counsel appearing for the appellants submitted that the learned Magistrate has been conferred jurisdiction to entertain proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 of the DV Act, 2005. The term Magistrate is defined under Section 2(i) of the DV Act, 2005 to mean a Judicial Magistrate of first class or, as the case may be, a Metropolitan Magistrate exercising jurisdiction under the CrPC. Therefore, the Court of a Judicial or Metropolitan Magistrate is a Criminal Court constituted under the provisions of the CrPC.

6. The learned senior counsel further contended that, although remedies under Sections 18, 19, 20, 21, and 22 can be availed of in a Civil Court or Family Court as per Section 26, Section 26 cannot be read to understand the scheme of the DV Act, 2005.

7. The learned senior counsel invited our attention to various provisions under the CrPC where the nature of relief which can be granted by the Courts is, in essence, a relief which can be granted by a Civil Court. Similarly, certain provisions of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the CPC'), were pointed out by him, where the relief granted by a Civil Court can also be granted in criminal proceedings. Therefore, the answer to the question which arises for consideration is not dependent upon the nature of the proceedings or the nature of the relief that can be granted in those proceedings.

8. The learned senior counsel relied upon a decision of the High Court of Allahabad in the case of **Devendra Agarwal and 3 Others v. State of Uttar Pradesh and Another**¹ and a decision of the High Court of Bombay in the case of **Nandkishor Pralhad**

¹ Application u/s 482 NO. - 18994 OF 2024

Vyawahare v. Mangala¹. In these cases, the High Courts held that an application under Section 482 CrPC is maintainable against orders passed under the DV Act, 2005 to prevent abuse of the process of Court and to secure the ends of justice. It is relevant to point out that the case of **Devendra Agarwal and 3 Others v. State of Uttar Pradesh and Another**¹ has been referred to a larger bench of the High Court of Allahabad in the case of **Ram Lotan Vishwakarma and Ors v. State of U.P and Anr**².

9. The learned senior counsel submitted that because an application under Section 12 of the DV Act, 2005, is maintainable before a Criminal Court under the CrPC, it is amenable to the inherent jurisdiction of the High Court under Section 482 of the CrPC.

Respondent

10. The learned counsel appearing for the respondent submits that proceedings under Section 12 of the DV Act, 2005, cannot be quashed under Section 482 of the CrPC. He contended that the High Court rightly held that the proceedings under the DV Act, 2005, are civil in nature. He relied upon the objects and reasons of the DV Act, 2005, to submit that the Legislature intended the proceedings thereunder to be civil in nature. The learned counsel relied upon the decision of this Court in the case of **Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another**³, which held that proceedings under the DV Act, 2005 are predominantly civil in nature.

11. The learned counsel argued that an application under section 12 of the DV Act, 2005, is not a “complaint” under section 2(d) of the CrPC. Further, he argued that Sections 200 to 204 of the CrPC do not apply to proceedings under the DV Act, 2005 and a Magistrate cannot treat an application under the DV Act, 2005 as a complaint under Section 200 of the CrPC. The notice issued to the respondent on an application under Section 12 of the DV Act, 2005 is not a summons under Section 61 of the CrPC but is a notice set out in Form VII of the Protection of Women from Domestic Violence Rules, 2006 (for short, ‘the DV Rules 2006’). He supported the view taken by the High Court.

CONSIDERATIONS

The provision of the DV Act, 2005

12. The DV Act, 2005 was enacted with the object of providing more effective protection to the rights of women guaranteed under the Constitution who are the victims of violence of any kind occurring within the family. The DV Act, 2005, has been enacted to tackle the menace of domestic violence faced by women in our society. A very wide meaning has been assigned to the term ‘domestic violence’ in the DV Act, 2005. Section 3 of the DV Act, 2005 reads thus:

“3. **Definition of domestic violence.**—For the purposes of this Act, any act, omission or commission 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

¹ 2018 SCC OnLine Bom 923

² 2025 AHC-LKO 7572

³ 2016 11 SCC 774

- (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.

