BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2023

CORAM

THE HON'BLE MR.JUSTICE K.K. RAMAKRISHNAN

Crl.O.P.(MD)No.15704 of 2018
and
Crl.M.P.(MD)Nos.6953 & 6954 of 2018

S.Amalraj ... Petitioner

Vs.

1.State rep. by
Inspector of Police,
Town Police Station,
Devakottai, Sivagangai District.
In Crime No.228 of 2011.

2. Kanikkaimarry ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pursuant to the charge sheet in STC.No.1393 of 2011 on the file of the Judicial Magistrate, Devakottai and quash the same.

For Petitioner : Mr.G.Karuppasamy Pandian
representing Mr.S.T.Selvakumaran

For R1 : Mr.M.Muthumanikkam
Government Advocate (Criminal Side)

For R2 : Mr.S.M.Sanjay

ORDER

"Sometimes obvious things become imperceptible through legal brain thought proceedings."

Such situation raised by the petitioner in this case at the cost of violence to the meaning of Section 31 of the Protection of Women from Domestic Violence Act, 2005, (hereinafter called as "the DV Act") by raising the following question :

> *"Whether the non-payment of maintenance amount is a breach of protection order for which the law enforcing authority has jurisdiction to register the Criminal case under Section 31 of the Act?"*

2. The husband of the second respondent filed this quash petition to quash the S.T.C.No.1393 of 2011 on the file of the learned Judicial Magistrate, Devakottai, which emanated from the FIR in Crime No.228 of 2011 registered for the offence under Section 31 of the DV Act.

3. On 21.08.1989, the petitioner married one Kanikaimarry, who is the second respondent herein and out of marriage, they are blessed with two female children. In their matrimonial life, some dispute arose and

hence, the second respondent filed a petition under Sections 18 and 19 of the DV Act in Crl.M.P.No.2230 of 2010 on the file of the learned Judicial Magistrate, Devakottai, claiming maintenance and protection. After considering the submission of the petitioner as well as the respondent/wife, the learned Judicial Magistrate, on 21.04.2011, passed an order of granting maintenance of Rs.3,000/- to the second respondent and Rs.5,000/- to their children and also passed an order to give protection to the respondent/wife.

4. Aggrieved over the same, the petitioner filed an appeal in Crl.A.No.25 of 2011 and the same was partly allowed by judgment dated 06.02.2013 and the maintenance awarded to the wife was set aside and in respect of Rs.5,000/- to their children was confirmed. Thereafter, the second respondent preferred a complaint under Section 31 of the DV Act stating that the petitioner did not pay the monthly maintenance amount and the said complaint was forwarded to the first respondent police and on receipt of the same, the first respondent police registered FIR in Crime No.228 of 2011. On the basis of FIR, investigation conducted and final report was also filed. The same was taken on file in STC.No.1393 of 2011 by the Judicial Magistrate, Devakottai. After service of

summons, the petitioner appeared and filed the present petition to quash the said proceedings.

5. The learned counsel appearing for the petitioner submitted that the Court below directed to pay maintenance amount of Rs.5,000/- to the children and the same has to be recovered through the execution of award either by way of 'distraint warrant' or 'distress warrant' procedure as contemplated under Sections 125 or 128 Cr.P.C, respectively.

6. Non-compliance of the monthly maintenance order not amount to breach of protection order and hence the respondent has no jurisdiction to register the criminal case in Crime No.228 of 2011 and hence, the final report filed before the learned Judicial Magistrate, Devakottai, is not valid one and the learned Judicial Magistrate has erroneously taken cognizance under Section 31 of the DV Act and hence, he seeks for quashment of the impugned STC proceedings. In support of his submission, the learned counsel for the petitioner relied on a judgment of the Kerala High Court reported in ***(2022) 7 KHC 577*** in the case of ***Suneesh Vs. State of Kerala*** and the relevant portions are extracted hereunder:

"13.Indubitably the Latin expression 'ejusdem generis' which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are to be restricted by implication with the meaning of restricted words. This is a principle which arises from the linguistic implication by which words having literally a wide meaning (which taken in isolation) are treated as reduced in scope by the verbal context. In fact, ejusdem generis principle is a facet of the principle of Noscitur a sociis.

14.The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its asspciated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in separation. Thus like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear.

