BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08/01/2013

CORAM
THE HONOURABLE Mr.JUSTICE M.VENUGOPAL

Criminal Revision Case (MD) No.482 of 2012
AND
M.P.(MD) No.1 of 2012

1.K.Rajendran
2.Parvgathy Ammal ... Petitioners

Vs

1.Ambikavathy

2.The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District. ... Respondents

Prayer

Criminal Revision Petition filed under Sections 397 read with 401 of Cr.P.C. to call for the records pertaining to the order passed by the Judicial Magistrate, Valliyoor, Tirunelveli District in D.V.O.P.No.29 of 2012 vide his order dated 21.09.2012 and set aside the same.

!For Petitioner ... Mr.R.Anand
^For Respondent ... Mr.S.Meenakshi Sundaram
for R1
Mr.P.Kandasamy, G.A. (Crl. Side)
for R2

:ORDER

The Petitioners/Respondents have preferred the instant Criminal Revision Petition as against the order dated 21.09.2012 in D.V.O.P.No.29 of 2012 passed by the Learned Judicial Magistrate, Valliyoor, Tirunelveli District.

2.The Learned Judicial Magistrate, Valliyoor, while passing the impugned orders in D.V.O.P.No.29 of 2012 on 21.09.2012, has directed that the Petitioner/First Respondent should not be evicted by the Respondents (Petitioners in Revision Petition) from the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District and also granted residence orders and further has directed that the Respondents (Revision Petitioners) should not cause trouble to the First

Respondent/Petitioner in any manner and granted protection order, and further passed orders granting interim injunction restraining the Respondents/Revision Petitioners from any way interfering with the enjoyment of the house in which the Petitioner/First Respondent has share and in other properties thereby not to encumber the same. Further, the First Respondent/Revision Petitioner has been directed to pay a sum of Rs.1,500/- per month to the Petitioner/First Respondent/Wife towards her Food, Clothing and for Medical expenses and also directed the Inspector of Police, Valliyoor Police Station to render assistance to the first Respondent/Petitioner in fulfilling the directives issued.

3.The Learned counsel for the Revision Petitioners/Respondents submits that the Learned Judicial Magistrate, Valliyoor, while passing the impugned order in D.V.O.P.No.29 of 2012 has committed an error in directing the Revision Petitioners/Respondents that they should not evict the First Respondent/Petitioner from the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District, wherein, she has a share, because of the simple fact that the house referred to supra belongs to the Second Petitioner/Mother-in-law exclusively which cannot be characterised in any manner as a 'shared household'.

4.The Learned counsel for the Petitioners/Respondents urges before this Court that the impugned order dated 21.09.2012 passed by the trial Court in D.V.O.P.No.29 of 2012 is a final order and in reality, the trial Court ought to have issued notice to the Revision Petitioners/Respondents and thereby an adequate opportunity ought to have been provided to them in the manner known to law.

5.Yet another submission of the Learned counsel for the Petitioners/Respondents is that the Learned Judicial Magistrate, Valliyoor, Tirunelveli District, while passing the impugned exparte order in D.V.O.P.No.29 of 2012 dated 21.09.2012 should not have examined the First Respondent/Wife of the First Revision Petitioner on oath. In short, the contention of the Learned counsel for the Petitioners is that the procedure contemplated has not been followed and therefore, the impugned order stands vitiated in the eye of law.

6.That apart, the Learned counsel for the Petitioners contends that the Petitioners could have very well convinced the trial Court by producing earlier complaint lodged by the First Petitioner as against the torture and humiliation caused by the First Respondent/Daughter-in-Law. Furthermore, there is a divorce petition between the First Petitioner/Husband and the First Respondent/Wife which has a serious impact on the present proceedings.