Explanation I—For the purposes of this section,—

- (i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- (ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- (iii) “verbal and emotional abuse” includes—
 - (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- (iv) “economic abuse” includes—
 - (a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a 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, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - (c) 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.

Explanation II—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.”

13. Even ‘domestic relationship’ has been defined widely under clause (f) of Section 2 of the DV Act, 2005, which reads thus:

“(f) “domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family”

13.1 An aggrieved person has been defined in clause (a) of Section 2, which reads thus:

“(a) aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent”

14. Chapter IV of the DV Act, 2005, lays down what kind of reliefs can be granted to a person aggrieved who has been subjected to any act of domestic violence. There are

different categories of reliefs which can be granted under the DV Act, 2005. These reliefs can be sought either by making an application under Section 12 of the DV Act, 2005 or by making an application in pending legal proceedings affecting aggrieved person before a Civil Court, Family Court or a Criminal Court. The reliefs are provided in Sections 17 to 22, which read thus:

“17. Right to reside in a shared household.—(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

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

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

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

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

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

- (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
- (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
- (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
- (5) While passing an order under sub-section (1), subsection (2) or sub-section (3), the court may also pass an order directing the officer in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.
- (6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.
- (7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.
- (8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

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 Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- (2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.
- (3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
- (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 resides.
- (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.

21. Custody orders.—Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved

person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. Compensation orders.—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.”

Application under Section 12 of the DV Act, 2005

15. Section 12 of the DV Act, 2005 reads thus:

“12. Application to Magistrate.—(1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.”

16. The term ‘Magistrate’ has been defined under Section 2(i) which is as under:

“2(i) “Magistrate” 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”

17. Section 12 of the DV Act, 2005 makes a provision enabling an aggrieved person, a Protection Officer or any other person on behalf of an aggrieved person to make an application to the learned Magistrate seeking one or more reliefs provided in Chapter IV. In exercise of the rule-making power under Section 37 of the DV Act, 2005, the DV Rules, 2006 have been framed. Rule 6(1) of the DV Rules, 2006 provides that every application of the aggrieved person made under Section 12 shall be in Form II appended to the Rules.

18. As can be seen from the scheme of the DV Act, 2005 and in particular Section 12, it is not a complaint under Section 200 of CrPC or Section 223 of the BNSS. While dealing with a complaint under Section 200 of the CrPC, the learned Magistrate cannot mechanically take cognizance of the offences alleged in the complaint. To ascertain the

truth about the allegations made in the complaint, the learned Magistrate is required to examine the complainant and witnesses, if any. Only after the learned Magistrate is satisfied that a case is made out to proceed against the accused, a process is issued and cognizance is taken. This is also true about a complaint under Section 223 of the BNSS. However, Section 223(2) of the BNSS takes it a step further. It provides that no cognizance of an offence can be taken by the Magistrate without giving an opportunity of being heard to the accused.

19. In case of an application under Section 12 of the DV Act, 2005, as provided in Sub-section (4) thereof, the learned Magistrate is duty-bound to fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. Section 13(1) provides that a notice of the date fixed in terms of Sub-section (4) of Section 12 shall be served on the respondent or any other person in the manner laid down therein. Rule 2 of the DV Rules, 2006 lays down the methods and means of service of notice issued under Section 13(1).

20. We may also note that under Sub-section (1) of Section 23 of the DV Act, 2005, a power has been conferred on the learned Magistrate to pass interim and *ex-parte* orders.

21. Therefore, an application under Section 12 of the DV Act, 2005, cannot be equated with a complaint within the meaning of Section 200 of the CrPC (Section 223 of the BNSS). As provided in Sub-section (4) of Section 12, read with Sub-section (1) of Section 13, the normal rule is that a notice of hearing must be issued on the application. The scheme of Section 12 is completely different from Section 200 of the CrPC or Section 223 of the BNSS.

