

Crl.O.P. Sr.No.31852 of 2022 etc. batch

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	15.10.2022
DELIVERED ON	:	17.11.2022

CORAM:

**THE HON'BLE MR. JUSTICE P.N. PRAKASH
THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN
AND
THE HON'BLE MR. JUSTICE A.D. JAGADISH CHANDIRA**

Crl.O.P. SR. Nos.31852, 28394, 29208, 29745, 32249, 32612, 32966, 33350,
33623, 33780, 33937, 34048, 34753, 35061, 35431, 35555, 35838, 35983,
36564, 36570, 36636, 36648, 36683, 36948, 36956, 37007, 37218, 37713,
37872, 37980, 38281 and 38330 of 2022

(32 cases)

Crl.O.P. SR.No.31852 of 2022

1 Arul Daniel
2 Gurupatham
3 Vasuki
4 Emimal
5 Gocheeyal

Petitioners

v

Suganya

Respondent

Crl.O.P. SR.No.28394 of 2022

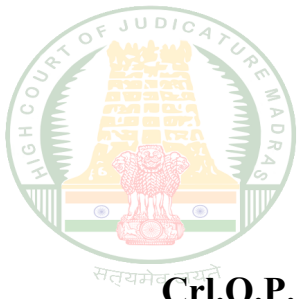
1 J. C. Hemachand
2 Gajalakshmi
3 Gomathi

Petitioners

v

Sudha

Respondent



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Crl.O.P. SR.No.29208 of 2022

Anantha Padmanabhan

Petitioner

v

Sasikala

Respondent

Crl.O.P. SR.No.29745 of 2022

D. Selvaraj

Petitioner

v

Dr. T. Yasodha

Respondent

Crl.O.P. SR. No.32249 of 2022

1 Angammal

2 Duraisamy

3 Sumathi

Petitioners

v

Amsavalli

Respondent

Crl.O.P. SR. No.32612 of 2022

1 Sanitha Mohandas

2 K. Mohandas

Petitioners

v

Shika Mohanan

Respondent

Crl.O.P. SR. No.32966 of 2022

1 Ananth @ E. Murugesan

2 Palaniammal

3 Ramachandran

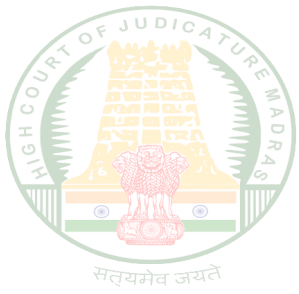
4 Mariammal

Petitioners

v

Vinothini

Respondent



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Crl.O.P. SR. No.33350 of 2022

Renuga

Petitioner

v

- 1 Boopathi
- 2 A. Kamala
- 3 M. Arumugam
- 4 N. Sudha
- 5 A. Nagendhiran

Respondents

Crl.O.P. SR. No.33623 of 2022

- 1 R. Muniappan
- 2 M. Arunkumar
- 3 A. Narmadha

Petitioners

v

- 1 Vishalakshi
- 2 M. Vinoth Kumar

Respondents

Crl.O.P. SR. No.33780 of 2022

- 1 R. Vignesh
- 2 Shanthi
- 3 R. Sindupreethi
- 4 L. Krishnan

Petitioners

v

R. Ranjitha

Respondent

Crl.O.P. SR. No.33937 of 2022

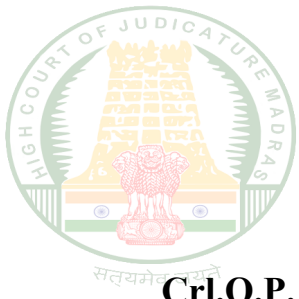
- 1 Samuel Yesupatham
- 2 Selvi @ Buelah
- 3 Freeda

Petitioners

v

- 1 Sushmita @ Hephzibah
- 2 Sathish Kumar @ Mosses
- 3 Muthallamma @ Elizabeth

Respondents



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Crl.O.P. SR. No.34048 of 2022

1 V. Muniyandi
2 M. Shanthi

Petitioners

v

Lakshmi

Respondent

Crl.O.P. SR. No.34753 of 2022

1 Raj Alagappan
2 A.L. Chidambaram
3 Meghallai

Petitioners

v

Periyanayagi @ Indu

Respondent

Crl.O.P. SR. No.35061 of 2022

Sardar

Petitioner

v

1 T. Aruna Priyanka
2 G. Nandhakumar
3 G. Kamatchi
4 G. Gejapriya Gururaj
5 R. Gururaj

Respondents

Crl.O.P. SR. No.35431 of 2022

Chandra

Petitioner

v

Malini

Respondent

Crl.O.P. SR. No.35555 of 2022

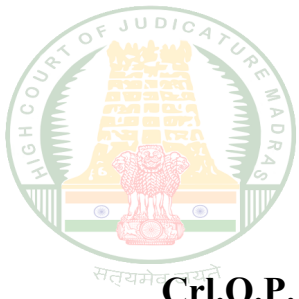
1 R. Sridevi
2 R. Santhiya
3 D. Ramesh

Petitioners

v

N. Jhanani

Respondent



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Crl.O.P. SR. No.35838 of 2022

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1 K. Chelladurai
2 Angammal

Petitioners

v

Lisi

Respondent

Crl.O.P. SR. No.35983 of 2022

1 M. Karthikeyan
2 M. Sulochana
3 M. Balasubramani
4 Dr. Nandhini

Petitioners

v

V. Sneha

Respondent

Crl.O.P. SR. No.36564 of 2022

1 Bharath
2 Saraswathi
3 Aparna
4 Baskar

Petitioners

v

Rajalakshmi

Respondent

Crl.O.P. SR. No.36570 of 2022

1 S. Vijaya Prabu
2 P. Selvaraj
3 S. Maheswari

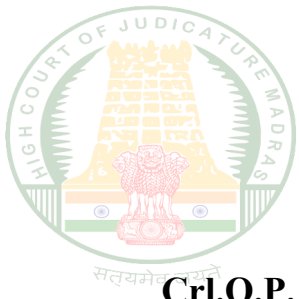
Petitioners

v

1 Muthulakshmi
2 Minor Shivani
3 Minor Pratap
4 R. Shakeela
5 S. Ramesh
6 R. Padma

Respondents

(RR 2 & 3 represented by their natural guardian and mother Muthulakshmi)



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Crl.O.P. SR. No.36636 of 2022
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1	Ponnusamy		
2	Dhanam		
3	Gomathi		
4	Sasi		Petitioners
		v	
	A. Komala		Respondent

Crl.O.P. SR. No.36648 of 2022

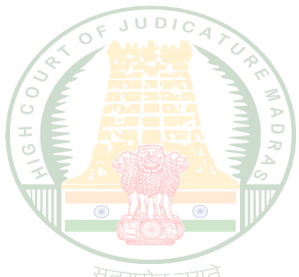
1	R. Subhashini		
2	R. Varshini		
3	Rajapandian		
4	Gopi Krishnan		Petitioners
		v	
1	A. Durga @ Maszadevi		
2	R. Vignesh Bala		Respondents

Crl.O.P. SR. No.36683 of 2022

1	R. Manikandan		
2	A.L. Ramasamy Chettiyar		
3	R. Sivagami Aatchi		
4	Sowmiya		Petitioners
		v	
	M. Gayathri		Respondent

Crl.O.P. SR. No.36948 of 2022

1	Vivekanandan		
2	Kuppusamy		
3	Muthulakshmi		
4	Vigneswaran		Petitioners
		v	
	Tamilpriya		Respondent



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Crl.O.P. SR. No.36956 of 2022

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- 1 D. Kathirvadivel
- 2 Amudhaveni
- 3 Ilakiya

Petitioners

v

Kowsalyadevi

Respondent

Crl.O.P. SR. No.37007 of 2022

- 1 Sarath Chander
- 2 Viji @ Thirupurasundari
- 3 Sukumar Kannan
- 4 Thilagavathi

Petitioners

v

Sarala Jagannathan

Respondent

Crl.O.P. No.37218 of 2022

- 1 Manickaraj
- 2 Bharaneeswari

Petitioners

v

Jothyshyamala

Respondent

Crl.O.P. No.37713 of 2022

Madhan Kumar

Petitioner

v

Sumathi

Respondent

Crl.O.P. No.37872 of 2022

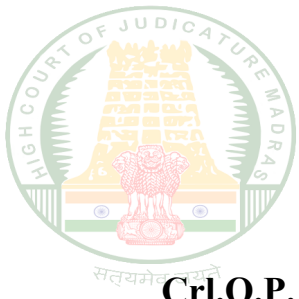
- 1 Kishore Kumar
- 2 Jayaraj
- 3 Banumathy
- 4 Hemavathy

Petitioners

v

Suganya

Respondent



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Crl.O.P. No.37980 of 2022
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1 S. Selvakumar
2 S. Priya
3 S. Praveena

Petitioners

v

Srinitha

Respondent

Crl.O.P. No.38281 of 2022

1 Vennila
2 Deepa

Petitioners

v

Ranjitha

Respondent

Crl.O.P. No.38330 of 2022

1 K. Muthu
2 Jeyanthi

Petitioners

v

Seetha

Respondent

Prayer in Crl.O.P. SR.No.31852 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to quash the proceedings in D.V.C. No.74 of 2022 on the file of the Additional Mahila Court, Thiruvallur, Thiruvallur District, against the petitioners.

Prayer in Crl.O.P. SR. No.28394 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in D.V.C. No.7 of 2022 pending on the file of the District Munsif-cum-Judicial Magistrate Court, Ranipet, Ranipet District and quash the complaint dated 04.05.2022.



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Prayer in Crl.O.P. SR. No.29208 of 2022

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Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records relating to the case in D.V.C No.9 of 2022 on the file of the Judicial Magistrate Court No.III, Puducherry, and to quash the same.

Prayer in Crl.O.P. SR. No.29745 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the complaint made by the respondent in D.V.C. No.15 of 2022 on the file of the Judicial Magistrate Court No.XVII, Saidapet, Chennai and quash the same.

Prayer in Crl.O.P. SR. No.32249 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to quash the proceedings in D.V.O.P. No.5 of 2021 on the file of the Judicial Magistrate Court No.II, Attur, Salem District.

Prayer in Crl.O.P. SR. No.32612 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the complaint in D.V.C No.2 of 2022 pending on the file of the Judicial Magistrate Court No.I, Poonamallee and quash the same as far as the petitioners are concerned.

Prayer in Crl.O.P. SR. No.32966 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the case in D.V.A. No.8 of 2022 on the file of the Judicial Magistrate Court No.I, Pollachi, Coimbatore District and quash the same.

Prayer in Crl.O.P. SR. No.33350 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to D.V.A. No.175 of 2021 insofar as the order dated 14.12.2021 pending on the file of the Special Court for trial of Domestic Violence Act Cases, Coimbatore and quash the same.



Crl.O.P. Sr.No.31852 of 2022 etc. batch

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Prayer in Crl.O.P. SR. No.33623 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings as against the petitioners in D.V.A. No.167 of 2020 on the file of the Judicial Magistrate (Special Court to try cases under the Protection of Women from Domestic Violence Act) Court, Coimbatore.

Prayer in Crl.O.P. SR. No.33780 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records connected in D.V.A. No.3 of 2022 on the file of the Judicial Magistrate Court, Madukkarai, Coimbatore District and quash the same against the petitioners.

Prayer in Crl.O.P. SR. No.33937 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.263 of 2022 pending on the file of the Judicial Magistrate Court No.I, Mayiladuthurai and quash the same as against the petitioners.

Prayer in Crl.O.P. SR. No.34048 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.8 of 2021 dated 27.04.2020 against the petitioners on the file of the Judicial Magistrate Court, Thiruvottriyur and quash the same.

Prayer in Crl.O.P. SR. No.34753 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the impugned proceedings made in D.V.C. No.5 of 2022 on the file of the Judicial Magistrate Court No.I, Poonamallee and quash the same.

Prayer in Crl.O.P. SR. No.35061 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to D.V. No.6 of 2022 initiated under the Protection of Women from Domestic Violence Act, 2005, against the petitioner at the behest of the first respondent pending before the Additional Mahila Court, Alandur and quash the same.



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Prayer in Crl.O.P. SR. No.35431 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pursuant to the complaint in D.V.C. No.7 of 2022 on the file of the Judicial Magistrate Court No.II, Poonamallee, Tiruvallur District and quash the same.

Prayer in Crl.O.P. SR. No.35555 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records connected with the complaint in D.V.C. No.5 of 2022 pending on the file of the Judicial Magistrate Court No.II, Sivakasi and quash the same.

Prayer in Crl.O.P. SR. No.35838 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to the proceedings in D.V.C. No.1 of 2022 on the file of the Judicial Magistrate Court No.II, Attur and quash the same.

Prayer in Crl.O.P. SR. No.35983 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.10 of 2022 on the file of the Judicial Magistrate Court at Arakkonam and quash the same.

Prayer in Crl.O.P. SR. No.36564 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to D.V.C. No.4 of 2021 on the file of the District Munsif-cum-Judicial Magistrate Court at Neyveli, Cuddalore District and to quash the same.

Prayer in Crl.O.P. SR. No.36570 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.21 of 2021 on the file of the Judicial Magistrate Court No.I, Mayiladuthurai and quash the same.

Prayer in Crl.O.P. SR. No.36636 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.2 of 2022 on the file of the Judicial Magistrate Court No.I, Tindivanam and quash the same.



Crl.O.P. Sr.No.31852 of 2022 etc. batch

Prayer in Crl.O.P. SR. No.36648 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pertaining to the complaint dated 04.05.2022 given under the Protection of Women from Domestic Violence Act in D.V.C. No.51 of 2022 on the file of the Judicial Magistrate Court No.I, Puducherry and quash the same with regard to the petitioners.

Prayer in Crl.O.P. SR. No.36683 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the case in D.V.A. No.201 of 2019 pending on the file of the Judicial Magistrate Court No.III, Coimbatore and quash the same.

Prayer in Crl.O.P. SR. No.36948 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V. No.11 of 2022 pending on the file of the Judicial Magistrate Court No.II, Attur and quash the same.

Prayer in Crl.O.P. SR. No.36956 of 2022

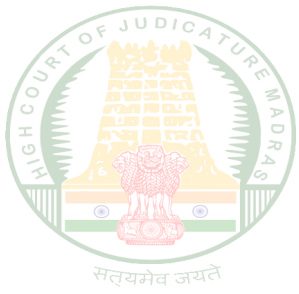
Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pertaining to the complaint in D.V.C. No.3 of 2022 on the file of the District Munsif-cum-Judicial Magistrate Court, Madathukulam and quash the same with regard to the petitioners.