7.The Learned counsel for the Petitioners contends that the marriage between the First Petitioner and the First Respondent has taken place on 10.07.1993 and as a result of the wedlock, they have given birth to two children and for six months, they lived at Valliyoor and in connection with the employment, the First Petitioner/Husband has gone abroad and he returned back to India after 5 years viz., during the year 1998 and for 4 years, he lived at Tirunelveli. Further, the Learned counsel for the Petitioners submits that the parents of the First Respondent/Wife are residing at Koodankulam and it is the habit of the First Respondent/Wife to lock the house and used to go to her parents house from Valliyoor to Koodankulam and she will not return back for 15 days. Moreover, she has not taken interest in her children and the First Petitioner/Husband only brought the First Respondent/Wife after 15 days from her parents house and it continued for long time and despite the intervention of elders, the First Respondent/Wife has not changed her attitude and she remained in different and later, the First Petitioner filed H.M.O.P.No.46 of 2009 against the First Respondent/Wife on the ground of cruelty under Section 13(1)(b) of the Hindu Marriage Act, 1955 and the same has been dismissed on 14.02.2012. Later, C.M.A.No.9 of 2012 on the file of the Learned Principal District Judge, Tirunelveli has

been filed and a notice has been ordered to the other side, in which the other side has entered appearance.

8.The specific argument advanced on behalf of the Petitioners is that the Learned Judicial Magistrate, Valliyoor has recorded the sworn statement of the First Respondent/Wife and nowhere in the protection of women from Domestic Violence Act, 2005, recording of sworn statement is permissible before passing an Exparte order and in fact, the proceeding before the trial Court under the Protection of Women from Domestic Violence Act, 2005 is a civil in nature and therefore, a summary procedure is to be followed like that of the one followed under Section 125 of Cr.P.C.

9.Added further, the Learned counsel for the Petitioners submits that Rule 6(5) of the Protection of Women from Domestic Violence, Rules 2006 enjoins that the applications under Section 12 of the Act, shall be dealt with and the order enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) and Rule 7 speaks of affidavit for obtaining Exparte orders of Magistrate which shall be filed as per sub Section (2) of Section 23 in form III. Also, the Learned counsel for the Petitioners referred to Section 125 and 126 of Cr.P.C., which deal with the Order for maintenance of wives, children and parents and taking of all evidence in such proceedings under Section 125 Cr.P.C., in the presence of person against, whom an order for payment of maintenance is proposed to be made etc.

10.According to the Learned counsel for the Revision Petitioners/Respondents, Section 23 of the Protection of Women from Domestic Violence Act, 2005 speaks of the power of the Magistrate to grant interim and Exparte orders and on the basis of affidavit in such form as per Section 23(2) of the Act, the Magistrate is entitled to pass an Exparte order and in the instant case on hand, the Learned Judicial Magistrate, Valliyoor has relied upon the sworn statement of the First Respondent/Petitioner/Wife an extraneous material which has resulted in an erroneous order being passed against the Revision Petitioners/Respondents. Continuing further, by passing the impugned order in D.V.O.P.No.29 of 2012 dated 21.09.2012, the Learned Judicial Magistrate has granted 1 to 5 reliefs as stated therein and in fact, has disposed of D.V.O.P.No.29 of 2012 in a complete and comprehensive fashion.

11.Proceeding further, the Learned counsel for the Revision Petitioners contends that as per sub Section (2) of Section 23 of the Protection of Women from Domestic Violence Act, 2005, an affidavit in Form No.III is to be filed by the First Respondent/Wife and no such affidavit has been filed by her and in fact, a sworn affidavit of the First Respondent/Wife cannot be construed as Form III. Therefore, in the present case, according to the Learned counsel for the Petitioners, the Learned Judicial Magistrate, Valliyoor has committed an irregularity and thereby the order passed on 21.09.2012 in D.V.O.P.No.29 of 2012 stands vitiated in Law.