22. Section 28 of the DV Act, 2005 reads thus:

“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.”

22.1 It is true that the proceedings of an application under Sections 12 and 23 are governed by the CrPC. However, Subsection (2) of Section 28 confers overriding power on the Court to lay down its own procedure for the disposal of an application under Section 12 or under Sub-section (2) of Section 23.

Jurisdiction to entertain an application under Section 12

23. Now we come to the issue of jurisdiction of the Courts to entertain applications under Section 12. Section 27 of the DV Act, 2005 deals with jurisdiction, which reads thus:

“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; or

(b) the respondent resides or carries 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.”

(emphasis added)

23.1 So, the Court of the Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, has jurisdiction to entertain applications under Section 12 of the DV Act, 2005 as can be seen from the provisions of Sections 12 and 27 read with clause (i) of Section 2 of the DV Act, 2005.

24. There is one more provision of the DV Act which deals with the power of other Courts (other than the Courts mentioned in Section 27) to grant reliefs under the DV Act, i.e. Section 26 which reads thus:

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

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

(emphasis added)

24.1 Therefore, in a given case, in any legal proceedings pending before a Civil Court or Family Court affecting the aggrieved person, the reliefs under Sections 18 to 22 can be sought. Similarly, in a Criminal Court other than the Courts of Judicial Magistrate of the First Class and Metropolitan Magistrate, reliefs under Sections 18 to 22 can be sought. For example, in proceedings before a Court of Session, such reliefs can be sought provided the proceeding affects the aggrieved person. We must note here that Section 26 does not confer jurisdiction on Courts other than the Courts mentioned in Section 27 to entertain an application under Section 12 of the DV Act, 2005. It only enables the Courts mentioned therein to grant the reliefs under Sections 18 to 22 in the pending legal proceedings.

25. Before we proceed further, we must clarify that in these appeals, we are confining our adjudication to the question whether the inherent jurisdiction of the High Court under Section 482 of CrPC or Section 528 of the BNSS can be exercised to quash proceedings arising out of an application under Section 12(1) filed before the learned Magistrate in accordance with Section 27 of the DV Act, 2005. We are not dealing with other legal proceedings in which reliefs under Sections 18 to 22 are sought in the Courts referred to in Section 26 of the DV Act.

CRIMINAL COURTS

26. Under the CrPC, Chapter II deals with the constitution of Criminal Courts and Offices. The Courts of Session, Judicial Magistrates of the First Class and in any metropolitan area, Metropolitan Magistrates, Judicial Magistrates of the Second Class and Executive Magistrates are Criminal Courts as provided in Section 6 of the CrPC. Therefore, the Courts of Metropolitan Magistrates and Judicial Magistrates of First Class, which are empowered to entertain applications under Section 12 and to grant reliefs under the DV Act, 2005, are Criminal Courts. Similarly, under the BNSS, Section 6 thereof provides that Courts of Session, Judicial Magistrates of the First Class, Judicial Magistrates of the Second Class and Executive Magistrates are Criminal Courts. Under the BNSS, there is no category of Metropolitan Magistrates. Therefore, the jurisdiction to entertain a complaint vests in a Criminal Court under the CrPC.

The nature of proceedings under Section 12 of the D.V Act, 2005

27. The learned counsel appearing for the respondent tried to rely upon the nature of proceedings under the DV Act, 2005. He invited our attention to a decision of this Court in the case of **Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Anr.**⁴ He relied upon paragraphs 11 and 12 of the said decision which read thus:

“11. We have already mentioned the prayers which were made by Respondent 1 in the original petition and Prayer A thereof relates to Section 9. However, in Prayer B, Respondent 1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20 of the DV Act. In fact, Prayer A is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by Respondent 1.

Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

12. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e. aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498-A of the Penal Code, 1860. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

.....”

