

HIGH COURT OF MADHYA PRADESH : JABALPUR

MCRC No. 16718/2015

Surya PrakashPetitioner
Versus
Smt. RachnaRespondent

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Coram:

**Hon'ble Shri Justice Hemant Gupta, Chief Justice
Hon'ble Shri Justice Vijay Kumar Shukla, J.**

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Shri Amit Seth, Advocate as *Amicus Curiae* for the petitioner.

Shri D.K. Dixit, Advocate as *Amicus Curiae* for the respondent.
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Whether approved for reporting? : **Yes**
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Law Laid Down: If there is any instance of domestic violence, for which an affirmative or prohibitory order is passed under Section 18 of the Protection of Women from Domestic Violence Act, 2005, the provisions of Section 31 of the Act can be invoked. Non-payment of maintenance allowance is also a breach of 'protection order' or 'interim protection order'. The order passed in *Sunil @ Sonu vs. Sarita Chawla (Smt.), reported in 2009 (5) MPHT 319* is in accordance with the provisions of the Act.

Significant paragraphs: 9, 10, 11 & 12.
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Heard on : 03/10/2017

Passed on :10/10/2017

O R D E R

{ 10th October, 2017 }

Per: Hemant Gupta, Chief Justice:

1. The present petition has been placed before this Bench in view of the reference made by the learned Single Bench on 11.09.2015 for the opinion on the following questions:-

- “(i) Whether non-payment of maintenance allowance can be treated to be a breach of 'protection order' or 'interim protection order'? If it is not a breach of said orders, whether Section 31 of the DV Act can be invoked?
- (ii) Whether any other breach of any provision of the DV Act, which does not fall within the ambit of 'protection order' or 'interim protection order', can be a basis to invoke Section 31 of the Act?
- (iii) Whether the order passed in Sunil @ Sonu vs. Sarita Chawla (Smt.), reported in 2009 (5) MPHT 319, is in accordance with the scheme of DV Act?”

2. None appeared for the parties on number of dates and, therefore, *amicus* were appointed to decide the important questions of law arising from the order passed by the learned Single Bench.

3. The brief facts leading to the present petition are that the respondent-wife filed a petition under the Protection of Women from Domestic Violence Act, 2005 (for short “**the Act**”) against her husband *inter alia* on the ground that her marriage took place on 11.05.2011 and

she gave birth to a baby boy. The learned trial Court passed an order on 30.10.2013 that the non-applicant/ present petitioner and his family members will not harass the wife and she be also paid Rs.2,500/- per month as maintenance and Rs.20,000/- as compensation. An appeal was filed against the said order which was partly allowed on 11.09.2014 whereby the amount of compensation was set aside.

4. The respondent-wife filed an application under Section 31 of the Act on account of non-payment of the maintenance amount. The Court registered the case against the petitioner which order is subject matter of challenge in the present petition.

5. The argument raised is that complaint under Section 31 of the Act is not maintainable as penalty is provided in the said provision for breach of protection order and not for breach of an order of grant of maintenance.

6. The learned Single Bench of this Court in a judgment reported as 2009(5) MPHT 319 (*Sunil @ Sonu vs. Sarita Chawla (Smt.)*) held as under:-

“Whether the interim order passed by the learned Trial Court whereby the maintenance was awarded is a protection order and on account of breach of protection order, the proceedings can be initiated against the petitioner under Section 31 of the Act.”

The said question was dealt with as under:-

“Section 18 of the Act empowers the Court for passing a protection order against a respondent, who commits any act of domestic violence. In exercise of the powers conferred by Section 37 of the Act and Central Govt. has framed the Rules. As per rule 6 every application of the aggrieved person under section 12 of the Act is required to be filed in Form 11. Sub-clause III of Form No.1 deals with economic violence according to which not providing money for maintaining of food, clothes, medicine etc. is amounting to the economic violence for which the Court is empowered to pass a protection order. As per sub-section (1) of section 28 of the Act the proceedings are required to be governed by the provisions of Criminal Procedure Code. As per sub-section (2) of section 28, the Court is not prevented from laying down its own procedure for disposal of the case where no amount of maintenance has been paid by the petitioners, no illegality was committed by the learned trial Court in initiating the proceedings under section 31 of the Act.”

It is the said finding which was doubted by the learned Single Bench while making reference to the larger Bench.

7. Learned counsel for the petitioner relied upon the following judgments:-

- (i) **Smt. Kanchan vs. Vikramjeet Setiya** (Cr. Misc. Petition No.123/2010, decided on 13.02.2012 by Single Bench of the Rajasthan High Court).
- (ii) **Manoj Anand vs. State of U.P. and another** (Criminal Revision No.635/2011, decided on 10.02.2012 by the Single Bench of Allahabad High Court).
- (iii) **Mr. Francis Cyril C Cunha vs. Smt. Lydia Jane D'Cunha** (Criminal revision Petition No.758/2015, decided on 18.12.2015 by the Single Bench of Karnataka High Court).
- (iv) **Mr. Sachin vs. Sau. Sushma** (Criminal Writ Petition No.305/2014, decided on 06.05.2014 by the Single Bench of Nagpur Bench of Bombay High Court).
- (v) **S. Jeeva Ashok vs. Kalarani** reported in (2015) 1 MLJ (Crl) 549.