12.Yet another legal plea projected by the Learned counsel for the Petitioners is that a shared household order cannot be passed by the Learned Judicial Magistrate, Valliyoor for the simple reason that the house bearing Door No.36 A, Chokkanathan Kovil Street, Valliyoor, Tirunelveli District does not belong to the First Petitioner/Husband of the First Respondent/Wife and the property in question is the exclusive property of the Mother-in-Law of the First Respondent/Wife viz., the Second Revision Petitioner. To put it precisely, the contention of the Learned counsel for the Petitioners is that the Daughter-in- law viz., the First Respondent cannot claim any relief in respect of the property viz., house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District belonging to the Mother-in-law viz., the Second Petitioner. Also, it is the stand of the Petitioners that the First Respondent/Wife has suppressed the fact that the property belongs to the Second Petitioner/Mother-in-Law.

13.The Learned counsel for the Petitioners submits that only in matters, where final orders have been passed by the Learned Judicial Magistrate, Appeals would lie and in the instant case, the First Respondent/Wife wants to misuse the Protection of Women from Domestic Violence Act, 2005. Furthermore, it is the contention of the Learned counsel for the Petitioners/Respondents that unless the Second Petitioner/Mother-in-Law gives her consent to the First Respondent/Daughter-in-law to stay in the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, the First Respondent/daughter-in-law cannot stay in the house.

14.The Learned counsel for the Petitioners contends that there is no need for the Petitioners to prefer an Appeal against the order passed by the Learned Judicial Magistrate, Valliyoor in D.V.O.P.No.29 of 2012 dated 21.09.2012 when the said Exparte order so passed is per se illegal and also passed without notice to the First Revision Petitioner/Husband. Moreover, the Learned counsel for the Revision Petitioners submits that the First Revision Petitioner/Husband is ready to pay maintenance to the First Respondent/Wife, but he has only attacking the residence order issued by the trial Court pertaining to the shared household, wherein, the first Respondent/Wife has been given the residence order and thereby the Revision Petitioners/Respondents are not to evict the First Respondent/Wife from the share household viz., the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District as referred to supra.

15.Apart from the above, the Learned counsel for the Petitioners contends that the Second Petitioner/Mother-in-law of the First Respondent/Wife has been looking after the Grandchildren and the First Respondent/Wife has shown the Court order and the investigation Officer has come and taken the inmates of the house viz., the children and the First Petitioner out of the house bearing Door No.36 A, Chokkanathan Kovil Street, Valliyoor, Tirunelveli District and entrusted the custody of the house to the First Respondent/Wife. Also, a separate lock and key have been brought and the lock of the First Petitioner/Husband has been removed and that the Petitioners are now in streets. At this stage, the Learned counsel for the Petitioners brings it to the notice of this Court that the First Petitioner/Husband is running a medical shop separately and in the back side of the shop, there is a small room, where the First Petitioner and his children are staying. In fact, the Educational Certificates and Thirukkural Book belonging to the children are inside the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District.

16.It is the stand of the Petitioners that the impugned order passed by the Learned Judicial Magistrate Valliyoor in D.V.O.P.No.29 of 2012 dated 21.09.2012 suffers from non application of mind and there must be a real sense of urgency for passing an interim order by the Learned Judicial Magistrate. Also that a speaking order is to be passed by her and the sworn statement has been recorded at 12.00 P.M., when the First Respondent/Wife has moved D.V.O.P.No.29 of 2012 before the trial Court in the morning and in the evening, the Learned Judicial Magistrate has passed the impugned order and on the same day, the First Respondent/Wife has come with police and removed all the family members including the Children from the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District as referred to supra and that the children are now under the custody of the First Petitioner(Father). Also, the Learned counsel for the Petitioners take a plea that the Learned Judicial Magistrate, Valliyoor has treated the First Respondent/Wife as a Complainant and has applied the ingredients of Section 200 Cr.P.C., when he examined her.

17.The Learned counsel for the Petitioners cites the decision of Hon'ble Supreme Court in S.R.Batra and Another V. Smt.Taruna Batra (AIR 2007 Supreme Court 1118 and 1119, wherein, it is held

that the Mother-in-Law's house does not become 'shared household' only because the applicant- wife had shared that house with her Husband earlier. Moreover, it is also observed in the said decision that "for that it has to be a house owned or taken on rent by Husband or a house which belongs to joint family of which Husband is a member'. In addition to this, the Learned counsel for the Petitioners relied on para 28 of the aforesaid Supreme Court's decision at page 1121, wherein, it is held as under:

"As regards Section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No.2, mother of Amit Batra. Hence it cannot be called a 'shared household'.