15.Here, the legislature vigilantly included 'protection orders' alone under Sec.31 of the D.V.Act after specifically categorizing the orders which would be given under the head 'protection orders' under Section 18 of the D.V.Act. Another very pertinent aspect to be noted in this context is the implication and ramification of widening the scope of

Sec.31. Say for instance, a person when ordered to pay a specified amount on every month as maintenance or interim maintenance and under Sec.20(4) of the D.V.Act, if he fails to pay the same on completion of every month for justified /unavoidable reasons, is it fair to hold that the said failure and omission would be penalised under Sec.31 of the D.V.Act. Similar is the position inasmuch as other orders excluding the order under Sec.18. Moreover, if such a wide interpretation is given, the Courts will be over-flooded with cases under Sec.31 of the D.V.Act and the said situation cannot said to have intended by the legislature. Therefore, the Court cannot overturn the legislature wisdom to hold that a 'monetary relief' such as payment of maintenance, if disobeyed, the same also would attract significant penalty under Sec.31 of the D.V.Act, treating the same as breach of 'protection order' or 'interim protection order'. Therefore, it is held that the penalty provided under Sec.31 of the D.V.Act would attract only for breach of protection orders passed under Sec.18 of the D.V.Act and the same would not apply to maintenance orders under Sec.20 of the Act. Holding so, prayer in this petition is liable to be allowed. Therefore, this petition is allowed and all further proceedings in C.C.No.1483 of 2019 on the file of the Additional Chief Judicial Magistrate (E.O), Ernakulam pursuant to Annexure-A1 shall stand set aside."

7. On the other hand, the learned counsel for the second respondent submitted that non-payment of maintenance allowance could be treated as breach of the protection order and hence, the first respondent police has rightly registered the case.

8. The above said submission was reiterated by the learned Government Advocate (Criminal side) and he further submitted that similar question raised before the Hon'ble Division Bench of the High Court of Madhya Pradesh in the case of ***Surya Prakash Vs. Rachna*** reported in MANU/MP/1091/2017 and the said Hon'ble Division Bench answered affirmatively. So, he seeks for dismissal of the quash petition. Both the counsel on record, after making the detailed submissions, stated that the issue of applicability of Section 31 of the DV Act for the non-payment of maintenance order has never been raised before this Court and also requested to decide the issue in detail.

9.1. ***Manu*** imposes moral obligation to pay maintenance in the following words:

> ***The aged parents, a virtuous wife and an infant child must be maintained even by doing a hundred mis-deed."***

9.2. But, there was no Unified Hindu code creating obligation to pay monthly maintenance to the wife, children and aged parents. Similarly, there was no such provision in muslim law also.

9.3. In result, there was a total failure of fulfilment of moral obligation to pay maintenance which driven women and children in the helpless stage of distress, vagrancy, distribution and starvation during British period. So, Sir James Fitz Stephen, being a legal member of the viceroy's Council acted as a precursor to bring the maintenance provision in the Code of Criminal Procedure, 1872. Infact, in the opinion of this Court, he was the first reformer of women folk and raised his voice for the welfare of the voiceless women and children and acted as a instrument to incorporate maintenance provision with distress and distraint warrant procedure of execution. Thus, for the first time, a summary legal process to enforce moral obligation of payment of monthly maintenance was created in the Code of Criminal Procedure, 1872 and the same was incorporated in the Code of Criminal Procedure, 1898 and subsequently in the Code of Criminal Procedure, 1972.

10.1. Maintenance(meaning) (P.Ramanatha Aiyar's Advanced Law Lexicon 5th Edition):

"Maintenance also means of subsistence, supply of necessaries and convenience; aid, support, assistence; the support which one person who is bound by law to do so, gives to another for his living"

10.1(a). The Hon'ble Supreme Court in the following various pronouncements stated the object of the maintenance.

10.1(b). Bhagwan Dutt v. Kamla Devi (1975) 2 SCC 386:

> *"Their object is to compel a man to perform the moral obligation which he owes to society in respect of his wife and children. By providing a simple, speedy but limited relief, they seek to ensure that the neglected wife and children are not left beggared and destituted on the scrap-heap of society and thereby driven to a life of vagrancy, immorality and crime for their subsistence. ...The jurisdiction conferred by the section on the Magistrate is more in the nature of a preventive, rather than a remedial jurisdiction; it is certainly not punitive."*

10.1(c). Dukhtar Jahan v. Mohd. Farooq - (1987) 1 SCC 624:

16. & Proceedings under Section 125 [of the Code], it must be remembered, are of a summary nature and are intended to enable destitute wives and children, the latter whether they are legitimate or illegitimate, to get maintenance in a speedy manner."