Prayer in Crl.O.P. SR. No.37007 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for records pertaining to the proceedings in D.V.C. No.41 of 2022 pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

Prayer in Crl.O.P. SR. No.37218 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records pertaining to D.V.A. No.2 of 2021 on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Gudalur, the Nilgiris and quash the same.



Crl.O.P. Sr.No.31852 of 2022 etc. batch

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Prayer in Crl.O.P. SR. No.37713 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.11 of 2019 on the file of the District Munsif-cum-Magistrate Court, Sriperumbudur and quash the same.

Prayer in Crl.O.P. SR. No.37872 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to quash the complaint in D.V.C. No.16 of 2021 on the file of the Judicial Magistrate Court No.I, Mannargudi, Tiruvarur District.

Prayer in Crl.O.P. SR. No.37980 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.A. No.84 of 2022 on the file of the Special Court under the Protection of Women from Domestic Violence Act, Coimbatore and quash the same.

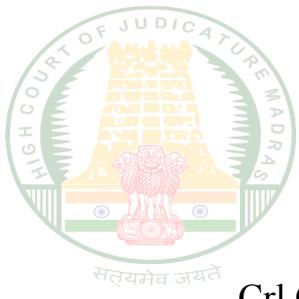
Prayer in Crl.O.P. SR. No.38281 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in D.V.C. No.2 of 2022 under Sections 18 to 20 and 22 of the Protection of Women from Domestic Violence Act, 2005, pending on the file of the Additional Mahila Court, Nagapattinam and quash the same as against the petitioners.

Prayer in Crl.O.P. SR. No.38330 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the proceedings in D.V.C. No. 5 of 2016 on the file of the Judicial Magistrate Court, Rasipuram and quash the same as illegal and without jurisdiction.

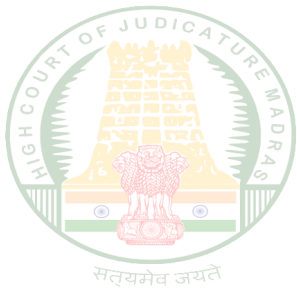
Crl.O.P. Sr.No.31852 of 2022	: Mr. P. Chandrasekar
Crl.O.P. Sr.No.28394 of 2022	: Mr. R. Balakrishnan
Crl.O.P. Sr.No.29208 of 2022	: Mr. Pon Pandian
Crl.O.P. Sr.No.29745 of 2022	: Mr. M.L. Ramesh



Crl.O.P. Sr.No.31852 of 2022 etc. batch

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Crl.O.P. Sr.No.32249 of 2022	: Mr. M. Senthilkumar
Crl.O.P. Sr.No.32612 of 2022	: Mr. Adithya Varadarajan
Crl.O.P. Sr.No.32966 of 2022	: Mr. V. Murugesan
Crl.O.P. Sr.No.33350 of 2022	: Mr. S. Karthikei Balan
Crl.O.P. Sr.No.33623 of 2022	: Ms. G.S. Thilagavathi
Crl.O.P. Sr.No.33780 of 2022	: Mr. P. Saravanan
Crl.O.P. Sr.No.33937 of 2022	: Mr. M. Soundar Vijay Arulram
Crl.O.P. Sr.No.34048 of 2022	: Mr. D. Nandhagopal
Crl.O.P. Sr.No.34753 of 2022	: Mr. K. Muthumalai
Crl.O.P. Sr.No.35061 of 2022	: Mr. N. Jothi for Mr. S. Vinod
Crl.O.P. Sr.No.35431 of 2022	: Mr. M. Sathish Kumar
Crl.O.P. Sr.No.35555 of 2022	: Mr. M. Anandan
Crl.O.P. Sr.No.35838 of 2022	: Mr. R. Dineshkumar
Crl.O.P. Sr.No.35983 of 2022	: Mr. S. Udhaya Kumar
Crl.O.P. Sr.No.36564 of 2022	: Mr. S. Vijayakumar
Crl.O.P. Sr.No.36570 of 2022	: Ms. D. Kamachi
Crl.O.P. Sr.No.36636 of 2022	: Mr. K. Thenrajan
Crl.O.P. Sr.No.36648 of 2022	: Mr. B. Kumarasamy
Crl.O.P. Sr.No.36683 of 2022	: Ms. S. Vennila
Crl.O.P. Sr.No.36948 of 2022	: Mr. S.N. Subramani
Crl.O.P. Sr.No.36956 of 2022	: Mr. B. Kumarasamy
Crl.O.P. Sr.No.37007 of 2022	: Mr. L. Sivakumar
Crl.O.P. Sr.No.37218 of 2022	: Mr. R. Siva
Crl.O.P. Sr.No.37713 of 2022	: Mr. L. Mahendran
Crl.O.P. Sr.No.37872 of 2022	: Mr. T. Shanmugam
Crl.O.P. Sr.No.37980 of 2022	: Mr. K. Myilsamy
Crl.O.P. Sr.No.38281 of 2022	: Mr. K. Venkateswaran
Crl.O.P. Sr.No.38330 of 2022	: Mr. N. Naganathan



Crl.O.P. Sr.No.31852 of 2022 etc. batch

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Counsel who assisted the Court : Mr. Nithyaesh Natraj
: Mr. Muniyapparaj, A.P.P.
Mr. Babu Muthu Meeran, A.P.P.

COMMON ORDER

P.N PRAKASH, J.

This Full Bench has been constituted under the orders of the Hon'ble Chief Justice on a reference made by our learned brother Justice N. Sathish Kumar *vide* order dated 12.08.2022 to answer the following questions:

- (a) “Whether a proceeding under Section 12 of the D.V. Act can be challenged under Article 227 of the Constitution or under Section 482 of Cr.P.C. ?
- (b) Whether the aforesaid remedy is available to an aggrieved person before approaching the learned Magistrate and, if necessary, the Court of Sessions by way of an appeal under Section 29 of the D.V. Act?”

2 As the order of reference is prefaced by a chequered history, it is necessary to briefly set out the manner in which these matters have come up before us:

a The Protection of Women from Domestic Violence Act, 2005 (“the D.V.Act” for short), was enacted with the avowed purpose of providing more effective protection of the rights of women, who are victims of violence of any kind, occurring within the family. Under the scheme of the said Act, an



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aggrieved person or a Protection Officer (PO) or any other person on behalf of the aggrieved person, may present an application before the Magistrate, under Section 12, seeking one or more reliefs under the said Act.

b As the reliefs that could be sought and granted under the said Act were civil in nature, the Registry of this Court entertained a doubt as to whether a petition under Section 482 Cr.P.C. was maintainable. One such matter came up before V. Ramasubramanian, J. (as he then was) in **M. Muruganandam v M. Megala**¹, wherein, it was held that a petition under Article 227 of the Constitution was maintainable against a complaint instituted under Section 12 of the D.V. Act. However, even after this decision, it is common knowledge that petitions challenging proceedings under the D.V. Act under Section 482 Cr.P.C. were being filed and entertained in this Court, presumably on the ground that complaints under the D.V. Act were akin to a complaint under Chapter XV of the Cr.P.C.

c However, in **Dr.P.Pathmanathan v V.Monica**², N. Anand Venkatesh, J. held that an application under the D.V. Act could not be equated

¹ 2011 (1) CTC 841

² 2021 1 MLJ (Cri) 311

<https://www.mhc.tn.gov.in/judis>



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to a complaint as defined in Section 2(d) of the Cr.P.C. This was because a complaint for grant of one or more reliefs under Section 12 of the D.V. Act did not contemplate any action in respect of an offence, but was a petition for grant of certain civil reliefs. This position was no longer *res integra* in view of the Supreme Court judgment in **Kunapareddy v Kunapareddy Swarna Kumari**³, wherein, it was held that all the reliefs granted by the Magistrate under the D.V. Act were civil in nature, and that an offence under Section 31 of the D.V. Act would be made out only if there was a breach of a protection order made under the Act.

d N. Anand Venkatesh, J. also pointed out that though the jurisdiction under the D.V. Act was conferred on a Magistrate, it did not necessarily follow that the Court of the Magistrate, exercising jurisdiction under the D.V. Act, was thereby a “Criminal Court” for the purpose of Section 6 Cr.P.C. Alluding to the decision of the Supreme Court in **State of W.B. v Sujit Kumar Rana**⁴ and of a Division Bench of this Court in **Rajamanickam v State of Tamil Nadu**⁵, N. Anand Venkatesh, J. observed that Section 482 Cr.P.C. applied only in respect of preventing abuse of process and

³ (2016) 11 SCC 774

⁴ (2004) 4 SCC 129

⁵ 2015 (3) MWN (Cri) 379

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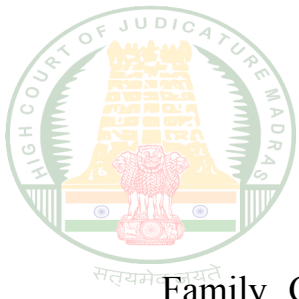
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securing the ends of justice in matters that were in seisin before a Criminal Court which is subordinate to the High Court. At this juncture, it may be relevant to state that the High Court has also been classified as a Criminal Court in Section 6 of the Code albeit the fact that the Madras High Court is a creature of the Letters Patent issued under the Indian High Courts Act, 1861. As the Magistrate exercising power under Section 12 of the D.V. Act was not a Criminal Court, the learned judge concluded that a petition under Section 482 Cr.P.C., challenging an application under Section 12 of the D.V. Act was not maintainable. It was also held that in view of the procedural flexibility given to a Magistrate under the D.V. Act, it was open to a respondent in a D.V. application to approach the Magistrate, upon receipt of notice, and seek exoneration. If the respondent was aggrieved by the decision of the Magistrate, an avenue of appeal was available under Section 29 of the D.V. Act to the Sessions Court.

e Shortly thereafter, in **Arun Prakash v Sudhamary**⁶, the husband filed a transfer petition before this Court, under Section 24 of the C.P.C., seeking to withdraw a D.V. application filed by his wife before the Metropolitan Magistrate, Saidapet and transfer the same to the file of the

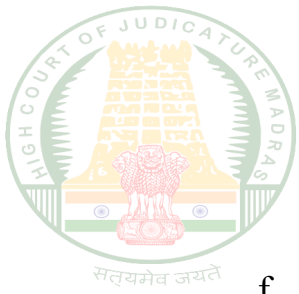
⁶ 2021-2- LW-518

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Family Court at Chennai. It appears that the Registry of this Court had entertained doubts on the nature of the relief sought in the petition, and the matter was, therefore, placed before S.M.Subramaniam, J. for considering the issue of maintainability. S.M.Subramaniam, J. observed that an application registered under Section 12 of the D.V. Act “*is criminal proceedings on the criminal side of the judiciary and accordingly, the said proceedings are to be regulated under the Criminal Procedure Code*”. He eventually concluded that “*the application under Section 12 of the Domestic Violence Act cannot be construed as a civil natured proceedings*”. We notice from the above order that the attention of the learned judge was not invited to the decision of the Supreme Court in **Kunapareddy**, *supra*, wherein, the Supreme Court has held that D.V.Act proceedings are civil in nature. The decision of a coordinate bench in **Pathmanathan**, *supra*, was also not brought to the notice of the learned judge. S.M.Subramaniam, J. eventually dismissed the petition holding that a petition filed to “*transfer a case registered under the Domestic Violence Act must be entertained only under the Code of Criminal Procedure and certainly not by invoking the powers under Article 227 of the Constitution of India, to transfer the said case to the Civil Court or Family Court.*”



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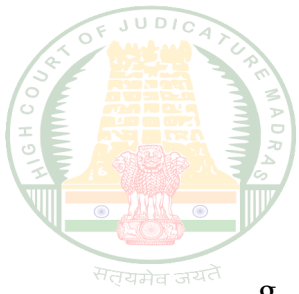
f In the meantime, one Muthulakshmi had filed a petition under Article 227 of the Constitution before the Madurai Bench challenging the D.V.application instituted by her daughter-in-law Vijitha before the Judicial Magistrate Court-I, Tirunelveli. The Registry raised a doubt on the maintainability of the petition, and the matter was eventually placed before G.R. Swaminathan, J. (**Muthulakshmi v Vijitha**⁷). Swaminathan, J. noticed that the decision of S.M.Subramaniam, J. in **Arun Prakash**, *supra*, was not in consonance with the decisions of A.D. Jagadish Chandira, J. (**G.Jayakumar v. Jayanthi**⁸) and S. Vaidyanathan, J. in **Mohana Seshathri v. E. Anuja**⁹, wherein, it was held that a petition under Article 227 to transfer a D.V. Act application was maintainable. However, as the petition before him was not one for transfer, but was one for quashing an application under the D.V. Act, Swaminathan, J. very properly declined to make a reference to a larger Bench. The learned judge held the petition to be maintainable observing that a proceeding whether “*civil or criminal, the power under Article 227 of the Constitution would always lie to quash the proceedings, if a case is really made out.*”

7 2021 (4) CTC 826

8 CrI.OP No.17235 of 2016 decided on 12.02.2021

9 2021-2- LW 509

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Subsequently, in **P. Ganesan v M. Revathy Prema Rubarani**¹⁰, the husband approached the Madurai Bench by way of a petition under Article 227 to quash the application instituted by his wife under the D.V. Act. When the matter came up before K. Murali Shankar, J., the learned judge noticed a divergence of opinion between the decision of N. Anand Venkatesh, J. in **Pathmanathan**, *supra*, which had held that a proceeding under Section 12 of the Act was a civil proceeding and the decision of S.M.Subramaniam, J. in **Arun Prakash**, *supra*, which had held to the contra. The learned judge, also flagged certain other issues and by order dated 27.09.2021, referred the following five questions for an authoritative decision by a larger bench:

(i) Whether the proceedings initiated under the provisions of the Protection of Women from Domestic Violence Act before the Magistrate Courts are the Civil proceedings or Criminal proceedings?

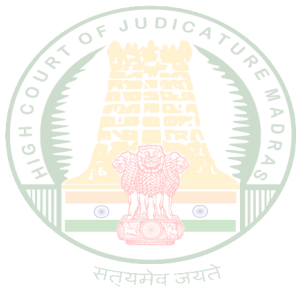
(ii) Assuming that the proceedings are civil in nature, whether the High Court can exercise its power under Section 482 of Cr.P.C., in respect of the said proceedings ?

(iii) Whether the provisions of Section 468 of Cr.P.C., are applicable for the proceedings initiated under the Domestic Violence Act ?

(iv) Assuming that Section 468 Cr.P.C., is not applicable, what is the period of limitation for initiating the proceedings under the Domestic Violence Act ?