18.He also seeks in aid of the decision of this Court in Sameer Vyas V. State (2010)2 MLJ Crl. 254 at 255, wherein, it is held that "no claim for "shared household" can be made in respect of property of which neither the Petitioner husband nor the respondent wife at a right of tenancy."

19.The Learned counsel for the Petitioners places reliance on the decision in Neetu Mittal V. Kanta Mittal and Others (AIR 2009 DELHI 72 and 73), wherein, it is interalia held that "Daughter-in-Law cannot claim right to live in house of parents of husband against their consent and wishes".

20.He also draws the attention of this Court to the order dated 02.12.2010 in CRP(PD)(MD) No.2081 of 2010, between M.Muruganandam and another V. M.Megala, wherein, in para 25, it is held as under:

"A combined reading of Sections 17 and 19 would show that it is only when a protection order under Section 17 read with clauses (a), (b), c, (d) and (e) of Sub Section (1) of Section 19 is claimed, that the property in respect of which it is claimed, should fall within the definition of the expression "shared household" under Section 2(s). To put it in simple terms, if an aggrieved woman seeks either a protection order to enable her to continue to reside in the shared household, then the property which forms the subject matter of the claim, should be a "shared household", within the meaning of the Act."

21.Repelling the contentions of the Learned counsel for the Petitioners, the Learned counsel for the First Respondent/Wife submits that the Learned Judicial Magistrate has passed final orders in D.V.O.P.No.29 of 2012 on 21.09.2012 and as against the said final order as per Section 23 of the protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), an Appeal is to be preferred by the Revision Petitioners/Respondents and in short, the present Revision Petition filed by them is not maintainable before this Court.

22.The Learned counsel for the First Respondent/Wife submits that the First Petitioner/Husband has filed H.M.O.P.No.46 of 2009 on the ground of cruelty under Section 13(1)(b) of the Hindu Marriage Act, 1955 against the First Respondent/Wife and the same has been dismissed on 14.02.2012 (after contest). C.M.A.No.9 of 2012 has been filed as against the order of dismissal passed in H.M.O.P.No.46 of 2009 and the mere pendency of C.M.A. will not disentitle the Learned Judicial Magistrate, Valliyoor to pass appropriate orders in D.V.O.P.No.29 of 2012 (filed by the First Respondent/Wife).

23.The Learned counsel for the First Respondent/Wife brings it to the notice of this Court that the First Petitioner/Husband for 10 years has remained in a Foreign Country and only later he returned to India and in the sworn statement, the First Respondent/Wife has stated that after dismissal of H.M.O.P.No.46 of 2009 on the file of the Learned Subordinate Judge, Valliyoor, she gone to her Husband's house, but, they have not accepted her. Moreover, as per Section 19(1)(f) of the Protection of Women from Domestic Violence Act, 2005, the First Petitioner/Husband has to provide an alternate accommodation to the First Respondent/Wife and moreover, as per Section 19(1) (a) of the Act (43 of 2005), if the First Respondent/Wife is attempted to be disturbed of the possession from the shared household, then the Learned Judicial Magistrate is empowered to pass residence orders under Section 19 of the Act. Even whether the first Respondent/Wife has or not having a legal or equitable interest in the shared household, she is to be protected from dispossession of the house viz., bearing Door No.36 A, Chokkanathan Kovil Street, Valliyoor, Tirunelveli District.

24.The Learned counsel for the First Respondent/Wife contends that the First Petitioner/Husband has the duty/liability of providing the first Respondent/Wife an alternate residence and even if the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District belongs to the Second Revision Petitioner, as per Section 2(f) of the Act, because of the domestic relationship with the First Petitioner/Husband, she has a right to reside in the house bearing Door No.36 A Chokkanathan Kovil Street, Valliyoor, Tirunelveli District.