10.1(d). Vimala (K.) v. Veeraswamy (K.) [(1991) 2 SCC 375:

3. "Section 125 of the Code of Criminal Procedure is meant to achieve a social purpose. The object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing, and shelter to the deserted wife."

10.1(e). Kirtikant D. Vadodaria v. State of Gujarat (1996) 4 SCC 479:

15. "... While dealing with the ambit and scope of the provision contained in Section 125 of the Code, it has to be borne in mind that the dominant and primary object is to give social justice to the woman, child and infirm parents, etc. and to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves but have a moral claim for support. The provisions in Section 125 provide a speedy remedy

to those women, children and destitute parents who are in distress. The provisions in Section 125 are intended to achieve this special purpose. The dominant purpose behind the benevolent provisions contained in Section 125 clearly is that the wife, child and parents should not be left in a helpless state of distress, destitution and starvation."

10.1(f). Savitri v. Govind Singh Rawat, (1985) 4 SCC 337 :

4. *A reading of the above provisions shows that they are intended to provide for a preventive remedy for securing payment of maintenance which can be granted quickly and in deserving cases with effect from the date of the application itself.*

5. *The jurisdiction of a Magistrate under Chapter IX of the Code is not strictly a criminal jurisdiction. While passing an order under that Chapter asking a person to pay maintenance to his wife, child or parent, as the case may be, the Magistrate is not imposing any punishment on such person for a crime committed by him.*

The Code, however, provides a quick remedy to protect the applicant against starvation and to tide over immediate difficulties. Chapter IX of the Code does not in reality create any serious new

obligation unknown to Indian social life.

6. *It is the duty of the court to interpret the provisions in Chapter IX of the Code in such a way that the construction placed on them would not defeat the very object of the legislation.*

27. We have said and it needs to be said again, that Section 488 is intended to serve a social purpose. It provides a machinary for summary enforcement of the moral obligations of a man towards his wife and children so that they may not, out of sheer destitution become a hazard to the well-being of orderly society.

10.1(g). Danial Latifi v. Union of India, (2001) 7 SCC 740:

*"**20**. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions"*

10.1(h). Shamima Farooqui v. Shahid Khan, (2015) 5 SCC 705 :

13.*When the aforesaid anguish was expressed, the predicament was not expected to be removed with any kind of magic. However, the fact remains, these*

litigations can really corrode the human relationship not only today but will also have the impact for years to come and has the potentiality to take a toll on the society. It occurs either due to the uncontrolled design of the parties or the lethargy and apathy shown by the Judges who man the Family Courts. As far as the first aspect is concerned, it is the duty of the courts to curtail them. There need not be hurry but procrastination should not be manifest, reflecting the attitude of the court. As regards the second facet, it is the duty of the court to have the complete control over the proceeding and not permit the lis to swim the unpredictable grand river of time without knowing when shall it land on the shores or take shelter in a corner tree that stands "still" on some unknown bank of the river. It cannot allow it to sing the song of the brook. "Men may come and men may go, but I go on forever." This would be the greatest tragedy that can happen to the adjudicating system which is required to deal with most sensitive matters between the man and wife or other family members relating to matrimonial and domestic affairs. There has to be a proactive approach in this regard and the said approach should be instilled in the Family Court Judges by the Judicial Academies functioning under the High Courts. For the present, we say no more.