On the basis of such judgments, it is contend that for non-payment of maintenance, the proceedings under Section 31 of the Act cannot be initiated. In the case of **Smt. Kanchan (supra)** it was held that maintenance is provided under Section 20 of the Act dealing with monetary relief, therefore, the said order can be executed in the manner provided under Section 125 of the Code of Criminal Procedure.

8. On the other hand, learned counsel for the respondent pointed out that Section 18 of the Act is in two parts. The first part is to

grant an affirmative protection order in favour of the aggrieved person whereas the second part is to prohibit the respondent from various acts enumerated therein. The use of expression “and” makes the provision disjunctive i.e. first part is an affirmative action whereas the second part is prohibitory action. It is further contended that Section 3 of the Act defines “domestic violence” which includes economic abuse. The “economic abuse” has been defined in Explanation I of Section 3 of the Act. Therefore, domestic violence as contemplated under Section 18 of the Act includes economic abuse i.e. deprivation of economic and financial resources to which the aggrieved person is entitled under any law or custom. Therefore, the wife is entitled to file a complaint under Section 31 of the Act for non-payment of the maintenance- an economic abuse which is, in fact, in terms of Section 18 of the Act for which complaint is maintainable under Section 31 of the Act.

9. It is advantageous to extract the relevant provisions of the Act, which read as under:-

“2. **Definitions.** – In this Act, unless the context otherwise requires, –

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(g) “domestic violence” has the same meaning as assigned to it in section 3;

*** *** ***

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

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

Explanation I.—*For the purposes of this section,—*

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

- (iv) *“economic abuse” includes—*
- (a) *deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;*
- (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
- (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

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

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

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- *** *** ***
- (g) committing any other act as specified in the protection order.” **(Emphasis Supplied)**

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

- (a) the loss of earnings;
- (b) the medical expenses;

- (c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
- (d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

***”

“31. Penalty for breach of protection order by

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

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

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.”

10. Before, we deal with respective contentions of the learned counsel, some principals of interpretation needs to be discussed. The object of the Act is to provide effective protection of the rights of women who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The provisions of the Act came up for consideration before the Supreme Court in the judgment reported as *(2016) 10 SCC 165 (Hiral P. Harsora and others vs. Kusum Narottamdas Harsora and others)*. In the said judgment, the Court struck down, the words “adult male” appearing in Section 2(q) of the Act as discriminatory. While discussing the provisions of the Act, the Court held as under:-

“**16.** A cursory reading of the Statement of Objects and Reasons makes it clear that the phenomenon of domestic violence against women is widely prevalent and needs redressal. Whereas criminal law does offer some redressal, civil law does not address this phenomenon in its entirety. The idea therefore is to provide various innovative remedies in favour of women who suffer from domestic violence, against the perpetrators of such violence.

18. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The Preamble also

makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.”

11. In a judgment reported as *(2016) 10 SCC 329 (Lanco Anpara Power Limited vs. State of Uttar Pradesh and others)*, while considering the provisions of Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 held that since the purpose of the Act is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded, therefore, doctrine of purposive interpretation also gets attracted. The relevant extract of the judgment reads as under:-

“45. In taking the aforesaid view, we also agree with the learned counsel for the respondents that “superior purpose” contained in the BOCW Act and the Welfare Cess Act has to be kept in mind when two enactments – the Factories Act on the one hand and the BOCW Act/Welfare Cess Act on the other hand, are involved, both of which are welfare legislations. [See *Allahabad Bank v. Canara Bank*, (2000) 4 SCC 406, which has been followed in

Pegasus Assets Reconstruction (P) Ltd. v. Haryana Concast Ltd., (2016) 4 SCC 47 in the context of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 1956.] Here the concept of “felt necessity” would get triggered and as per the Statement of Objects and Reasons contained in the BOCW Act, since the purpose of this Act is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded. Here the doctrine of purposive interpretation also gets attracted which is explained in recent judgments of this Court in Richa Mishra v. State of Chhattisgarh, (2016) 4 SCC 179 (SCC p. 197, para 30) and Shailesh Dhairyawan v. Mohan Balkrishna Lulla, (2016) 3 SCC 619 (SCC p. 641, para 31).”

12. In another recent seven-judge Bench judgment reported as **(2017) 2 SCC 629 (Abhiram Singh vs. C.D. Commachen (Dead) by Legal Representatives and others**, the majority judgment is that the conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The Court held as under:-

36. The conflict between giving a literal interpretation or a purposive interpretation to a statute or a provision in a statute is perennial. It can be settled only if the draftsman gives a long-winded explanation in drafting the law but this would result in an awkward draft that might well turn out to be unintelligible. The interpreter has, therefore, to consider not only the text of the law but the context in which the law was enacted and the social context in which the law should be interpreted. This was articulated rather felicitously by Lord Bingham of Cornhill in *R. (Quintavalle) v. Secy. of State for Health*¹⁹ when it was said: (AC p. 695 C-H, paras 8-9)

“8. The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed. But that is not to say that attention should be confined and a literal interpretation given to the particular provisions which give rise to difficulty. Such an approach not only encourages immense prolixity in drafting, since the draftsman will feel obliged to provide expressly for every contingency which may possibly arise. It may also (under the banner of loyalty to the will of Parliament) lead to the frustration of that will, because undue concentration on the minutiae of the enactment may lead the court to neglect the purpose which Parliament intended to achieve when it enacted the statute. Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment.