25.The Learned counsel for the First Respondent cites the order dated 04.10.2012 in C.R.R.No.1341 of 2012 in C.R.R.No.1194 of 2012 between Vinay Kumar Sethia V. Vinita Sethia and Another, whereby and whereunder, paragraph No.4, it is observed as follows:

"On the other hand, learned lawyer of the opposite party submitted that this present Revision is not at all maintainable because the application was couched under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India which cannot be heard because this is a revisional forum. Further it was contended by the learned lawyer of the opposite party that the actual remedy is not here but in term of Section 29 of the said Act at the court of appeal. I find substance in the contention of the learned lawyer of the opposite party. The learned lawyer of the opposite party placed before me the decision as reported in (2012) 1 SCC (Cri) 371 wherein it was propounded that in Revision against maintenance order passed in proceedings under Section 125 of the Cr.P.C., revisional court has no power to reassess evidence and substitute its own findings. Another decision as reported in (2012) 3 C.Cr.L.R.(Cal) 621 was cited in regard to Sections 23 and 29 of the Protection of Women from Domestic Violence Act, 2005 wherein the Hon'ble Court held that against interim order granted, the remedy lies in preferring appeal against the order and revisional application for quashing the order was not maintainable. The said decision fits in toto in this case. Further the decision as reported in (2012) 2 SCC (Cri) 102 shows that condition of period even prior to coming into force of 2005 Act can be taken into consideration while passing the order."

Also, in paragraph 5 of the aforesaid order, it is mentioned as under:

"It was transpired from the materials on record that the criminal appeal under the provision of Section 29 of the said Act has been filed before the learned District Judge, Howrah and that appeal is pending. The impugned order was passed by the learned District Judge, when the appeal was at nascent stage. Some question of fact and question of law are inherently related for which the revisional court ought not to go deep into them.

26.He also invites the attention of this Court to the order dated 11.01.2012 in Crl.A.(apl)No.564 of 2011 between Manoj Harikisanji Changani and others Vs. Sau.Prema Shrinivas Changani and others, wherein, in paragraph Nos.17 to 21, it is observed as follows:

"17.However, reading the provision as regards calling the report of Protection Officer as a mandatory rule and equipping a respondent with a device of getting the application of a woman dismissed on the ground that Domestic Violence Report is not called would be a treatment harsher than the ailment.

18.Some Reports contain information filled in a cryptic manner, and such reports do not do much service to the victim.

19.It cannot be forgotten that ultimately the litigant-applicant has to prove the case.

20.The provision of Section 12 of the Act, though employs the word shall, the imperativeness included in the word shall cannot and should not be allowed to defeat the scheme of the Act."

27.He also draws the attention of the order dated 17.05.2012 in Crl.M.C.3083 of 2011 and Crl.M.A.10914 of 2011 between Shambhu Prasad Singh Vs. Manjari, wherein, in paragraph 10, it is held as follows:

"In Ajay Kant and Others V. Alka Sharma 2008 CrlJ 264 (MP HC), the Madhya Pradesh High Court held, turning down a contention identical to that of the respondent that:

"On perusal of the aforementioned proviso appended to the provision, it appears that before passing any order on the application, it is obligatory on a Magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither it is obligatory for a Magistrate to call such report nor it is necessary that before issuance of notice to the Petitioners it was obligatory for a Magistrate to consider the report. The words before passing any order provide that any final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words any report also mention that a report, if any, received by a Magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground for quashing the proceeding." A similar view was taken by the Jharkhand High Court in Rakesh Sachdeva and Others V. State of Jharkhand and Another 2011CrLJ158 (Jharkhand HC): "12.It would thus appear that the proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass under Section 18 of the Act. The Protection orders, which the Magistrate may pass under Section 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act. The contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable."