14..... *It can never be forgotten that the inherent and fundamental principle behind Section 125 CrPC is for amelioration of the financial state of affairs as well as mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. The statute commands that there have to be some acceptable arrangements so that she can sustain herself. The principle of sustenance gets more heightened when the children are with her. Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar.*

19. *From the aforesaid enunciation of law it is limpid that the obligation of the husband is on a higher pedestal when the question of maintenance of wife and children arises. When the woman leaves the matrimonial home, the situation is quite different. She is deprived of many a comfort. Sometimes her faith in life reduces. Sometimes, she feels she has lost the tenderest friend. There may be a feeling that her fearless courage has brought her the misfortune. At this stage, the only comfort that the law can impose is that the husband is bound to give monetary comfort. That is the only soothing legal balm, for she cannot be allowed to resign to destiny. Therefore, the lawful imposition for grant of maintenance allowance."*

10.1(i). Anju Garg and Ors.V. Deepak Kumar Garg, 2022 SCC OnLine SC 1314:

"9. *At the outset, it may be noted that Section 125 of Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman who is required to leave the matrimonial home, so that some suitable arrangements could be made to enable her to sustain herself and the children."*

10.1(j). Kuldip Kaur v. Surinder singh (1989) 1 SCC 405:

> ***5***. *.... Now, one of the modes for enforcing the order of maintenance allowance with a view to effect recovery thereof is to impose a sentence of jail on the person liable to pay the monthly allowances.*
>
> ***6.*** *A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a "mode of enforcement". It is not a "mode of satisfaction" of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. Sentencing to jail is the means for achieving the end of enforcing the order by recovering the amount of arrears. It is not a mode of discharging liability.*

10.1(k). Poongodi v. Thangavel, (2013) 10 SCC 618 :

> *"Criminal Procedure Code, 1973 — S. 125(3) and first proviso thereto — Time-limit under said first proviso for invoking S. 125(3) — Whether creates any*

bar or affects right to claim arrears of maintenance — Mode of enforcement of payment of maintenance distinguished from entitlement to payment of maintenance.

Held, said first proviso to S.125(3) does not extinguish or limit entitlement to arrears of maintenance — This proviso lays down procedure for recovery of maintenance by construing maintenance to be a levy of fine — In case of default in payment of maintenance, claimant cannot seek detention of defaulter in custody if application therefor is not moved within one year from due date."

11.1. Before commencement of the DV Act, 2015, due to the existing cumbersome procedure to enforce the maintenance order by means of distress warrant procedure under Section 125(3) Cr.P.C as well as distraint warrant procedure under Section 128 Cr.P.C, the aimed result of getting maintenance amount in a speedy manner, has been thwarted. The said execution proceeding comprised its own procedure of filing execution petition, attachment of the property, salary and finally order for arrest, that too, after consuming 1/6 portion of life period of women and 1/2 portion of maintenance amount, for meeting the legal expenditure. After the above said detailed procedure, the trial Court

would order the sentence of imprisonment on the husband for not making the payment of maintenance amount and almost, all the arrest orders have been stayed either by the Revisional Court or by the High Court. In the result, the queue of women folk to get the fixed maintenance amount is endless either in the Execution Court, Revision Court or High Court. In the said circumstances, eventhough the maintenance proceeding under the Code of Criminal Procedure intended as speedy remedy, reality goes otherwise and once again women are driven to the original position of distress. The execution of maintenance order through Court process has become futile exercise. So, in order to provide immediate relief to the queue of women waiting for getting determined maintenance amount, the legislature brought the penal provision under Section 31 of the DV Act as a life saving medicine by treating the failure of remittance of maintenance as an offence and crime. The legislature has the present DV Act with the penal provision with an intention of suppressing the mischief of delayed execution proceeding of maintenance award and to provide the speedy remedy to the victim to avoid further destitution and vagrancy.

11.2. Purposive interpretation:

"In Heydon's case [76 ER 637], it was decided that—

"... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth., and

4th. The true reason of the remedy; and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bona publico."

11.2.1. *In Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks [LR (1898) AC 571 at 576] Earl of Halsbury reaffirmed the Rule as follows:*

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy."

11.3. (1985)2 WLR 968 [Anderton v. Ryan]:

The Courts should where possible identify "the mischief" which existed before the passing of the statute

and then if more than one construction is possible, favour that which will eliminate "the mischief" so identified."

11.4. In Badshah Vs. Urmila Badshah Godge reported in **2014 (1) SCC 188:**

> *20. Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case[13] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of ut res magis valeat quam pereat in such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife."*

11.5. By applying the above principles of purposive interpretation to the below extracted Sections 2(o) and 3(iv) of the DV Act, this Court without any ambiguity holds that non-payment of maintenance allowance

would amount to economic abuse and the same will very well come under the umbrella of breach of protection order.

“ Section 2(o):

"protection order" means an order made in terms of Section 18.