(emphasis added)

28. Reliance is also placed by the respondent on a decision of this Court in the case of **Prabha Tyagi v. Kamlesh Devi**¹ and in particular paragraph 50 which reads thus:

“50. In our view, the DV Act is a piece of civil code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. Therefore, the expression “joint family” cannot mean as understood in Hindu Law. Thus, the expression “family members living together as a joint family”, means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under sub-section (1) of Section 17 of the DV Act. When such a girl child or woman becomes an aggrieved person, the protection of subsection (2) of Section 17 comes into play.”

(emphasis added)

28.1 Thus, there is no doubt that, notwithstanding the penal provisions in the form of Sections 31 and 33 of Chapter V, the proceedings before the Magistrate under the DV Act, 2005, are predominantly of a civil nature.

The power of the High Court under Section 482 of the CrPC and Section 528 of the BNSS to quash proceedings under the D.V Act, 2005.

¹ (2022) 8 SCC 90

29. Under the scheme of the DV Act, 2005, the reliefs which are provided in Sections 18 to 23 can be granted on an application made by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person under Sub-section (1) of Section 12. Thus, when the question of quashing proceedings under the DV Act, 2005 pending before the learned Magistrate arises, it is for quashing of an application under Section 12(1) of the DV Act. We are examining the issue of jurisdiction of the High Court under Section 482 of the CrPC or Section 528 of the BNSS in the context of quashing the proceedings initiated on an application made under Section 12(1). We have already held that an application under Sub-section (1) of Section 12 is completely different from a complaint under Section 200 of the CrPC (Section 223 of the BNSS).

30. Now, we turn to Section 482 of CrPC, which reads thus:

“482. Saving of inherent powers of High Court.—

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

30.1 The word ‘Court’ referred to in Section 482 is obviously a Criminal Court within the meaning of Section 6 of CrPC which includes a Court of a Judicial Magistrate or Metropolitan Magistrate.

31. There are two parts of Section 482. Both parts save the inherent powers of the High Court. The first part is applicable where the power is exercised to make such orders as may be necessary to give effect to any order under ‘this Code’. When a notice is issued on an application under Section 12(1), the learned Magistrate does not pass any order under the CrPC. When orders granting any of the reliefs under Sections 18 to 23 are passed, the orders of the learned Magistrate are not under the CrPC. Therefore, the first part of Section 482 cannot apply to proceedings under Section 12(1) of the DV Act, 2005.

32. The second part of Section 482 saves the inherent power of the High Court to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Therefore, in a given case where a learned Magistrate is dealing with an application under Section 12(1), the High Court can exercise the power under the second part of Section 482 to prevent abuse of the process of any Court or to secure the ends of justice. Hence, the High Court can exercise jurisdiction under Section 482 of the CrPC to quash proceedings of an application under Section 12(1) or orders passed in accordance with Sections 18 to 23 of the DV Act, 2005.

33. Now, the question is what is the scope of interference under Section 482 with the proceedings under the DV Act, 2005. We must make a distinction between proceedings initiated on the basis of an application under Section 12(1) of the DV Act, 2005, which are predominantly of a civil nature and the proceedings before the Criminal Court for prosecuting a person for any offence. Setting criminal law in motion has very serious consequences affecting the liberty of a human being, as the person against whom criminal law is set in motion can be arrested and sentenced to undergo imprisonment.

34. We have already referred to the objects and reasons of the DV Act, 2005, which are reproduced in the decision of this Court in the case of ***Kunapareddy alias Nookal a Shanka Balaji v. Kunapareddy Swarna Kumari and Anr***⁴. The basic object of the DV Act, 2005, is to protect women from being victims of domestic violence and also to prevent the occurrence of domestic violence in society. It seeks to protect the right of women to reside in their matrimonial home or shared household. Therefore, there is a provision for passing a Residence Order under Section 19. Section 18 provides for granting Protection