9. There is, I think, no inconsistency between the rule that statutory language retains the meaning it had when Parliament used it and the rule that a statute is always speaking. If Parliament, however long ago, passed an Act applicable to dogs, it could not properly be interpreted to apply to cats; but it could properly be held to apply to animals which were not regarded as dogs when the Act was passed but are so regarded now. The meaning of “cruel and unusual punishments” has not changed over the years since 1689, but many punishments which were not then thought to fall within that category would now be held to do so. The courts have frequently had to grapple with the question whether a modern invention or activity falls within old statutory language: see Bennion, *Statutory Interpretation*, 4th Edn. (2002) Part XVIII, Section 288. A revealing example is found in *Grant v. Southwestern and Country Properties Ltd.*, 1975 Ch 185 : (1974) 3 WLR 221, where Walton, J. had to decide whether a tape recording fell within the expression “document” in the Rules of the Supreme Court. Pointing out (at p. 190) that the furnishing of information had been treated as one of the main functions of a document, the Judge concluded that the tape recording was a document.”

44. Another facet of purposive interpretation of a statute is that of social context adjudication. This has been the subject matter of consideration and encouragement by the Constitution Bench of this Court in *Union of India v. Raghubir Singh (Dead) by Lrs.* (1989) 2 SCC 754. In that decision, this Court noted with approval the view propounded by Justice Holmes, Julius Stone and Dean Roscoe Pound to the effect that law must not remain static but move ahead with the times keeping in mind the social context. It was said:

“10. But like all principles evolved by man for the regulation of the social order, the doctrine of binding precedent is circumscribed in its governance by perceptible limitations, limitations arising by reference to the need for

readjustment in a changing society, a readjustment of legal norms demanded by a changed social context. This need for adapting the law to new urges in society brings home the truth of the Holmesian aphorism that “the life of the law has not been logic it has been experience” (Oliver Wendell Holmes), and again when he declared in another study (Oliver Wendell Holmes, *Common Carriers and the Common Law*) (1943) 9 *Curr LT* 387 at p. 388), that “the law is forever adopting new principles from life at one end”, and “sloughing off” old ones at the other. Explaining the conceptual import of what Holmes had said, Julius Stone elaborated that it is by the introduction of new extra-legal propositions emerging from experience to serve as premises, or by experience-guided choice between competing legal propositions, rather than by the operation of logic upon existing legal propositions, that the growth of law tends to be determined (Julius Stone, *Legal Systems & Lawyers Reasoning*, pp. 58-59).”

(emphasis supplied)

A little later in the decision it was said: (SCC pp. 767-68, para 13)

“13. Not infrequently, in the nature of things there is a gravity-heavy inclination to follow the groove set by precedential law. Yet a sensitive judicial conscience often persuades the mind to search for a different set of norms more responsive to the changed social context. The dilemma before the Judge poses the task of finding a new equilibrium prompted not seldom by the desire to reconcile opposing mobilities. The competing goals, according to Dean Roscoe Pound, invest the Judge with the responsibility “of proving to mankind that the law was something fixed and settled, whose authority was beyond question, while at the same time enabling it to make constant readjustments and occasional radical changes under the pressure of infinite and variable human desires” (Roscoe Pound, *An Introduction to the*

Philosophy of Law, p. 19. The reconciliation suggested by Lord Reid in *The Judge as Law Maker* (1972) *The Journal of Public Teachers of Law* 22 at pp. 25-26, lies in keeping both objectives in view, 'that the law shall be certain, and that it shall be just and shall move with the times'."

13. We have heard the learned counsel for the parties and find that the orders passed by the Single Benches of different High Courts do not lay down correct law. In as much as, the definition of "domestic violence" including economic abuse has not been considered.

14. 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 abuse, 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 necessity is an expression of "domestic violence".

15. 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 necessities but also includes payment of rental related to the shared 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.

16. Section 20 of the Act deals with grant of monetary relief to meet the expenses incurred and the losses suffered by aggrieved person and any 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 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.

17. 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.

18. In respect of the last question, we find that the order passed in *Sunil @ Sonu vs. Sarita Chawla (Smt.)*, reported in 2009 (5) *MPHT 319* is in accordance with the Act.

19. We find that the purposive interpretation is to be given to the provisions of the Act, in view of the intent of the Act to provide support to the victims of domestic violence. Thus we hold that in view of the definition of domestic violence, proceedings under Section 31 of the Act would be maintainable.

20. In the light of the aforesaid, the petition be posted for hearing as per Roster.

(Hemant Gupta)
Chief Justice

(Vijay Kumar Shukla)
Judge

psm