Section 3(iv):

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance”.

12.1. To prevent women from facing needless distress, destitution and starvation, the DV Act was enacted by transforming the existing preventive provision into punitive provision to meet out the society’s changing needs. The same was emphasised by the Hon’ble Supreme Court in the case of **Badshah Vs. Urmila Badshah Godge** reported in **2014 (1) SCC 188.**

> ***15.*** *The provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour.*
>
> ***16.*** *The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs."*

12.2. Similarly, in **Thota Sesharathamma v. Thota Manikyamma,** reported in **(1991)4SCC 312,** the Hon'ble Supreme Court has held as follows:

> ***20.*** *In a socialist democracy governed by rule of law, law as a social engineering should bring about transformation in the social structure. Whenever a socio-economic legislation or the rule or instruments touching the implementation of welfare measures arise for consideration, this historical evidence furnishes the foundation and all other relevant material would be kept at the back of*

the Court's mind."

13. The transformation of process of execution of maintenance order into penal statute is a measure of social justice and specially enacted to protect women and children and would fall within the constitutional sweep of Article 15(3) and reinforced under Article 39. So, Sections 31 and 18 of the DV Act calling for construction by the Courts are not petrified, but vibrant words with social function to fulfil.

14. Threat of arrest is timely requirement to prevent destitution and vagrancy by compelling those who can support those who are unable to support themselves.

15. It is also aimed to eradicate the situation of a poor woman asked to run from pillar to post for getting speedy recovery under the Code of Criminal Procedure. There is a complete transformation from the object of preventive maintenance proceedings under the Code of Criminal Procedure into a punitive one ie., the object of the maintenance proceeding is not to punish a person for his past neglect, but to prevent

vagrancy by compelling husband to make payment as a moral claim to support which has been transformed into legal obligation with probable threat of registration of the criminal case, arrest of husband and likely conviction.

16. In the said circumstances, this Court finds it difficult in accepting the ratio laid down by judgment of the Hon'ble Kerala High Court reported in ***(2022) 7 KHC 577*** in the case of ***Suneesh Vs. State of Kerala*** and accepts the ratio laid down by the Hon'ble Division Bench of Madhya Pradesh in the case of ***Surya Prakash Vs. Rachna*** reported in MANU/MP/1091/2017 wherein the Hon'ble Division Bench has interpreted the provisions to achieve the object of the DV Act and held as follows:

> *"13.Section 18 of the Act empowers the Magistrate to pass a protection order in affirmative in favour of an aggrieved person when he is satisfied that domestic violence has taken place or is likely to take place. The Magistrate is also competent to prohibit the respondent from committing any act of domestic violence or such other acts as mentioned in the said section. The domestic violence has been defined in Section 3 of the Act which includes causing physical abuses, sexual abuse, verbal and*

emotional abuse and economic abuse. The "economic abuse" has been explained in clause (iv) of Explanation I of Section 3 of the Act wherein deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessary is an expression of "domestic violence".

14.The amount of maintenance awarded by the Magistrate is an amount which an aggrieved person requires to meet necessities of life and for survival. Such amount is not limited to household. It includes maintenance as well. Therefore, the order passed by the Magistrate granting maintenance is an affirmative order of protection in relation to domestic violence as defined in Section 3 of the Act. For such violation, the penalty is provided in Section 31 of the Act.

15.Section 20 of the Act deals with grant of monetary relief to meet the expenses incurred and the losses suffered by aggrieved person and child of the aggrieved person as a result of domestic violence. Such provision enlarges the scope of domestic violence as defined in Section 3 of the Act. In terms of Section 3 of the Act, the "economic abuse" includes deprivation of all or any economic or financial resources, payment of rental related to shared household and maintenance. Whereas Section 20 includes a loss of earnings, medical expenses, loss caused due to destruction,

damage or removal of any property as also the maintenance. The grant of monetary relief under Section 20 does not exclude the amount of maintenance which can be awarded in terms of Section 18 of the Act as part of the affirmative order in respect of the domestic violence as defined in Section 3 of the Act. Therefore, we find that non-payment of maintenance is a breach of protection order; therefore, Section 31 of the Act can be invoked. Therefore, in respect of first question, it is held that non-payment of maintenance allowance is a breach of protection order for which proceedings under Section 31 of the Act can be invoked.