¹⁰ C.R.P. (MD) Nos.909 & 915 of 2021

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(v) Whether the proceedings initiated under the Domestic Violence Act and pending before the Magistrate Court can be transferred to the Civil Court or Family Court, by invoking Article 227 of Constitution of India?”

h In the meantime, another transfer petition in Tr.C.M.P. No.478 of 2021¹¹ was filed by the husband before the Principal Seat invoking Section 24 of the C.P.C and seeking transfer of a D.V. application filed by his wife before the Court of a Magistrate to the Family Court. When this matter came up before R. Subramanian, J., the learned judge noticed the conflicting views prevailing as regards the question of invoking Article 227 of the Constitution to transfer D.V. cases, which have already been alluded to in paragraph 2(g), *supra*. The learned judge, by order dated 06.12.2021, referred the matter to a larger bench to resolve the conflicting views expressed therein without framing any particular question of law. In effect, the issue in reference made by the learned judge is the same as question no.(v) framed by Murali Shankar, J.

i Pursuant to the orders of the Hon'ble Chief Justice, the two references made by K. Murali Shankar, J. and R. Subramanian, J., were eventually placed before a Division Bench of this Court comprising M.Duraiswamy and Sunder Mohan, JJ. (**P. Ganesan v Revathi Prema Rubarani**¹²). The said Division Bench agreed with the view expressed by N.

¹¹ R. Vivek @ Sudharshan v V. Shakthi

¹² 2022 SCC Online Mad 3598

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Anand Venkatesh, J. in **Pathmanathan**, *supra*, that the proceedings under the D.V. Act were civil in nature and it is only when there is a breach of the protection order passed by the Magistrate, the proceedings would metamorphose to become penal in nature. As regards the issue of limitation [Questions (iii) and (iv)] raised by Murali Shankar, J., the Division Bench concluded that the issue was no longer *res integra* in view of the decision of the Supreme Court in **Kamatchi v Lakshmi Narayanan**¹³ which had held that Section 468 Cr.P.C. was not applicable to a proceeding under Section 12 of the D.V. Act, and that no period of limitation could be judicially prescribed for making such an application. As regards the issue of transfer [(Question (v))], the Division Bench concluded that an application under the D.V. Act cannot be transferred from a Magistrate Court to a Family Court or any other Civil Court, save with the consent of the aggrieved person.

j As regards the maintainability of a petition under Section 482 Cr.P.C. challenging an application under the D.V. Act (Question ii), the Division Bench differed with the views of N. Anand Venkatesh, J. and held that a Magistrate dealing with a case under the D.V. Act was a Criminal Court. It was observed that although in **Muruganandam**, *supra*, this Court had held that a petition under Article 227 was maintainable, the said decision did not hold

¹³ 2022 SCC Online SC 446

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that a petition under Section 482, Cr.P.C. was not maintainable. It was further observed that irrespective of the portfolio, every judge of the High Court is entitled to exercise inherent powers on the criminal side by invoking Section 482, Cr.P.C. or under Article 227 of the Constitution. The Division Bench held that a petition under Section 482, Cr.P.C. challenging an application under Section 12 of the D.V. Act, was maintainable. The Court concluded by observing as under:

“When it was the Parliament's intention to confer powers on a Magistrate/criminal Court to adjudicate Civil rights and confer appellate power to the Court of Sessions, we cannot rule out the Criminal jurisdiction of this Court alone by saying Section 482 of *Cr.P.C.* is inapplicable. It is therefore, the procedure which is more relevant rather than the reliefs sought for the purpose of invoking Section 482 *Cr.P.C.* We are also of the view that any person aggrieved by an order passed under Section 29 by the Sessions Court can approach this Court under Section 397 *Cr.P.C.*, provided he is able to bring his case within the limited scope of revision under Section 397 of *Cr.P.C.*.” (emphasis supplied)

k Pursuant to the aforesaid decision, a batch of petitions under Section 482 Cr.P.C. challenging various applications under Section 12 of the D.V. Act came up before N. Sathish Kumar, J. The learned judge noted that certain conclusions reached by the Division Bench in **P.Ganesan**, *supra*, were internally inconsistent. For instance, it was noticed that though the Division Bench had not disapproved the decision of V. Ramasubramanian, J. (as he then



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was) in **Muruganandam**, *supra*, holding that a petition under Article 227 was maintainable, it had disapproved the conclusion in paragraph 52 (xiv) of **Pathmanathan**, *supra*, (N.Anand Venkatesh, J.) which held that a petition under Article 227 would be maintainable under certain exceptional circumstances. It was also noticed that the decision of the Supreme Court in **Kamatchi**, *supra*, had approved the view of N.Anand Venkatesh, J. in **Pathmanathan**, *supra*, by holding that an application under Section 12 of the D.V. Act could not be equated to an application under the Cr.P.C. Since the learned judge (N. Sathish Kumar, J.) found that the decision of the Division Bench was also in conflict with certain other precedents of the Supreme Court, the matter was directed to be placed before the Hon'ble Chief Justice, who, in turn, has constituted this Full Bench to answer the questions that have been set out in paragraph 1, *supra*.

Re: Question Nos.1& 2

3 The D.V. Act was enacted in response to the obligations under the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to which India had become a signatory in 1993. The object of the legislation is to provide women with civil remedies against acts of



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domestic violence. This is clear from the Statement of Objects and Reasons

which reads as follows:

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

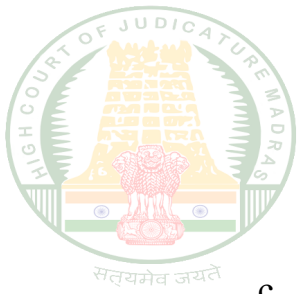
(emphasis supplied)

4 Having carefully examined the scheme and the provisions of the D.V. Act, we find that the legislature has envisaged a completely different scheme for entertaining applications and granting reliefs under the D.V. Act.

The salient features that are discernible are:

a Section 12 of the D.V. Act contemplates an application being made to a Magistrate for grant of civil reliefs and not for taking cognizance of an offence.

b As has been pointed out in **Pathmanathan**, *supra*, an application is made under Section 12 in terms of Rule 6(1) of the D.V. Rules, 2006, and not by way of a complaint as defined in Section 2(d) of the Cr.P.C. Consequently, an application, not being a complaint under the Cr.P.C., the procedure for cognizance set out under Section 190(1)(a) Cr.P.C. followed by the procedure set out in Chapter XV of the Cr.P.C. for taking cognizance, will have no application to a proceeding under the D.V. Act.



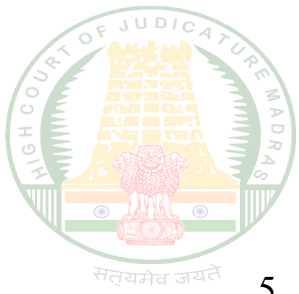
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c Since the respondents before the Court are not accused of any offence, Section 13 of the D.V. Act and Rule 12 of the Rules expressly provide that the Magistrate shall issue “*a notice*” fixing a date of hearing as prescribed in Form VII appended to the D.V. Rules, and not a summons under Section 61, Cr.P.C.

d Section 14 of the D.V. Act empowers the Magistrate to direct the parties to undergo counselling at any stage of the proceeding, which is something that an ordinary Criminal Court can never do while trying an offence.

e More importantly, the jurisdiction of the Magistrate is statutorily prescribed by Sections 2(i) and 27 of the Act. The succeeding Section, viz., Section 28, sets out the procedure for exercise of jurisdiction by the Magistrate under the D.V. Act.

f Section 29 provides for a right of appeal against an order of the Magistrate. This was obviously necessary since Chapter XXIX of the Cr.P.C. has no application since it deals with appeals arising out of trials for offences and against orders passed under Chapter VIII of the Code.

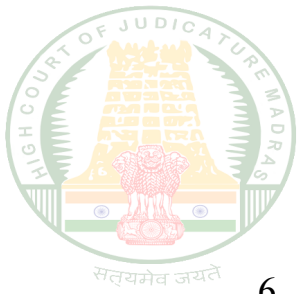


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It may not be necessary to allude to the very many authorities that were cited at the Bar regarding the nature of reliefs that can be granted by the Magistrate under the D.V. Act, as the legal position is no longer *res integra* in view of the decision of the Supreme Court in **Kunapareddy**, *supra*, wherein, it was held that the various reliefs under Sections 17-23 of the D.V. Act which can be granted by the Magistrate are civil in nature. It is only upon the breach of an interim protection order or a protection order that an offence in terms of Section 31 of the D.V. Act is committed. This is clear from the following observations of the Court:

“It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence”

Thus, at the stage of considering an application under Section 12 of the D.V. Act, the Magistrate does not perform his conventional role of trying any offence and is merely considering an application for grant of civil reliefs under the D.V. Act. This position is reiterated in **Kamatchi**, *supra*. We also notice that the Division Bench in **P. Ganesan**, *supra*, also arrived at the same conclusion while expressing their agreement with the conclusion of N. Anand Venkatesh, J. in **Pathmanathan**, *supra*.



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6 In **Pathmanathan**, *supra*, the learned single judge concluded that a Magistrate exercising jurisdiction under the D.V. Act is not a Criminal Court within the meaning of Section 6 of the Cr.P.C. Placing reliance on the decision of the Supreme Court in **Sujith Kumar Rana**, *supra*, it was observed that the power under Section 482 Cr.P.C. can be exercised only in relation to a proceeding before a Criminal Court; as the Magistrate under the D.V. Act was not a Criminal Court, a petition under Section 482 Cr.P.C. was not maintainable to quash an application filed under Section 12 of the D.V. Act.

7 The Division Bench, in **P.Ganesan**, *supra*, has categorically and correctly restated the legal position, in two places that the proceedings under the D.V. Act are civil in nature. For the sake of convenience, we are extracting those portions from **P. Ganesan**, *supra*.

“15 (o) To sum up:

(i) As we have already held that the proceedings under the Domestic Violence Act are civil in nature.....

16 (c) We have already held that the proceedings under Chapter IV of the Domestic Violence Act are civil in nature.....”

8 We concur with the above view of Anand Venkatesh, J., as affirmed by the Division Bench in **P.Ganesan**, *supra*. However, after saying so, the Division Bench, in **P.Ganesan**, *supra*, found itself in disagreement with the opinion of Anand Venkatesh, J. that a petition under Section 482 Cr.P.C. to



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quash a D.V. proceedings is not maintainable and has given a contrary opinion

which is as under:

“N. Anand Venkatesh, J. held that the Magistrate while adjudicating Civil rights cannot be called Criminal Court. We do not agree with this view of the learned Judge, firstly because the Parliament intended to deliberately confer Jurisdiction on the Criminal Court. An appeal is also provided to the Court of Sessions and not to the District Judge. Secondly, the learned Judge relied upon a number of cases to hold that where the Magistrate is conferred power to grant reliefs of Civil nature he cannot be called to a ‘Criminal Court’. We find that in all the Judgments referred by the learned Judge, the Courts have held that the Magistrate was not a Court when he was exercising Ministerial/Administrative functions and not a criminal Court when he was following the procedure stipulated under the Special Act which gave his power and not under Cr.P.C.. Therefore, in our view those Judgments cannot be relied upon to hold that the Magistrate is not a criminal Court while dealing with an Application under 12 of the Domestic Violence Act. Just as we found that the nature of reliefs would determine the character of the proceedings we find that the nature of the procedure adopted would determine the character of the Tribunal. There is no doubt that the Magistrate dealing with proceedings under Domestic Violence Act is a Criminal Court who has to follow the procedure under Cr.P.C., exception being provided under Section 28 (2) of the Act.” (emphasis supplied)

9 From a reading of the aforesaid, we are able to infer that albeit the fact that D.V. proceedings initiated on an application under Section 12 are civil proceedings, the Magistrate is nonetheless a Criminal Court as the procedure he is required to follow is one under the Code of Criminal Procedure. To put it more precisely, according to the Division Bench, it is not the substantive law, but the procedural law that determines the character of the Court of the



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Magistrate. This is where, in our considered opinion, with due respect, the Division Bench appears to have fallen in error.

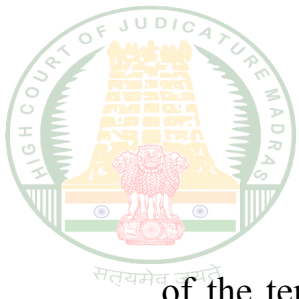
10 To examine the correctness of the conclusions of the Division Bench, it is necessary to first examine the relevant provisions of the Cr.P.C. Section 6 in Chapter II of the Cr.P.C. sets out various Classes of Criminal Courts and reads as follows:

“Classes of Criminal Courts.

Besides the High Courts and the Courts constituted under any law, other than this Code, there shall be, in every State, the following classes of Criminal Courts, namely:-

- (i) Courts of Session;
- (ii) Judicial Magistrates of the first class and, in any metropolitan area, Metropolitan Magistrates;
- (iii) Judicial Magistrates of the second class; and
- (iv) Executive Magistrates.”

It is apparent that Section 6 Cr.P.C. does not purport to define a Criminal Court, and merely enumerates the various classes of Criminal Courts under the Code, and also includes those Courts ‘*constituted under any law*’ other than the Code. For instance, the High Court of Madras, which is a creature of the Letters Patent read with the Indian High Courts Act, 1861, has also been classified as a Criminal Court. In the absence of any statutory definition of a “Criminal Court” in the Cr.P.C., the Court must look to the dictionary meaning



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of the term as was pointed out by the Supreme Court in **CIT v. Raja Benoy Kumar Sahas Roy**¹⁴.

11 A Criminal Court is defined in the Black's Law Dictionary (9th Edition) to mean "*A court with jurisdiction over criminal matters*". In an earlier edition of the same dictionary (3rd Edition), a Criminal Court was defined to mean "*One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority.*" Therefore, an application under Section 12 of the D.V. Act, not being a proceeding involving the trial and determination of offences, does not, textually or contextually, fit in the aforesaid definition of a Criminal Court as it is not a criminal matter by any stretch of imagination.

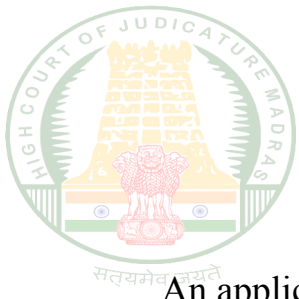
12 As to what constitutes a "criminal proceeding", the Supreme Court, in **Ram Kishan Fauji v. State of Haryana**¹⁵, has laid down the following test:

"As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order."

¹⁴ AIR 1957 SC 768

¹⁵ (2017) 5 SCC 533

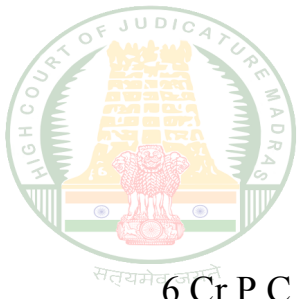
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An application under Section 12 of the D.V. Act does not lead to the imposition of any sentence. In fact, as has been pointed out by the Supreme Court in **Kamatchi**, *supra*, at the stage of an application under Section 12 of the D.V. Act, there is no offence at all. The enquiry under Section 12 may culminate with the granting of one or more of the civil reliefs set out in Sections 17-23, and does not lead to the imposition of any sentence. Nor can such a proceeding be characterised as one to prevent an apprehended breach of peace which is governed by Chapter VIII of the Code. Thus, by applying the aforesaid test, it is clear that the character of the proceeding before the Court in an application under Section 12 of the D.V. Act is civil and not criminal in nature.