Orders, which are essentially to prevent the commission of acts of domestic violence against women. The orders which can be passed under Section 20 are with the object of compensating a woman for loss caused due to domestic violence. The custody orders regarding children are also essentially to prevent domestic violence. Even Section 22 provides for passing compensation orders for the injuries, including mental torture and emotional distress, caused by acts of domestic violence. If a complaint is entertained under Section 12(1), the erring respondent cannot be punished as is understood in criminal law. He can be subjected to various orders as provided in Sections 18 to 23. A respondent in the application can be prosecuted only if he commits a breach of a protection order or an interim protection order. Therefore, the consequences of entertaining an application under Section 12(1) are not as drastic as the consequences of setting criminal law in motion. No doubt, orders that can be passed under the DV Act, 2005, can also be very drastic, but in proceedings under Section 12(1), a respondent cannot be sentenced to suffer imprisonment or a fine as in a criminal trial.

35. When it comes to exercise of power under Section 482 of the CrPC in relation to application under Section 12(1), the High Court has to keep in mind the fact that the DV Act, 2005 is a welfare legislation specially enacted to give justice to those women who suffer from domestic violence and for preventing acts of domestic violence. Therefore, while exercising jurisdiction under Section 482 of the CrPC for quashing proceedings under Section 12(1), the High Court should be very slow and circumspect. Interference can be made only when the case is clearly of gross illegality or gross abuse of the process of law. Generally, the High Court must adopt a hands-off approach while dealing with proceedings under Section 482 for quashing an application under Section 12(1). Unless the High Courts show restraint in the exercise of jurisdiction under Section 482 of the CrPC while dealing with a prayer for quashing the proceedings under the DV Act, 2005, the very object of enacting the DV Act, 2005, will be defeated.

36. We must also note here that against an order passed by a learned Magistrate, there is an appeal provided under Section 29 to the Court of Session. In contrast, generally, there is no remedy of appeal available against an order taking cognisance of an offence or an order issuing process. This is another reason why the High Court should exercise caution when exercising its inherent jurisdiction to quash proceedings under Section 12 of the D.V. Act, 2005.

37. There are decisions of the High Courts taking a view that the jurisdiction under Section 482 of the CrPC is not available to quash proceedings of an application under Section 12(1) of DV Act, 2005. The decisions are primarily based on the premise that proceedings under Section 12(1) are predominantly of a civil nature. The said view is not correct for the reasons set out earlier.

38. Before we part with this Judgment, we must mention here that one of us (Abhay S. Oka, J) is a party to a Judgment dated 27nd October, 2016 of the Bombay High Court in Writ Petition 2473 of 2016 in which the view taken is that remedy under Section 482 of the CrPC is not available for quashing the proceedings under Section 12(1) of the DV Act, 2005. This view was found to be incorrect by a full Bench of the same High Court. As judges, we are duty-bound to correct our mistakes in properly constituted proceedings. Even for Judges, the learning process always continues.

39. To conclude, the view taken in the impugned order of the High Court that a petition under Section 482 of the CrPC for challenging the proceedings emanating from Section 12(1) of the DV Act, 2005 is not maintainable, is not the correct view. We hold that High Courts can exercise power under Section 482 of CrPC (Section 528 of the BNSS) for

quashing the proceedings emanating from the application under Section 12(1) of the DV Act, 2005, pending before the Court of the learned Magistrate. However, considering the object of the DV Act, 2005, the High Courts should exercise caution and circumspection when dealing with an application under Section 12(1). Normally, interference under Section 482 is warranted only in the case of gross illegality or injustice.

40. Accordingly, we quash the order dated 9th May, 2024, passed by the High Court of Madhya Pradesh at Indore in Miscellaneous Criminal Case Nos. 52308 of 2022 and 3363 of 2023 and restore the said petitions to the file of the High Court. The restored petitions shall be heard afresh and disposed of by the High Court in the light of what we have held in this Judgment.

41. The appeals are allowed accordingly.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)