16.The second question is required to be examined in the light of definition of Section 3 of the Act. If there is any instance of domestic violence, for which an affirmative or prohibitory order is passed under Section 18 of the Act, the provisions of Section 31 of the Act can be invoked.

17.In respect of the lase question, we find the order passed in Sunil alias Sonu V. Sarita Chawla(Smt.), reported in MANU/MP/0308/2009;2009(5) MPHT 319 is in accordance with the Act."

17. The other reasoning of the Hon'ble Kerala High Court that if wide interpretation is given to Section 31 of the DV Act, the Courts will be over-flooded with cases under Section 31 of the DV Act is not the

correct proposition according to this Court. Similar situation earlier arose in interpreting Section 125 Cr.P.C provisions to grant interim maintenance and the same reasoning was given by the High Court, but the same was not accepted by the Hon'ble Supreme Court in **Savitri v. Govind Singh Rawat, (1985) 4 SCC 337:**

> *"Every Court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide Earl Jowitt's Dictionary of English Law, 1959 Edn., p. 1797.] Whenever anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment. Such a construction though it may not always be admissible in the present case however would advance the object of the legislation under consideration. A contrary view is likely to result in grave hardship to the applicant, who may have no means to subsist until the final order is passed. There is no room for the apprehension that the recognition of such implied power would lead to the passing of*

interim orders in a large number of cases where the liability to pay maintenance may not exist. It is quite possible that such contingency may arise in a few cases but the prejudice caused thereby to the person against whom it is made is minimal."

18. Looking from another angle, where the law Courts are flooded with cases, it would only signify the faith of the people upon the judiciary and the same is good sign of judiciary.

19. So, in view of the above discussion, this Court humbly differs from Hon'ble Kerala High Court's view reported in ***(2022) 7 KHC 577*** and concurs with the view taken by the Hon'ble Division Bench of Madhya Pradesh High Court reported in **MANU/MP/1091/2017.**

20.1. It is well settled principle that in interpreting the provision, if two views are possible, the one which is enabling the achievement of object of the DV Act, is to be accepted. In the said circumstances, this Court accepts the interpretation made by the Hon'ble Division Bench of Madhya Pradesh High Court in ***Surya Prakash Vs. Rachna*** reported in

MANU/MP/1091/2017, as the same was fortified by the principle laid down by the Hon'ble Supreme Court in the following cases:

20.1.(a) Ramesh Chander Kaushal v. Veena Kaushal reported in **1978 4 SCC 70:**

> *9.*… The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advances the cause — the cause of the derelicts."

20.2(b). Fuzlunbi v. K. Khader Vali, (1980) 4 SCC 125:

> *"The conscience of social justice, the cornerstone of our Constitution will be violated and the soul of the scheme of Chapter IX of the Code, a secular safeguard of British-Indian vintage against the outrage of jetsam women and floatsam children, will be defiled if judicial interpretation sabotages the true meaning and reduces a benign protection into a damp squib."*

21. In the result this Court holds as follows:-

Section 31 of the DV Act is a key provision and heartbeat of the DV Act to regulate the violator of protection order passed under Section 18 of the DV Act. The question as to whether the law enforcing authority has jurisdiction to register the Criminal Case under Section 31 of the Act for non-payment of maintenance allowance which is deemed to be breach of protection order under Section 18 of the Act, is answered affirmatively and the law enforcing authority has jurisdiction to register the case and proceed in accordance with law for every breach of order without any legal bar for the reason that each breach of order amounts to a continuing offence.

22. In view of the above, the registration of FIR by the first respondent police could not be faulted with.

23. However, it is the case of the petitioner that he has been regularly paying the maintenance, for which, he produced relevant documents, the same is not disputed by the learned counsel for the second respondent. In such circumstances, registering a case without conducting proper enquiry with regard to the payment of maintenance allowance is not correct and hence, the proceedings in STC.No.1393 of

2011 on the file of the learned Judicial Magistrate, Devakottai, is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

06.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PJL

To
1.The Judicial Magistrate,
Devakottai.

2.The Inspector of Police,
Town Police Station,
Devakottai,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

K.K. RAMAKRISHNAN,J.

PJL

Crl.O.P.(MD)No.15704 of 2018
and
Crl.M.P.(MD)Nos.6953 & 6954 of 2018

06.03.2023