13 The aforesaid dictionary meaning of a “*Criminal Court*” appears to be in line with the scheme of the Code which would be evident from Chapter III of the Cr.P.C. which sets out the “*Power of Courts*”. Section 26, Cr.P.C. proceeds to set out the Courts by which “offences” are triable. This provision has to be read in conjunction with the First Schedule to the Code which enumerates the various offences under the IPC and the Court(s) by which they are to be tried. The succeeding Sections 28, 29, 30 and 31 of the Code set out the various sentences which a Criminal Court may pass in the course of a trial before it. What is apparent is that the Classes of Courts set out in Section



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6,Cr.P.C. and the corresponding powers conferred on such Courts under Chapter III of the Code, concern the trial of “*offences*”, and do not take within their fold, proceedings of the nature set out in Section 12 of the D.V. Act.

14 We must now examine the impact of Section 28 of the D.V. Act which appears to have weighed heavily with the Division Bench in **P.Ganesan**, *supra*. Section 28, *ibid.*, reads as follows:

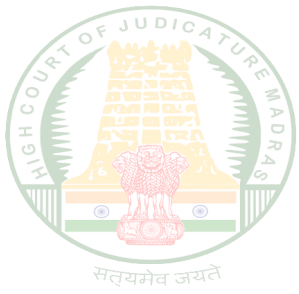
“Procedure.—

(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.”

According to the Division Bench, the Magistrate is enjoined by Section 28(1) to follow the Cr.P.C. while dealing with an application under Section 12 of the D.V. Act; consequently, the Magistrate exercises power under the Cr.P.C. while deciding an application under Section 12 and is, thus, a Criminal Court under the Code. The Division Bench concludes by observing:

“We have already held that it was the intention of the Legislature that the Civil Law remedies have to be adjudicated and enforced by adopting the criminal procedure in order to provide teeth to the remedies. Section 28 (1) is nothing but a reflection of the statement of Objects and Reasons of the Act. That is why this Act is unique and by a judicial pronouncement we cannot dilute the intention of the Parliament.”



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15 Normally, when a matter is to be adjudicated by a Court, the normal incidents of the procedure of that Court automatically attaches to it during the adjudication of a dispute. This principle was laid down by the House of Lords in **National Telephone Co. Ltd. v Postmaster General**¹⁶ in the following words:

“When a question is stated to be referred to an established court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that court are to attach, and also that any general right of appeal from its decisions likewise attaches.”

This principle finds its manifestation in Section 4 of the Cr.P.C. which makes the provisions of the Code applicable, by default, to the inquiry and trial of all offences under the IPC and other laws. However, as observed, *supra*, the Magistrate deciding an application under Section 12 of the D.V. Act is not a Criminal Court trying an offence with the result that Section 4, Cr.P.C. would have no application to the matters before it. The legislature, being aware of this position, engrafted Section 28(1) which states that the procedure before the Magistrate is to be “governed” by the Cr.P.C. The opening words of Section 28(1) of the D.V. Act begin with the expression “*Save as otherwise provided in this Act*” which indicates that the special procedure set out in the Act would prevail over the procedure under the Cr.P.C. This was necessary since the

¹⁶ [1913] A.C. 546

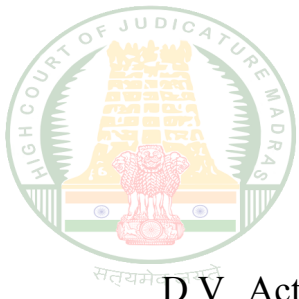
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enquiry conducted by the Magistrate under the D.V. Act is not akin to an enquiry under Chapter XV of the Cr.P.C., which deals with the procedure for taking cognizance of offences.

16 Looking at the scheme of Section 28 of the D.V. Act, we are of the opinion that the legislature was conscious of the fact that the Magistrate was required to grant civil reliefs under Sections 18 to 22 of the D.V. Act. A wholesale application of the provisions of the Cr.P.C would have been unworkable and therefore, a special procedure was devised. In the Code of Criminal Procedure, there are five forms of trial for offences, to wit, Sessions Trial (Chapter XVIII), Magisterial Trial on a police report (Chapter XIX-A), Magisterial Trial otherwise than on a police report (Chapter XIX-B), Summons Trial (Chapter XX) and Summary Trial (Chapter XXI). In special penal enactments like the Prevention of Corruption Act, NDPS Act, *etc.*, wherein, establishment of Special Courts for trial of the offences therein is envisaged, the statutes themselves prescribe the mode of inquiry and trial by telescoping one of the five modes stated above. However, under the D.V. Act, the legislature did not say so because of two-fold reasons: (a) The aforesaid five chapters would apply for trial of offences, whereas, Sections 18 to 22 of the



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D.V. Act are not penal provisions; (b) The Magistrate in D.V. proceedings is not conducting a trial, but, an enquiry.

17 Since the enquiry should be conducted expeditiously and not like a proceeding before Civil Courts, the legislature has stated in Section 28, *ibid.*, that the proceedings shall be “governed” by the provisions of the Code of Criminal Procedure. After saying so, it has given a further leeway to the Magistrate by saying in Section 28(2) that the Court which includes the Magistrate, can lay down its own procedure. The word “governed” used in Section 28(1) and the general power to devise “its own procedure” in Section 28(2), are the two acupuncture points in Achilles' feet of Section 28 that were lost sight of by the Division Bench in **P. Ganesan**, *supra*, while holding that the Magistrate is a Criminal Court. The following observations of the Supreme Court in **Kunapareddy**, *supra*, support this view:

“In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature.”

18 Once the procedure set out in the five chapters of the Code referred to above are excluded from application for an enquiry by a Magistrate under the D.V. Act, then, what obviously remains is only Chapter IX – “Order



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for maintenance of wives, children and parents”, because, Chapter X, wherein, an inquiry is contemplated, deals with maintenance of public order, which can, by no stretch of imagination, be applied to D.V. Act proceedings. The legislature could have straightaway stated in Section 28 that Chapter IX of the Code of Criminal Procedure would apply, but, instead, has stated in general terms that the proceedings “shall be governed by the provisions of the Code of Criminal Procedure” so as to leave it to the wisdom of the Central Government to lay down the specifics in the Rules *via* the rule-making power under Section 37 of the D.V. Act. Accordingly, the Central Government has laid down the specifics in Rule 6(5) of the D.V. Rules, 2006, which reads as follows:

“6. Applications to the Magistrate.--

5. The applications under section 12 shall be dealt with and the orders enforced in the same manner laid down under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).”

19 Since Chapter IX of the Code has an in-built mechanism for the enforcement of the orders of maintenance, the legislature deemed it fit to mirror the said procedural mechanism under the D.V. Act and the Rules by a well-known legislative device of incorporation by reference. At the risk of repetition, the legislature has not stated that the Code would apply to the proceedings under the D.V. Act, but has only stated that the proceedings shall



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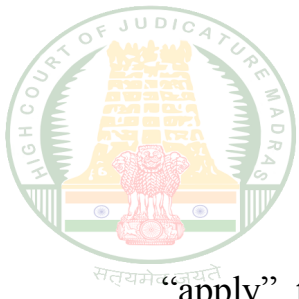
be governed by the provisions of the Code of Criminal Procedure. Whereas, the Division Bench, with due respect, has fallen in error by holding that the Magistrate “has to follow the procedure under the Cr.P.C., exception being provided under Section 28(2) of the Act”.

20 It is necessary to restate that Section 28(2) of the D.V. Act begins with the expression “Nothing in sub-section (1) shall prevent the Court from laying down its own procedure.”. The non-obstante clause in Section 28(2), *ibid.*, cannot be an exception to Section 28(1), for, that would be putting the cart before the horse. To be noted, wherever the legislature has envisaged the “application” of the Code, it has stated so explicitly. For instance, Section 31 of the POCSO Act reads as follows:

“31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court:

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”

That is not the case in Section 28 of the D.V. Act. That is why, we lay emphasis on the expression “governed” which is in contra distinction with the expression



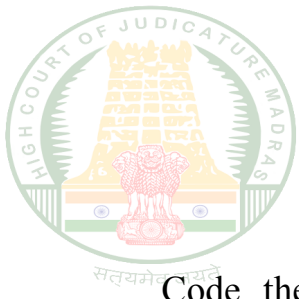
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“apply”, the former being generic in character while the latter is specific in the present context.

21 The legislative technique of empowering Magistrates to grant civil reliefs through the procedural mechanism of the Cr.P.C. is not unknown to our law. Way back in 1856, Act XIII of 1856 was enacted by the Legislative Council of India for regulating the police of the Towns of Calcutta, Madras and Bombay and certain settlements. Section XLIII of the Act ran as under:

“If any person, having sufficient means, neglects or refuses to maintain his wife or any legitimate or illegitimate child unable to maintain himself, it shall be lawful for a Magistrate, upon due proof thereof to order such person to make a monthly allowance....”

22 In 1861, a Code of Criminal Procedure for Courts of criminal jurisdiction not established by Royal Charter, (Act XXV of 1861) was passed by the Legislative Council of India. The corresponding provision of Section XLIII of the 1856 Act was Section 316 in the 1861 Code. In the succeeding Code of Criminal Procedure, 1872, the corresponding provision was Section 536. In the Code of Criminal Procedure, 1898, this remedy was housed in Chapter XXXVI titled “Of the maintenance of wives and children” and was housed in Part VIII of the Code titled “Special Proceedings.” In the present



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Code, the special provisions regarding the maintenance of wives and children are found in Chapter IX of the Code.

23 In **Nand Lal Misra v Kanhaiya Lal Misra**¹⁷, Subba Rao, J. termed Chapter XXVI of the 1898 Code (present Chapter IX of the 1973 Code) as a “*self-contained*” one. Furthermore, it is well settled that though the Magistrate exercises power under the Code to grant maintenance, the proceedings before him do not partake the character of a criminal proceeding. This was pointed out by J.C. Shah, J. (as the learned Chief Justice then was) in **Jaswantsinghji Fathehsinghji Thakore v Kesuba Harisinh Dipsinhji**¹⁸, wherein, it was held as follows:

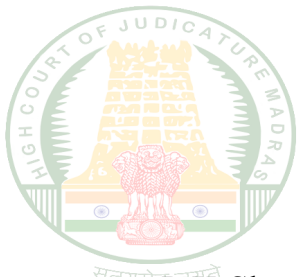
“What is essentially a civil remedy is given to abandoned wives and children by providing in Chap. XXXVI of Criminal P.C. a right to approach a Magistrate of the First Class or a Presidency Magistrate for an order for payment of maintenance. The fact that the proceedings lie in the Court of a Magistrate does not convert those proceedings into 'criminal proceedings' nor proceedings in respect of an offence. Inherent in the provisions of Ss.488, 489 and 490, which fall in Chapter XXXVI of the Code, is sufficient indication that the proceedings under S.488 of the Code are not regarded as proceedings in respect of an offence.” (emphasis supplied)

24 In **Balan Nair v Bhavani Amma Valsamma and others**¹⁹, a Full Bench of the Kerala High Court (U.L.Bhat, K.T.Thomas and

¹⁷ AIR 1960 SC 882

¹⁸ AIR 1955 Bom 108

¹⁹ AIR 1987 Ker 110



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P.K.Shamsuddin, JJ.) reiterated the aforesaid position. Speaking for the Full

Bench, Justice U.L.Bhat observed:

“The relief given, as we have indicated is essentially of a civil nature and the proceedings are essentially civil proceedings and not criminal proceedings. The proceedings have been described in some decisions as of a quasi-criminal nature or quasi-civil nature. But we are of opinion that they are essentially of a civil nature. The fact that the provisions occur in the Cr. P.C. and not the Civil P.C. and the fact that the recalcitrant opposite party who suffers the order of maintenance and does not obey the order may have to go to prison, will not change the nature of the proceedings from civil to criminal. The provisions have been incorporated in the Cr. P.C. only with a view to expedite the proceedings, as it was thought that the Magistrate could better deal with the matter in a summary manner.”

We are in complete agreement with the aforesaid observations. We may add that the considerations that impelled the Parliament to vest power with the Magistrate to grant civil reliefs under the D.V. Act appear to be the same. Cases in the Civil Court do not move with any degree of expedition, as is well known. Then, there is the proverbial lament harking back to the days of the Privy Council that the difficulties of the litigant in India begin when he has obtained a decree. This observation, which was made in 1872, was reiterated by the Supreme Court in 2022 in **Air Liquide Deutschland GMBH v Goyal MG Gases Pvt. Ltd.**²⁰. Under these circumstances, it would have been an exercise in futility to provide a mechanism for expeditious remedy for a victim of domestic violence and then toss her into the Civil Courts for eking out her

²⁰ 2022 SCC Online SC 97

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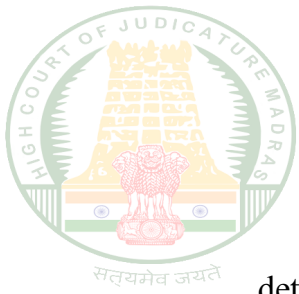
redress, given the vagaries and procedural uncertainties that plague our civil justice system. It is for this reason, that the Parliament has vested a special statutory jurisdiction under the D.V. Act, empowering a Magistrate to entertain and grant one or more reliefs under the D.V. Act.

25 At this juncture, it is necessary to notice that the word “*jurisdiction*” relates to the power of the Court to decide a class or classes of cases. The import of the expression has been considered by the Supreme Court in **Nusli Neville Wadia v Ivory Properties**²¹, wherein, it was observed as under:

“The word “jurisdiction” is derived from Latin words “juris” and “dico”, meaning “I speak by the law” and does not relate to rights of parties as between each other but to the power of the court. Jurisdiction relates to a class of cases to which a particular case belongs. Jurisdiction is the authority by which a judicial officer takes cognizance and decides the cases. It only presupposes the existence of a duly constituted court having control over subject-matter which comes within classification limits of the law under which court has been established. It should have control over the parties' litigant, control over the parties' territory, it may also relate to pecuniary as well as the nature of the class of cases. Jurisdiction is generally understood as the authority to decide, render a judgment, inquire into the facts, to apply the law, and to pronounce a judgment. When there is the want of general power to act, the court has no jurisdiction. When the court has the power to inquire into the facts, apply the law, render binding judgment, and enforce it, the court has jurisdiction. Judgment within a jurisdiction has to be immune from collateral attack on the ground of nullity. It has co-relation with the constitutional and statutory power of tribunal or court to hear and

²¹ (2020) 6 SCC 557

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determine. It means the power or capacity fundamentally to entertain, hear, and determine.” (emphasis supplied)

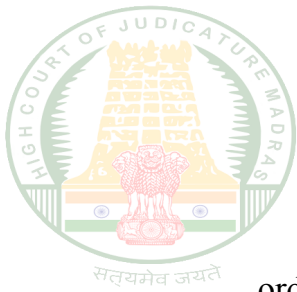
26 In view of the above, the power of the Magistrate to entertain and decide an application under Section 12 and grant one or more reliefs under the D.V. Act is an aspect of his jurisdiction. It is settled law that jurisdiction is an issue that belongs to the realm of substantive law. Procedural law, on the other hand, prescribes the mode and manner in which such jurisdiction is to be exercised. A character of the Court is an essential aspect of its substantive jurisdiction, and would depend on the nature or subject matter of the case before it.

27 In **V.B. D'Monte v Bandra Borough Municipality**²², the question before the Full Bench of Bombay High Court was whether an application for revision against an order of a Magistrate made under Section 110 of the Bombay Municipal Boroughs Act, 1925, lies on the civil or criminal side of the High Court. Under the scheme of the Act, Magistrates or Benches of Magistrate were to be designated as appellate authorities under Section 110 of the Act. The contention raised before the Full Bench was as follows:

“Now the contention put forward is that inasmuch as the decision is given by a Magistrate under s. 110 and an appeal from the Magistrate's decision lies to the High Court on its criminal side, the

²² AIR 1950 Bom 397

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order of the Magistrate should be revised by the High Court on its criminal side and not on its civil side.”

28 Speaking for the Full Bench, Chagla, C.J. repelled the aforesaid

contention observing, *inter alia*, as under:

“Now it cannot be disputed that the subject matter of the decision of the Magistrate is a purely civil matter. He is dealing with rates and taxes. He is not exercising any criminal jurisdiction, nor is he dealing with any criminal matter. Therefore when the matter comes before us in revision, it is a matter which is civil in its nature; and we see no reason why such a matter should be entertained on the criminal side of the High Court and not on the civil side.

.....

.....

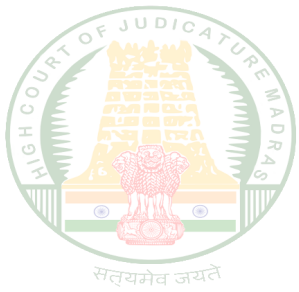
.....The better view seems to be that a criminal Court may be constituted as a *Court designata* and civil jurisdiction may be conferred upon that Court. If a criminal Court exercises that jurisdiction, then it is not necessarily an inferior criminal Court within the meaning of the Criminal Procedure Code; and if a right of revision is given from a decision of such a Court, then that revisional application is civil in its character and not criminal.”

(emphasis supplied)

29 From the aforesaid, it is evident that where the subject matter for decision before the Magistrate is purely a civil matter, he cannot be said to be exercising criminal jurisdiction or be dealing with a criminal matter. We are in respectful agreement with the aforesaid conclusion of the learned Chief Justice. We also find that this conclusion is fortified by the decision of the Supreme Court in **S.A.L. Narayan Row v Ishwarlal Bhagwandas**²³, wherein, it was observed as under:

²³ (1966) 1 SCR 190

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“The character of the proceeding, 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.”
(emphasis supplied)

30 Thus, in our considered opinion, the character of the proceeding, must be ascertained having regard to the nature of the subject matter and the reliefs sought. Viewed thus, there can be no two opinions that the proceeding before the Magistrate is essentially civil in character. The Magistrate under the D.V. Act is, to borrow the words of Chagla, C.J., in **V.B. D'Monte**, *supra*, a “*Court designata*” and not a “Criminal Court”. Consequently, we cannot agree with the conclusion of the Division Bench in **P. Ganesan**, *supra*, that “*the nature of the procedure adopted would determine the character of the Tribunal*”, for, that would imply that a Criminal Court must be defined not as one “*with jurisdiction over criminal matters*”, but as one which “*exercises criminal procedure over certain matters*”. To borrow the words of Sir Henry Maine, that would be secreting a facet of jurisdiction, which is a matter of substantive law, into the “*the interstices of procedure*”.



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31 Since we are agreeing with the opinion of the Bombay High Court in **Jaswant Singhji** (*supra*) that a proceeding under Section 125 Cr.P.C. is not a criminal proceeding, we are required to answer a seminal doubt, viz., “*if a proceeding under Section 125 Cr.P.C. is not a criminal proceeding, then, how can a revision petition under Section 397 Cr.P.C. or a petition under Section 482 Cr.P.C. be maintained?*” The short answer to this question is that an order made by the Magistrate under Chapter IX, which envisages a right for maintenance and provides a remedy thereof, is nonetheless an order passed “*under the Code*” (See Sec 482 Cr.P.C). Consequently, an order passed under Section 125 Cr.P.C. is revisable under Section 397 Cr.P.C. or the proceeding itself can be challenged in an appropriate case under Section 482 Cr.P.C. Whereas, an order passed granting one or more reliefs under the D.V. Act, is not an order passed under Chapter IX of the Cr.P.C. It remains an order passed under the D.V. Act which is susceptible to an appeal under Section 29 of the said Act. There is no appeal from an order under Chapter IX Cr.P.C, and such order can, nonetheless, be revised under Section 397 Cr.P.C, since it is an order made under the provisions of the Code.

32 We are, therefore, of the considered opinion that in a proceeding under Chapter IV of the D.V. Act, a Magistrate exercises civil jurisdiction to grant one or more civil reliefs under Sections 18-23 of that Act. Consequently, we affirm the view of N. Anand Venkatesh, J. in **Pathmanathan**, *supra*, that a



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Magistrate exercising jurisdiction under Section 12 of the D.V. Act, is not a Criminal Court for the purpose of Chapter IV of the said Act.

33 As a sequitur, in view of the law laid down by the Supreme Court in **Sujit Kumar Rana**, *supra*, that a petition under Section 482 Cr.P.C. is maintainable only against the proceedings of a Criminal Court, we also affirm the view in **Pathmanathan**, *supra*, that a petition under Section 482 Cr.P.C. is not maintainable to challenge a proceeding under Chapter IV of the D.V. Act.

34 A decision of the Full Bench of the Bombay High Court in **Nandkishor Pralhad Vyawahare v Mangala**²⁴, which has been cited with approval in **P.Ganesan**, *supra*, was brought to our notice. The Full Bench, like the Division Bench in **P. Ganesan**, *supra*, has proceeded on the basis that the procedure prescribed in Section 28 of the D.V.Act attracts the jurisdiction of the High Court under Section 482 Cr.P.C. For the reasons indicated earlier, we respectfully find ourselves unable to subscribe to this view.

35 The other aspect of the first question raised in the order of reference is whether a proceeding under Chapter IV of the D.V. Act can be assailed before this Court by way of a petition under Article 227 of the

²⁴ 2018 Cr.L.J.2992

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Constitution. In **Pathmanathan**, *supra*. it was held that a petition under Article 227 of the Constitution challenging a proceeding under Chapter IV of the D.V. Act, would be maintainable if it suffered from a patent lack of jurisdiction. This conclusion was set out in paragraph 52 (xiv) of the order of the learned single judge. In paragraph 6(k) in **P. Ganesan**, *supra*, the Division Bench appears to have concurred with all the conclusions summed up in paragraph 52 of the order of the learned single judge in **Pathmanathan**, *supra*, except paragraphs 52 (xi) and (xiv) which are extracted hereunder for the sake of convenience:

“xi. In Satish Chandra Ahuja (cited *supra*), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

xiv. A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See Abdul Razak v. Mangesh Rajaram Wagle, (2010) 2 SCC 432, Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society, (2019) 9 SCC 538). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.”

36 We also notice that, on the one hand, while disapproving of

paragraph 52 (xiv), *supra*, in **Pathmanathan**, *supra*, the Division Bench has,



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on the other hand, not explicitly observed that a petition under Article 227 is not maintainable. The Division Bench has, however, gone on to observe:

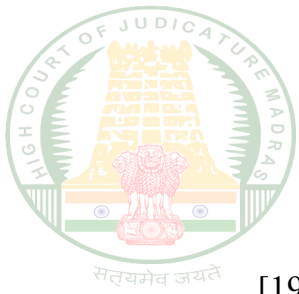
“It is needless to mention that Section 482 Cr.P.C. does not confer any new power to the High Court. It only reiterates the existence of the inherent powers of the High Court. The nomenclature of the petition makes no difference. The roster system/portfolio allocation is an Administrative act for the purpose of convenience and to bring about regularity in distribution of cases. It does not take away the powers inherent in every Judge of this Court. Every Judge irrespective of the portfolio can exercise inherent powers in criminal Cases or powers of superintendence under Article 227 Constitution of India or power to issue Writs under Article 226. When it was the Parliament's intention to confer powers on a Magistrate/criminal Court to adjudicate Civil rights and confer appellate power to the Court of Sessions, we cannot rule out the Criminal jurisdiction of this Court alone by saying Section 482 of Cr.P.C. is inapplicable. It is therefore, the procedure which is more relevant rather than the reliefs sought for the purpose of invoking Section 482 Cr.P.C.”

37 It is no doubt true that Section 482 Cr.P.C. does not confer any new power on the High Court, but, merely preserves the inherent power which inheres in the High Court as a Court of Record. However, it does not follow that any judge of this Court can exercise power under Section 482 Cr.P.C. ignoring the allocation of cases made by the Chief Justice as the Master of the Roster. That apart, the aforesaid observations run counter to the decision of the Supreme Court in **State of Punjab v Davinder Pal Singh Bhullar**²⁵, wherein, it was held as follows:

“69. It has rightly been pointed out by the Full Bench of the Allahabad High Court in *Sanjay Kumar Srivastava v. Chief Justice*

²⁵ (2011) 14 SCC 770

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[1996 All WC 644] , that if the Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they would like to hear and decide, the machinery of the court could have collapsed and judicial functioning of the court could have ceased by generation of internal strife on account of hankering for a particular jurisdiction or a particular case.

70. In view of the above, the legal regime, in this respect emerges to the effect that the Bench gets jurisdiction from the assignment made by the Chief Justice and the Judge cannot choose as to which matter he should entertain and he cannot entertain a petition in respect of which jurisdiction has not been assigned to him by the Chief Justice as the order passed by the court may be without jurisdiction and make the Judge coram non judice.”

(emphasis supplied)

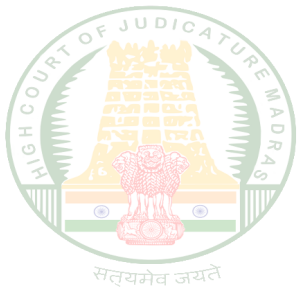
38 To the same effect are the following observations of a learned single judge of this Court in **Dorothy Thomas v Rex Arul**²⁶:

“Within the precincts of this heritage structure, every Judge exercises different jurisdictions, some under the Constitution, some on the Civil Appellate Side, some on the Ordinary Original Civil Side and so on and so forth. While exercising jurisdiction on one side, it is not open to a Judge to exercise jurisdiction on another side, merely because the High Court is one. My jurisdiction in this case arises out of some of the provisions of the Letters Patent, the rules on the Original Side of this Court and the Code of Civil Procedure. Therefore, I cannot now convert this into a proceeding under the Guardians and Wards Act.”

39 Thus, the conclusion of the Division Bench in **P. Ganesan**, *supra*, that it is open to any judge of this Court to exercise inherent jurisdiction in criminal matters irrespective of portfolio may not reflect the correct legal position.

²⁶ 2011 (5) CTC 22

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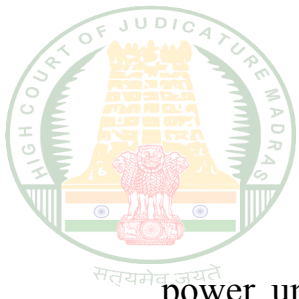
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40 The next question is whether the proceedings under Chapter IV of the D.V. Act can be assailed by way of a petition under Article 227 of the Constitution. Indubitably, the power of judicial review under the said provision is a part of the basic structure of the Constitution. After the decision of the Constitution Bench in **L.Chandra Kumar v Union of India**²⁷, it is no longer open to doubt that the power of judicial review under Articles 226/227 cannot be taken away even by a constitutional amendment, let alone by a statute. Nevertheless, the existence of power is one thing and the exercise of power is quite another. Though the power of superintendence under Article 227 over the proceedings of the Magistrate under the D.V. Act exists, its exercise would, no doubt, be conditioned on certain very salutary principles one of which is that a High Court will not exercise its power of superintendence if there exists an efficacious alternative remedy.

41 As has been adverted to, *supra*, the legislature has very thoughtfully provided an appellate remedy, under Section 31 of the D.V. Act, before the Court of Session against an order of the Magistrate. The existence of an appellate remedy would almost always be a “near total bar” for exercising

²⁷ (1997) 3 SCC 261

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power under Article 227, as has been pointed out by the Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v. Tuticorin Educational Society**²⁸. An exception to the aforesaid rule is where the proceedings before the Court below are patently lacking in jurisdiction. An illustrative instance of such a case is where a Magistrate, who does not possess jurisdiction under Section 27, entertains an application under the D.V. Act or where the reliefs sought are outside the scope of the Act, *etc.* Such instances would, no doubt, be few and far between. We only reiterate that the policy of the D.V. Act is expedition, which cannot be achieved if all and sundry orders are called into question before the High Court. This aspect must necessarily weigh with the learned single judges while exercising jurisdiction under Article 227 in a challenge to proceedings under the D.V. Act.

42 We also notice that in many cases, such as the cases on hand, a challenge is straightaway made primarily by in-laws and others contending that the application arraying them as a respondent is an abuse of process. In such cases, upon receipt of notice from the Magistrate Court, it would be open to the respondents to approach the Magistrate and file their responses or seek deletion

²⁸ (2019) 9 SCC 538

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of their names by way of an appropriate application. In **Pathmanathan**, *supra*, the learned single judge has observed thus:

“In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a “complaint” as contemplated under the D.V. Act and the D.V. Rules is not the same as a “complaint” under Cr.P.C. A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) of the Cr.P.C. is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Cr.P.C., the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C., given to a Magistrate and not to an application under Section 12 of the Act.”

43 The aforesaid observations have been quoted by the Supreme

Court in **Kamatchi**, *supra*. It was also contended before the Supreme Court in

Kamatchi, *supra*, that in view of the decision in **Adalat Prasad v Rooplal**



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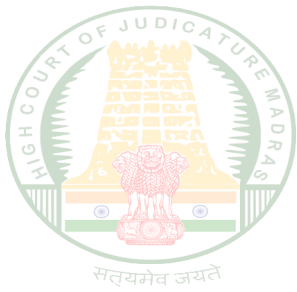
Jindal²⁹, once notice was issued by the Magistrate, the only remedy for a respondent in a D.V. case was to challenge the said proceedings under Section 482 Cr.P.C. Rejecting this submission, the Supreme Court held as under:

“Lastly, we deal with the submission based on the decision in **Adalat Prasad**. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code. The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in **Adalat Prasad** would not get attracted at a stage when a notice is issued under Section 12 of the Act.”

44 It is, therefore, clear that what is contemplated under the D.V. Act is the issuance of notice under Section 13 and not a summons under Section 61 of the Cr.P.C. The decision in **Adalat Prasad**, *supra*, concerned the correctness of the view taken by a two judge bench of the Supreme Court in **K.M.Mathew v State of Kerala**³⁰, wherein, it was held that an order issuing process was merely an interim order which could be recalled/varied. It was held that once process was issued, the accused could appear before the Magistrate and plead that the process issued against him must be recalled, and that it was open to the Magistrate to reconsider the complaint and drop proceedings if the situation so warranted. In **Adalat Prasad**, *supra*, a three judge bench overruled the aforesaid decision observing, *inter alia*, as under:

²⁹ (2004) 7 SCC 338

³⁰ (1992) 1 SCC 217

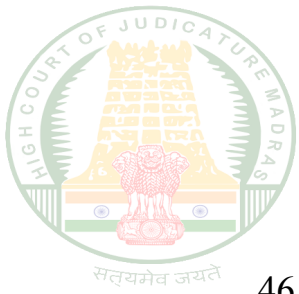


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“It is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.”

(emphasis supplied)

45 It is on account of the decision in **Adalat Prasad**, *supra*, that petitions under Section 482 Cr.P.C. are entertained after the trial court takes cognizance and issues process in a case arising out of complaint or upon submission of a final report under Section 173 Cr.P.C. in a police case. However, as pointed out in **Kamatchi**, *supra*, such a constraint cannot apply when the Magistrate exercises jurisdiction under the D.V. Act because the procedure of taking cognizance and issuing summons does not apply to a proceeding under that Act. It would, therefore, be open to the respondent in a D.V. case to appear in response to the notice and urge all such grounds, as may be open to him in law, before the Magistrate. If any party is aggrieved by an order passed by the Magistrate thereafter, it would be open to him to pursue the remedy of a statutory appeal before the Sessions Court under Section 29 of the D.V. Act.



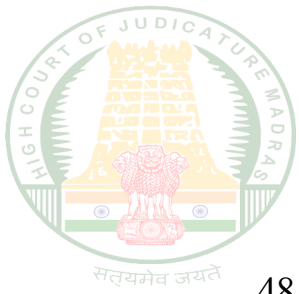
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46 There is another insurmountable difficulty in accepting the line of reasoning adopted by the Division Bench in **P. Ganesan**, *supra*. After having affirmed the directions in **Pathmanathan**, *supra*, that it was open to the respondent to approach the Magistrate, upon receipt of notice, to seek appropriate reliefs, the Division Bench has gone on to hold that a petition under Section 482 Cr.P.C. would still be maintainable to challenge a proceeding under Section 12. On a demurrer, once it is accepted that a remedy is available before the Magistrate, it must necessarily follow that the invocation of inherent power under Section 482 Cr.P.C. is impermissible (See **State v Murugesan**³¹ following **Davinder Pal Singh Bhullar**, *supra* (para 52).

47 It was also brought to our notice that despite the decision in **Pathmanathan**, *supra*, the Magistrates are continuing to issue summons and warrants in a proceeding under the D.V. Act. We have no hesitation in concluding that such a course is clearly impermissible in law. The Magistrates will, therefore, scrupulously adhere to the directives set out in paragraphs 52 (iv),(v) and (vi) in **Pathmanathan**, *supra*.

³¹ (2020) 15 SCC 251

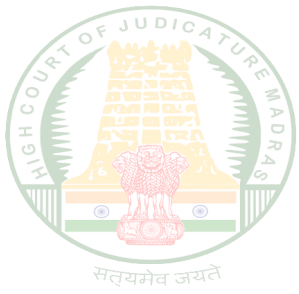
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48 As has been pointed out in **Pathmanathan**, *supra*, the Sessions Court, hearing an appeal under Section 29 of the D.V. Act, does not function as a Court of Appeal under Chapter XXIX of the Cr.P.C. It is elementary that an appeal is a continuation of an original proceeding. Thus, if an original proceeding bears a civil character, it is impossible to term an appeal arising out of such a case as a criminal proceeding. That apart, the Sessions Court, while hearing an appeal under Section 29 of the D.V. Act, is not shackled by any of the procedural rigours which applies to appeals under Chapter XXIX of the Cr.P.C. Against the order of the Sessions Court, neither a revision to the High Court under Section 397 Cr.P.C. nor a petition under Section 482 Cr.P.C. is maintainable. However, a remedy under Article 227 would be available in an appropriate case.

49 Our answer to the reference is intricately and inextricably linked to the power of transfer of proceedings from one Court to another. This is because, our finding on the character of a Court will have a direct bearing on the issue of transfer. There appears to be a conflict between paragraph 19(j) and 19(g) in **P. Ganesan**, *supra*, which requires to be addressed. Paragraph 19(j) and 19(g) are extracted for ready reference.



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“19(j) The Proceedings under the Domestic Violence Act being Civil in nature, can also be tried before the Family Court. There cannot be any dispute over that proposition of Law.”

“19(g) It is therefore clear that the Family Court can exercise all powers of any District Court or any Subordinate Civil Court to deal with the proceedings which are found in clauses (a) to (g) to the explanation. However, the Family Court can exercise the jurisdiction of a Magistrate only while dealing with the proceedings under Chapter IX of Cr.P.C. The Family Court can exercise any other Jurisdiction only if the same is conferred on it by any other enactment. Thus, we find that unless the enactment confers the Jurisdiction on the Family Court to exercise the Powers of the Magistrate, the Family Court cannot exercise the powers of the Magistrate while deciding the Domestic Violence Act proceedings. In the absence of such powers, we are of the view that if the Domestic Violence Act proceedings are transferred from the Magistrate to the Family Court or any other Civil Court, the intention of the Legislature would be defeated.” (emphasis supplied)

50 Our attention was also drawn to the following conclusion in

P.Ganesan, *supra*:

“Thus, we can see that it is only the Code of Civil Procedure that governs the Proceedings under the Family Court, except when the Family Court is dealing with the proceedings under Chapter IX of the Criminal Procedure Code. The Family Court cannot exercise any of the Powers that the Magistrate exercises while disposing of the applications under Section 12 of Domestic Violence Act. Although, Section 26 (2) of the Domestic Violence Act provides that the reliefs provided under the Act can also be sought in Civil Suit or Legal Proceedings before Civil or Criminal Court, it no way declares that when the reliefs are sought before the Civil Court or Family Court, the Procedure under Domestic Violence Act can be followed. It does not also say that the Civil Court or Family Court would be deemed to be a Magistrate for the purpose of deciding the applications under Section 12. Further, we also find that section 29



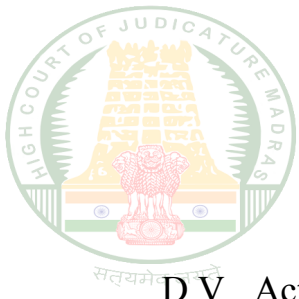
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which provides for right of appeal to the Court of Sessions also confers the appellate power only to a Criminal Court namely the Court of Sessions. If the Proceedings are transferred to Family Court, there would also be difficulty in fixing the forum for filing an appeal as the Family Court is equal in rank to that of the Court of Session. The intention of the Legislature clearly appears to provide for a host of Civil rights and all the Civil rights are to be dealt with by applying the provisions of Criminal Procedure. The reason being obvious that the Parliament wanted to enforce these Civil rights in a more effective and forceful manner. The fear of Criminal Procedure and that of the Magistrate may be an effective tool to enforce the provisions of Domestic Violence Act. Further the parliament also thought it fit to provide for Penal consequences wherever there is a breach of protection order. Section 26 (2) also clearly stipulates that the proceedings under Domestic Violence Act can be in addition to any other proceedings before any Civil Court, Family Court or Criminal Court. Therefore, the choice of the forum is with the complainant and it is not proper for this Court to force him to give up his rights to have his application determined by applying the procedure under Domestic Violence Act.”

It is submitted that having held as above, the Division Bench has gone on to hold, in paragraph 22(e) as under:

“(e) Proceedings under Domestic Violence Act cannot be transferred from a Magistrate to a Civil or Family Court at the instance of the Respondent defined under 2 (q) of the Domestic Violence Act. However, the proceedings can be transferred at the instance of the applicants/victim or with her consent.”

51 The contention raised before us was that in paragraph 19(j), the Division Bench has observed that D.V. proceedings can be entertained in a Family Court, whereas, in paragraph 19(g), it has concluded that no power is vested with the Family Court to exercise the powers of a Magistrate under the



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D.V. Act. However, in paragraph 22(e), it has once again concluded that transfer to a Family Court is possible with the consent of the complainant. In other words, the contention is that jurisdiction must either exist or not exist and there cannot be a half-way house. In any case, ‘the consent of a complainant’ cannot be a determinative factor since consent cannot confer jurisdiction on a Court which otherwise does not possess any inherent jurisdiction. As one part of the reasoning of the Division Bench contradicts another, the learned counsel submitted in unison that this aspect may also be ironed out by this Full Bench as the legal position is under a cloud.

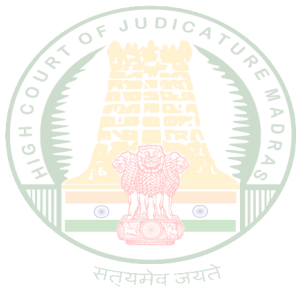
52 It was also submitted that the observations in paragraph 19(g) of **P.Ganesan**, *supra*, run counter to the law laid down in the Supreme Court in **Satish Chander Ahuja v Sneha Ahuja**³². In particular, our attention was invited by the Bar to Section 26 of the D.V. Act which runs as follows:

“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

³² (2021) 1 SCC 414

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aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

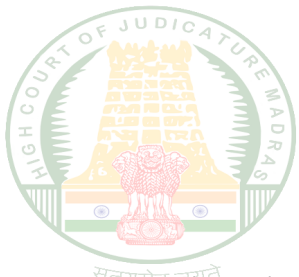
- (3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”

53 The seminal question, therefore, is whether a proceeding under the D.V. Act before the Magistrate could be transferred to a Civil or Family Court in exercise of powers under Section 24 of the CPC or under Article 227 of the Constitution. This issue appears to have cropped up in several High Courts across the country.

54 In an early case before the Kerala High Court in **M.A.Mony v M.P.Leelamma**³³, R. Basant, J. held that a proceeding under Section 12 of the D.V. Act, pending before the Magistrate cannot be transferred to a Family Court in exercise of powers under Article 227 of the Constitution. The learned judge noticed that there was no provision for transfer in the D.V. Act, and at any rate, there was no provision enabling the Family Court or the Civil Court to entertain an application under Section 12 of the D.V. Act. The same view was

³³ 2007 Cri LJ 2604

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taken in **Anish Antony Thimohty v Neetha**³⁴ and still more recently in **Ammini K.A v Ravi N.A**³⁵.

55 In Madras, the decision in **M.A. Mony**, *supra*, was followed by a learned single judge of this Court (K. Mohan Ram, J.) in **Capt. C.V.S Ravi v Ratna Sailaja**³⁶ where the husband invoked the inherent power of this Court under Section 482 Cr.P.C. to transfer the D.V. proceedings initiated by his wife from the XVII Metropolitan Magistrate, Saidapet, to the Family Court, Chennai. Mohan Ram, J. followed the decision in **M.A. Mony**, *supra*, and rejected the petition, holding that the Family Court had no power to entertain an application under Section 12 of the D.V. Act. Mohan Ram, J. reiterated this view in **M.J.John v Elizabeth John**.³⁷

56 However, in **S.Gowrishankar v Deepa**³⁸, a learned single judge of this Court appears to have exercised power under Section 482 Cr.P.C. to transfer a D.V. application from the Court of the Judicial Magistrate, Palani, to the Family Court, Dindigul. Having perused the decision, we find that the order

34 2011 3 KLT 409

35 2021 SCC Online Ker 9212

36 (2009) 1 MWN (Cri) 472

37 2011 SCC Online Mad 465

38 2014 SCC Online Mad 12443

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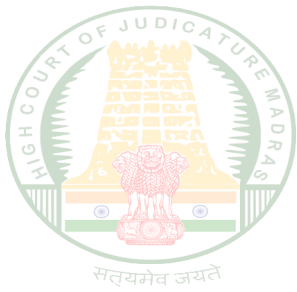
was passed with the consent of both parties and that there is no declaration of law by the learned single judge.

57 In **Sathiyaseelan v Preethi**³⁹, another learned single judge, after extracting Section 26 of the D.V. Act, was of the view that this provision enabled the High Court to exercise power under Section 407 Cr.P.C. to withdraw a case from the file of the Judicial Magistrate and transfer the same to the Sub-Court, Villupuram, for joint trial along with a pending matrimonial proceeding. Shortly thereafter, in **P.Rajendran v P. Sasikala**⁴⁰, one of us, (A.D.Jagadish Chandira, J.) following the decision of Mohan Ram, J. in **Capt.C.V.S.Ravi**, *supra*, took the view that a petition under Sections 407 or 482 Cr.P.C could not be entertained to transfer a D.V. application from the Judicial Magistrate to the Family Court. Later, in **G. Jayakumar**, *supra*, it was held that such a transfer was possible under Article 227 of the Constitution and not under Section 407 Cr.P.C. A diametrically opposite view was taken in **Arun Prakash**, *supra*, wherein, it was held that a D.V. Act proceeding which is essentially criminal in nature, cannot be transferred to the Family Court or any Civil Court under Article 227.

³⁹ 2018 SCC Online Mad 7641

⁴⁰ Crl.O.P. 29522 of 2013 decided on 14.09.2017

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58 We have set out the aforesaid decisions of this Court in some detail only to note that the apprehension and concern expressed at the Bar is certainly not misplaced. The morass of conflicting views, expressed *supra*, on a vital issue like jurisdiction, is only bound to result in chaos and confusion. We have, therefore, thought it fit to set this controversy at rest once and for all.

59 To complete the picture, we also take note of the recent decision of the Delhi High Court in **Sandeep Aggarwal v Viniti Aggarwal**⁴¹, wherein, it was held that an application under Section 12 of the D.V. Act cannot be transferred from the Court of the Magistrate to the Family Court. On the other hand, the Bombay High Court has taken the contra view in **Sandip Mrinmoy Chakrabarty v Reshita Sandip Chakrabarty**⁴² and **Dr.Sandeep Shekar Shetty v Dr.Sarika Sandeep Shetty**⁴³.

60 To begin with, we notice that the legislature has not provided for transfer of cases under the D.V. Act. Matrimonial statutes normally contain such a power to avoid multiplicity of proceedings and conflicting judgments⁴⁴.

⁴¹ 2021 SCC Online Del 1524

⁴² (2021) 4 Mah LJ 404

⁴³ 2022 1 AIR Bom R 506

⁴⁴ See Section 40-A of the Special Marriage Act, Section 21-A of the Hindu Marriage Act, etc.

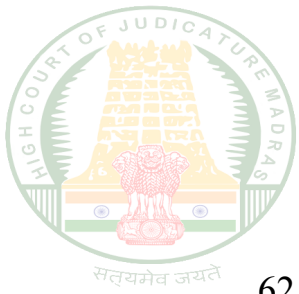


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However, even assuming that the absence of any specific provision is not determinative of the question, we must still answer whether the transfer is jurisdictionally permissible in the light of the overall scheme of the D.V. Act.

61 It was contended at the Bar that Section 26 of the D.V. Act is the provision that enables the High Court to effect a transfer in an appropriate case. Having closely examined this contention, we are unable to agree. Section 26(1) is an enabling provision that facilitates a remedy for the aggrieved person under Sections 18-22 in any legal proceeding pending before the civil, criminal or the Family Court. Thus, the key to the operation of Section 26(1) is the pendency of any legal proceeding. In simpler terms, the operation of Section 26(1) is parasitic on the existence of a “*legal proceeding*” affecting aggrieved person and the respondent in any of the aforementioned courts. This is clear from the expression “*may also be sought in any legal proceeding*” occurring in Section 26(1). Thus, it is evident that Section 26(1) does not confer any original jurisdiction on a Civil, Criminal or Family Court to entertain an application under Section 12 of the D.V. Act.



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62 Similarly, Section 26(2) on the other hand, enables the aggrieved person to seek the reliefs under Sections 18-22 of the D.V. Act, in any proceeding she may seek before the Civil or Criminal Court. This provision also has a parasitic existence, for, the reliefs under Sections 18-22 of the D.V. Act can be sought “*in addition to and along with any other relief*” claimed before the Civil or Criminal Court. Thus, what Section 26(2) does is that it enables the aggrieved person to seek the special remedies under the D.V. Act in a conventional civil or criminal proceeding. For instance, the wife may approach the Magistrate with a complaint under Section 498-A IPC. In addition, she may also seek other reliefs under Sections 18-22 of the D.V. Act, which can be granted by the Magistrate trying the offence under Section 498-A IPC, without driving the lady to institute a separate proceeding under Section 12 of the D.V. Act. Another example could be a case of a live-in relationship between a man and a woman. If the woman had suffered physical violence due to which the man is being prosecuted in a Criminal Court, say, for an offence under Section 323 or 324 IPC, the woman could claim the reliefs under the D.V. Act before the Criminal Court in the said prosecution. Consequently, we find that Section 26(2) cannot be construed as vesting original jurisdiction with the Civil or Criminal Courts to decide an application under Section 12 of the



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D.V. Act. We also have no doubt in our minds that the legislative inspiration for Section 26 of the D.V. Act is a similar provision viz., Section 23-A in the Hindu Marriage Act, which is titled “*Relief for respondent in divorce and other proceedings*” which enables the respondent to make a counter-claim for any relief under that Act.

63 We also notice that Section 26(1) refers to “*Civil Court, Family Court or a Criminal Court*”, whereas, Section 26(2) refers to “*Civil or Criminal Court*”. We are disposed to think that the omission of the expression “Family Court” in Section 26(2) is clearly the draftsman’s devil. Sections 26(1) and (2) serve a common object *i.e.*, to prevent multiplicity of proceedings. We are, therefore, of the considered view that Section 26(2) must be construed as including the Family Court as well.

64 We may now notice the decision of the Supreme Court in **Vaishali Abhimanyu Joshi v Nanasahed Gopal Joshi**⁴⁵, which illustrates the operation of Section 26(1). A matrimonial dispute resulted in the husband leaving the matrimonial home which belonged to the father-in-law. The father-in-law instituted a suit in the Small Causes Court, Pune, to restrain the daughter-in-law

⁴⁵ (2017) 14 SCC 373

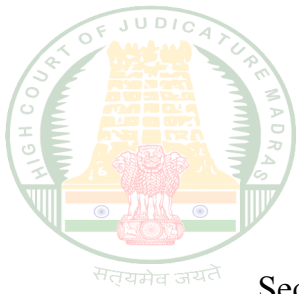
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from using the flat. The daughter-in-law filed her written statement and set up a counter claim by seeking residence orders under Section 19 of the D.V. Act. She contended that the flat was a shared household where she resided with her son. She also sought a decree of perpetual injunction to restrain the plaintiff from creating any third party interest in respect of the flat. The counter-claim was rejected by the Small Causes Court on the ground that it did not have any jurisdiction to grant a residence order under the D.V. Act. The daughter-in-law assailed this order in the Bombay High Court which did not meet with any success. The matter eventually travelled to the Supreme Court. Setting aside the order of the High Court, the Supreme Court observed that there could be no dispute that the proceeding before the Small Causes Court was a “legal proceeding” before a Civil Court. Alluding to the object and purpose of the D.V. Act, the Court observed:

“Section 26 of the 2005 Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Unless the determination of claim by an aggrieved person seeking any order as contemplated by the 2005 Act is expressly barred from consideration by a civil court, this Court shall be loath to read in bar in consideration of any such claim in any legal proceeding before the civil court. When the proceeding initiated by the plaintiff in the Judge, Small Cause Court alleged termination of gratuitous licence of the appellant and prays for restraining the appellant from using the suit flat and permit the plaintiff to enter and use the flat, the right of residence as claimed by the appellant is interconnected with such determination and refusal of consideration of claim of the appellant as raised in her counterclaim shall be nothing but denying consideration of claim as contemplated by



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Section 26 of the 2005 Act which shall lead to multiplicity of proceedings, which cannot be the object and purpose of the 2005 Act.”

65 A similar situation arose in **Satish Chander Ahuja**, *supra*, where a matrimonial dispute had broken out and the husband had filed a divorce proceeding against the wife. The wife, in turn, filed a domestic violence complaint. The father-in-law joined the bandwagon by filing a suit for recovery of possession against his daughter alleging that she was harassing him by occupying the first floor and filing false cases against him and his wife. A prayer was also made to direct the daughter-in-law to pay Rs.1 lakh per month as mesne profits from the date of filing of the suit till the date of handing over possession. The daughter-in-law filed her written statement and set up a counter-claim claiming a right of residence, and sought a residence order under Section 19 of the D.V. Act. The father-in-law filed a petition under Order XII Rule 6 of the CPC on the premise that as the daughter-in-law had admitted that the property was acquired by him, a decree could be passed on admission. The trial court allowed the application without considering the claim of the daughter-in-law under Section 19 of the D.V. Act. On appeal, the Delhi High Court reversed the decree observing, *inter alia*, that in view of the mandate of Section 26 of the D.V. Act, the trial court ought to have considered the counter-claim of the daughter-in-law under Section 19 of the D.V. Act. The decision of



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the High Court was eventually affirmed by the Supreme Court holding that the prayer under Section 19 of the D.V. Act, ought to have been examined by the trial court as a counter claim in view of the provisions of Section 26.

66 **Satish Chander Ahuja**, *supra*, is, therefore, not an authority for the proposition that an application under Section 12 can be transferred to a Family Court to be tried along with the matrimonial proceeding. It is not possible for us to attribute something which was never decided in that case. It is axiomatic that a case is an authority for what it decides and not what logically flows therefrom.

67 It is also necessary to notice that Section 26 which is titled “***Relief in other suits and proceedings***” is placed side by side with Section 27 which deals with “***Jurisdiction***”. Viewed thus, it is clear as the day that Section 26 deals with “reliefs” in “other suits and proceedings” and does not concern itself with Section 12 of the D.V. Act at all. On the other hand, Section 27 explicitly stipulates that the Judicial Magistrate (First Class) or the Metropolitan Magistrate shall be the “competent court” to grant a protection order and other orders under this Act, and also to try offences under the Act. If Section 26 were



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to be construed as vesting Civil and Family Courts with jurisdiction to determine complaints under Section 12, the succeeding Section 27 would be rendered otiose. Under the well settled canons of interpretation, we cannot attribute surplusage to the legislature. The aforesaid conclusion is fortified by the following observation in **Satish Chander Ahuja, supra.**

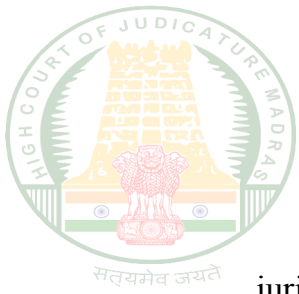
“Considering Section 12(2) and Section 26(3), read with Section 25(2), even the legislature envisaged the two independent proceedings, one before the Magistrate under the DV Act and another proceeding other than the proceedings under the DV Act.” (emphasis supplied)

68 We, therefore, hold that the jurisdiction to entertain and decide a complaint under Section 12 must be reckoned with reference to Section 27 of the D.V. Act alone. Section 26, on the other hand, applies only if the reliefs under Sections 18-22 of the D.V. Act are sought in other legal proceedings *i.e.*, legal proceedings other than Section 12 of the D.V. Act.

69 Coming to the aspect of transfer, we must take notice of two cardinal principles set out in the majority view in **A.R. Antulay v R.S. Nayak**⁴⁶. The first principle has been explained by Sabyasachi Mukharji, J. in the following way:

“The power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no court, whether superior or inferior or both combined can enlarge the

⁴⁶ (1988) 2 SCC 602



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jurisdiction of a court or divest a person of his rights of revision and appeal.”

The second principle is found in the concurring judgment of S. Ranganathan, J wherein it is observed thus:

“A power of transfer postulates that the court to which transfer or withdrawal is sought is competent to exercise jurisdiction over the case.”

Thus, the basic principle governing transfer is that the transferee court must be competent to exercise jurisdiction over the case which is transferred from the transferor court. Applying this test, the question would then be : could a Family Court or the Civil Court entertain an application under Section 12 of the Family Courts Act? The answer, in our considered opinion, is in the negative. The court, designated under Section 27 of the D.V.Act, is the Court of the Magistrate. We would be doing violence to the plain language of this provision by telescoping Section 26 into it.

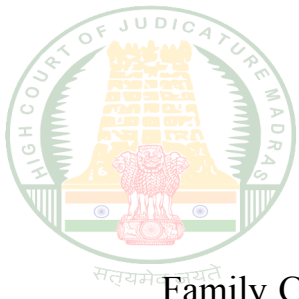
70 Our attention was then drawn to Section 7(2)(b) of the Family Courts Act, 1984, to contend that the Family Court derives its jurisdiction over D.V. cases by virtue of that provision. We are unable to countenance this submission. Section 7(2)(b) of the Family Courts Act states that a Family Court may exercise “*such other jurisdiction as may be conferred on it by any other enactment*”. It is obvious from a reading of Section 7(2)(b) that it does not vest



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any jurisdiction with the Family Court. All that it does is to enable jurisdiction to be vested with a Family Court through an enactment. We find nothing in the D.V. Act vesting jurisdiction in the Family Court to entertain an application under Section 12. Indeed, Section 27 of the D.V. Act militates against this view. What the D.V. Act does under Section 26 is, to empower the Family Court, Civil Court/Criminal Court also to grant reliefs under the D.V. Act in other legal proceedings. Like the Magistrate, the Family Court, Civil Court and Criminal Court do not have the original jurisdiction to entertain an application under Section 12 of the D.V. Act.

71 Lastly, our attention was drawn to **Sandip Mrinmoy Chakrabarty**, *supra*, decided by a Division Bench of the Bombay High Court. The facts are that a petition was filed by the wife under the Special Marriage Act for divorce on the ground of adultery and cruelty. The husband filed a counter claim seeking divorce on the ground of cruelty. The wife followed this up with a D.V. complaint before the Magistrate at Pune. The husband approached the High Court and sought transfer of the D.V. case to the Family Court to be decided along with the divorce case(s) by invoking Section 24 C.P.C. A learned single judge of the High Court ordered the transfer and the



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Family Court, Pune, passed a composite order disposing the D.V. case and the divorce case by framing separate issues. The question for consideration before the Bombay High Court was as follows:

“whether Appeal under section 19(1) of the Family Courts Act, 1984 is maintainable also in respect of the reliefs granted by the Family Court claimed under the provisions of Domestic Violence Act along with the reliefs granted in the divorce proceedings under the provisions of Special Marriage Act by a common judgment or not.”

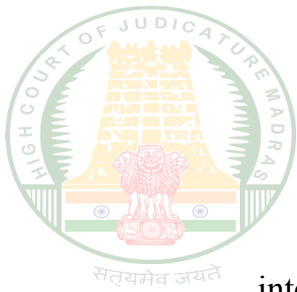
The High Court went on to observe:

“A perusal of the relief granted by the Family Court in favour of the respondent on the application filed by the respondent under the provisions of the Domestic Violence Act clearly indicates that neither any of the reliefs falling under sections 31 or 33 were sought nor were granted by the Family Court. All the reliefs sought by the respondent and granted by the Family Court were under the provisions of sections 19 to 22 of the Domestic Violence Act, which were of the civil nature and did not attract any offence punishable under criminal law.”

72 With due respect, we venture to point out that under the scheme of the D.V. Act, reliefs are granted under Sections 18-22 of the Act. Section 31 contemplates a prosecution for breach of a protection order and is not a relief.

The Division Bench then goes on to say:

“The moment both the proceedings came to be clubbed by judicial order of this Court and directed to be tried together, the jurisdiction of the Family Court became abundantly clear over the proceedings under the Domestic Violence Act. Resultantly, the order passed in the proceedings became the orders passed by the learned Judge of the Family Court for all purposes and therefore, it would be a fallacy and myopic to term part of the order pertaining to the reliefs under Domestic Violence Act as an order amenable to revisional jurisdiction. This would amount to nothing but a self serving



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interpretation. The proceedings under the provisions of Domestic Violence Act having subsumed with the proceedings of Special Marriage Act by virtue of the order of clubbing and consequently final orders flowing therefrom, needless to say acquired the characters of orders passed by the learned Judge of Family Court and nothing else.”

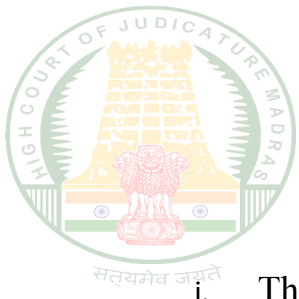
73 With very great respect, we are unable to concur with the aforesaid observations, particularly, the observation that the D.V. proceedings were subsumed into the proceeding for divorce. This finding appears to run counter to the following observations of the Supreme Court in **Satish Chander Ahuja**, *supra*:

“Therefore, on conjoint reading of Sections 12(2), 17, 19, 20, 22, 23, 25, 26 and 28 of the DV Act, it can safely be said that the proceedings under the DV Act and proceedings before a civil court, family court or a criminal court, as mentioned in Section 26 of the DV Act are independent proceedings, like the proceedings under Section 125 CrPC for maintenance before the Magistrate and/or family court and the proceedings for maintenance before a civil court/family court for the reliefs under the Hindu Adoptions and Maintenance Act.”

(emphasis supplied)

It is, thus clear, that a proceeding under Section 12 of the D.V. Act and a proceeding in a Civil/Criminal or Family Court invoking Section 26 of the D.V. Act are independent proceedings. Consequently, we are unable to persuade ourselves to agree with the decision of the Bombay High Court in **Sandip Mrinmoy Chakrabarty**, *supra*.

74 We now summarise our conclusions on the issue of transfer:

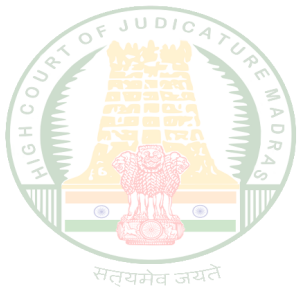


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- i. The legislative scheme of the D.V. Act clearly envisages two independent proceedings: proceedings before the Magistrate under Section 12 of the D.V. Act and “*proceedings before a Civil Court, Family Court or a Criminal Court, as mentioned in Section 26 of the D.V. Act*” (vide paragraphs 140 & 144 of **Satish Chander Ahuja, supra**).
- ii. Section 26 deals with “reliefs” in “other suits and proceedings” and does not concern itself with Section 12 of the D.V. Act at all. Section 26 is an enabling provision where reliefs provided in Sections 18-22 of the D.V. Act may be sought in a “legal proceeding” pending before a Civil Court, Family Court or a Criminal Court.
- iii. Similarly, such reliefs can be prayed for as part of other reliefs in collateral proceedings before a Family Court/Civil Court/Criminal Court.

The following illustrations will give clarity:

- i. The wife files a divorce petition on the ground of cruelty in the Family Court. In the same petition, she can seek reliefs under Sections 18-22 r/w Section 26 of the D.V. Act.
- ii. The husband files a petition for restitution of conjugal rights in the Sub Court. The wife can file a counter resisting the prayer and also seeking reliefs under Sections 18-22 r/w Section 26 of the D.V. Act.



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In the above two illustrations, the Family Court/Sub Court is not governed by the Code of Criminal Procedure. The enquiry for the reliefs claimed under the D.V. Act will be held under the procedure that applies to the Family Court or Sub Court, as the case may be. The appeals from these Courts will be to the usual forum, *viz.*, under Section 19 of the Family Courts Act or under Section 96 read with Order XLI, C.P.C., as the case may be.

- iv. Section 27 of the D.V. Act is the sole repository of jurisdiction for an application under Section 12, *ibid.*, and the Magistrate is the statutorily designated forum to entertain an application under Section 12, *ibid.*, and also to try offences under the D.V. Act.
- v. The power of transfer postulates that the Court to which transfer or withdrawal is sought, is competent to exercise jurisdiction over the case.
- vi. No power has been vested with the Family Court, either under the D.V. Act or the Family Courts Act, 1984, to entertain an application under Section 12 of the D.V. Act. Similarly, no power has been vested with the Civil Court to entertain an application under Section 12 of the D.V. Act.

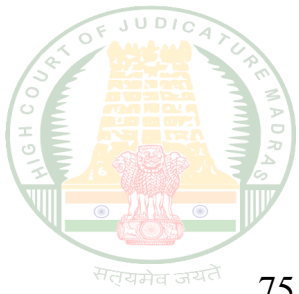


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- vii. Consequently, we hold that an application under Section 12 of the D.V. Act cannot be transferred from the Court of the Magistrate, designated under Section 27 of the D.V. Act, to the Family Court or the Civil Court. Decisions of learned single judges which have held to the contra in paragraphs 56 and 57, *supra*, will stand overruled.
- viii. We, therefore, uphold the first limb of the conclusion of the Division Bench in paragraph 17(e) in **P. Ganesan**, *supra*, though for different reasons. The second limb of paragraph 17(e) of the opinion in **P.Ganesan**, *supra*, will stand overruled in the light of the well settled principle that consent cannot confer jurisdiction on a court which does not otherwise possess inherent jurisdiction (*vide* **Raghunath Rai Bareja v Punjab National Bank**⁴⁷).
- ix. We also uphold the direction in paragraph 52 (xi) of the decision in **Pathmanathan**, *supra*, holding that the reliefs under Chapter IV of the D.V. Act can also be claimed in a pending proceeding before a Civil, Criminal or Family Court as a counter claim in the light of the decision in **Satish Chander Ahuja**, *supra*.

⁴⁷ (2007) 2 SCC 230

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We now summarise our conclusions to the questions set out in paragraph 1 of this opinion:

a A petition under Section 482 Cr.P.C. challenging a proceeding under Section 12 of the D.V. Act is not maintainable. A petition under Article 227 of the Constitution is maintainable on a limited ground of patent lack of jurisdiction, as indicated in paragraphs 40 and 41, *supra*.

b Except on the limited ground indicated, *supra*, jurisdiction under Article 227 of the Constitution will not be exercised, as a measure of self-imposed restriction, by-passing the statutory remedies under the D.V. Act in the light of the decision of the Supreme Court in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai**, *supra*.

c In the light of the aforesaid conclusions, we uphold the decision of N. Anand Venkatesh, J. in **Pathmanathan**, *supra*, including the directions set out, in paragraph 52 in their entirety, though, in our view, the reference to Section 483 Cr.P.C. therein, may not be appropriate. The decision of the Division Bench in **P. Ganesan**, *supra*, to the extent that it is contrary to this

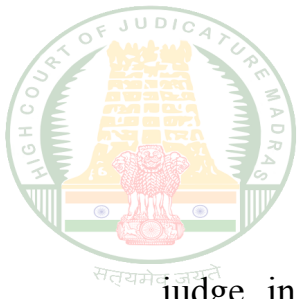


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opinion, shall stand overruled. *Ex consequenti*, the decisions of learned single judges in **S.Gowrishankar**, *supra*, **Sathiyaseelan**, *supra*, **G.Jayakumar**, *supra*, **Mohana Seshathri**, *supra*, and other cases following or adopting the line of reasoning therein, shall stand overruled, to the extent that they are contrary to the view taken herein.

d As a sequitur to the above, it must necessarily follow that the petitions in this batch are not maintainable. We, therefore, see no useful purpose in remitting the matter to the learned single judge to perform the obsequies. Accordingly, exercising power under Order I Rule 7 of the Appellate Side Rules, we hold that all the petitions filed under Section 482 Cr.P.C. shall stand dismissed at the SR stage itself, preserving all the rights and contentions of the parties and granting liberty to move the Magistrate to agitate their grievances, which shall be considered in consonance with the directions set out in paragraph 52 of the decision in **Pathmanathan**, *supra*.

76 Before bringing the curtains down, for the sake of convenience and clarity, we reiterate the following directions passed by the learned single



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judge in **Pathmanathan**, *supra*, which shall now govern the disposal of applications under the D.V. Act:

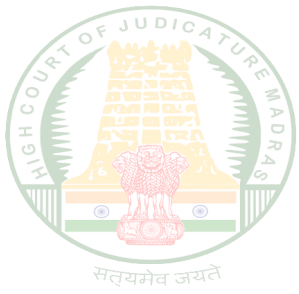
“i. An application under Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C. as regards cases instituted on a complaint has no application to a proceeding under the D.V. Act. The Magistrate cannot, therefore, treat an application under the D.V. Act as though it is a complaint case under the Cr.P.C.

ii. An application under Section 12 of the Act shall be as set out in Form II of the D.V. Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.

iii. The Magistrate shall not issue a summon under Section 61, Cr.P.C. to a respondent(s) in a proceeding under Chapter IV of the D.V. Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V. Rules, 2006. Service of such notice shall be in the manner prescribed under Section 13 of the Act and Rule 12(2) of the D.V. Rules, and shall be accompanied by a copy of the petition and affidavit, if any.

iv. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V. Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. **(See Siladitya Basak v. State of West Bengal (2009 SCC OnLine Cal 1903).**

v. If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex parte.



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vi. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. As pointed out by this Court in **Vijaya Baskar** (cited supra), there should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued. In all cases involving relatives and other third parties to the matrimonial relationship, the Magistrate must set out reasons that have impelled them to issue notice to such parties. To a large extent, this would curtail the pernicious practice of roping in all and sundry into the proceedings before the Magistrate.

vii. As there is no issuance of process as contemplated under Section 204, Cr.P.C. in a proceeding under the D.V. Act, the principle laid down in **Adalat Prasad v. Rooplal Jindal ((2004) 7 SCC 338)** that a process, under Section 204, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V. Act. Consequently, it would be open to an aggrieved respondent(s) to approach the Magistrate and raise the issue of maintainability and other preliminary issues. Issues like the existence of a shared household/domestic relationship etc., which form the jurisdictional basis for entertaining an application under Section 12, can be determined as a preliminary issue, in appropriate cases. Any person aggrieved by such an order may also take recourse to an appeal under Section 29 of the D.V. Act for effective redress (**See V.K. Vijayalekshmi Amma v. Bindu V., (2010) 87 AIC 367**). This would stem the deluge of petitions challenging the maintainability of an application under Section 12 of the D.V. Act, at the threshold before this Court under Article 227 of the Constitution.

viii. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.

ix. In **Kunapareddy** (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The Civil Procedure Code, 1908 (hereinafter referred to as "C.P.C."), to permit the amendment of an application under Section 12 of the D.V. Act. Taking a cue therefrom, it would be open to



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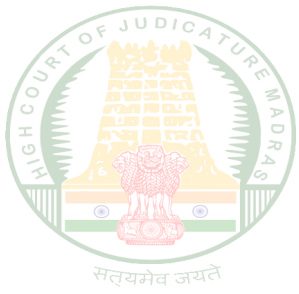
any of the respondent(s), at any stage of the proceeding, to apply to the Magistrate to have their names deleted from the array of respondents if they have been improperly joined as parties. For this purpose, the Magistrate can draw sustenance from the power under Order I Rule 10(2) of the C.P.C. A judicious use of this power would ensure that the proceedings under the D.V. Act do not generate into a weapon of harassment and would prevent the process of Court from being abused by joining all and sundry as parties to the lis.

x. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in **Vijaya Baskar** (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V. Act.

xi. In **Satish Chandra Ahuja** (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V. Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V. Act can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

xii. While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (See **Lakshman v. Sangeetha, (2009) 3 MWN (Cri) 257**). The Magistrate shall generally follow the procedure set out in Section 254, Cr.P.C. while recording evidence.

xiii. Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (See **Muhammad Sulaiman Khan v. Muhammad Yar Khan, (1888) 11 ILR All 267**).



Crl.O.P. Sr.No.31852 of 2022 etc. batch

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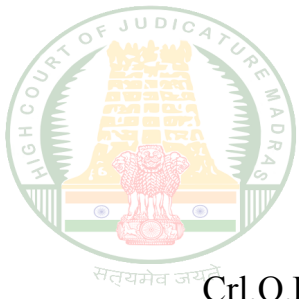
xiv. A petition under Article 227 of the Constitution may still be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The jurisdiction under Article 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exists a clear jurisdictional error and that manifest or substantial injustice would be caused if the power is not exercised in favour of the petitioner. (See **Abdul Razak v Mangesh Rajaram Wagle (2010) 2 SCC 432**, **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai v Tuticorin Educational Society (2019) 9 SCC 538**). In normal circumstances, the power under Article 227 will not be exercised, as a measure of self-imposed restriction, in view of the corrective mechanism available to the aggrieved parties before the Magistrate, and then by way of an appeal under Section 29 of the Act.”

77 The order of reference dated 12.08.2022 is, thus, answered on the aforesaid terms.

We place on record our appreciation to all the members of the bar for their able assistance to us in answering the reference, that too on a holiday, viz., Saturday, 15th October, 2022.

(P.N.P., J.) (TKR., J.) (A.D.J.C., J.)
17.11.2022

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Crl.O.P. Sr.No.31852 of 2022 etc. batch

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Crl.O.P. SR. Nos.31852, 28394, 29208, 29745, 32249, 32612, 32966, 33350, 33623, 33780, 33937, 34048, 34753, 35061, 35431, 35555, 35838, 35983, 36564, 36570, 36636, 36648, 36683, 36948, 36956, 37007, 37218, 37713, 37872, 37980, 38281 and 38330 of 2022

(32 cases)

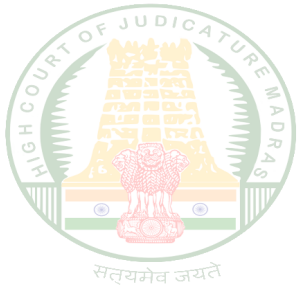
P.N. PRAKASH, J.,
RMT. TEEKAA RAMAN, J.
and
A.D. JAGADISH CHANDIRA, J.

Today, after the orders were pronounced, the members of the bar submitted that applying the law laid down as it obtained earlier, several applications under Section 12 of the D.V. Act that were pending before the various Magistrates have been transferred to the Family Courts or to the Civil Courts, as the case may be, on the orders of this Court and therefore, an order could be passed by this Court retransferring the said cases, to the Court of the Magistrate concerned, where, the applications under Section 12 of the D.V. Act were originally pending.

We are afraid that we cannot accede to this request as those transfers were effected by judicial orders which cannot be upset wholesale, though we have held in this batch of cases that such a transfer is impermissible. In other words, this Full Bench cannot set at naught, the earlier judicial orders and can only lay down the law in answer to the reference made to us. That apart, the disputes are essentially matrimonial in nature and it may further prolong the agony of the parties if they are tossed from one Court to another, from time to time.

(P.N.P., J.) (TKR., J.) (A.D.J.C., J.)
17.11.2022

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Crl.O.P. Sr.No.31852 of 2022 etc. batch

P.N. PRAKASH, J.,

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and

A.D. JAGADISH CHANDIRA, J.

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36648, 36683, 36948, 36956, 37007, 37218,
37713, 37872, 37980, 38281 & 38330 of 2022
(Domestic Violence batch - 32 cases)

17.11.2022