28.Yet another order in W.P(C).No.30948 of 2009 dated 07.01.2010 between Dr.Preceline George @ Antony V. State of Kerala represented by the Chief, is relied on on the side of the First Respondent/Wife, wherein, in para 19, it is among other things observed as follows:

"... The order passed under sub section (2) would only be of ad interim in nature. In the light of the earlier findings the following guidelines could be laid to be followed by the trial Courts dealing with the applications filed under the Act.
(i)Notice of the application filed under Section 12 of the Act shall be served as provided in Section 13, complying the procedure laid in Rule 12 of Protection of Women from Domestic Violence Rules.
(ii)The notice is to be send in Form VII as prescribed under the Rules.
(iii)The notice to be served on the respondent shall be accompanied by copy of application filed under section 12 and 23 if any.
(iv)The Magistrate can pass interim order under section 23(1) ex parte. But that ex parte order could be passed only after service of notice as provided under Rule 12(3) of the Rules.
(v)The Magistrate can pass an exparte ad interim order without notice to the respondent, as provided under section 23(2).
(vi)In case an ex parte ad interim order is passed without notice, or service of notice on the respondent, on his appearance, after granting an opportunity to the respondent to object the claim and on hearing the applicant and the respondent, a final interim order under section 23(1) is to be passed with or without modification of the ad-interim order.
(vii)If on service of notice, the respondent fails to appear, Magistrate is to pass a final ex parte interim order under section 23(1) with or without modification of the ad interim order.
(viii)Magistrates shall bestow care and caution in granting ad interim ex parte order under section 23(2). Such relief is to be granted only if urgent orders are warranted on the facts and circumstances of the case and delay would defeat the purpose or where an interim orders is absolutely necessary either to protect the aggrieved person or to prevent any domestic violence or to preserve the then existing position."

It is to be borne in mind that Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 speaks as follows:
"domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family"

Also Section 2(s) of the Act enjoins as follows:
"shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household."

29.It is to be pointed that the Learned Judicial Magistrate can pass interim orders under Section 18 to 23 and all these reliefs are not criminal liabiity and in fact, they are only civil liability, in the considered opinion of this Court.

30.It is not out of place for this Court to make a significant reference to the decision in M.Palani Vs. Meenakshi reported in 2008(3) MLJ 855, wherein, it is held that "any woman being in domestic relationship with opposite party can file a complaint under the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005).

31.Also, in the decision in Karthikeyan Vs. Sheeja reported in 2008(1) KLT 750, 751, 752, it is held that the writ petition cannot hence be entertained as the petitioner has an efficacious remedy.

32.Moreover, in the decision in Ramesh Chand Vs. State of NCT of Delhi reported in 2009(1) J.CC 520 at P 521 (Delhi), it is held that the petitioner has been directed to withdraw the petition with liberty to file an appeal before this Court of the Learned Assistant Sessions Judge.

33.The term of aggrieved person in Section 29 of the Act is wide enough not only to take in the parties to the petitioner/application, but also a Protection Officer or a person who has moved the Magistrate on behalf of the aggrieved person as per decision in Chitrangathan Vs. Seema.C reported in 2007(3) KHC 757, 762 (Ker.).

34.Furthermore, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Learned Judicial Magistrate seeking one or more reliefs under the Act as per Section 12. Section 17 speaks of all right of reside in a shared 'household'. Also, as per Section 17(2) of the Act, the aggrieved person shall not be evicted or excluded from the shared household or any part of it by the Respondent save in accordance with the procedure established by law. Section 18 enables the Learned Judicial Magistrate to pass protection orders after giving the aggrieved person and the Respondents 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 committing any act of Domestic Violence etc. In fact, Section 19 of the Act speaks of residence orders.

35.Section 23 of the Act (43 of 2005) enables the Learned Judicial Magistrate to grant interim and Exparte orders as it deems just and proper. He may also pass Exparte orders on the basis of affidavits furnished by the affected party. Section 25(1) of the Act says that a Protection Order made under Section 18 shall be in force till the aggrieved person applies for discharge. Further, Section 25 (2) of the Act contemplates that in case, there is a change in the circumstances of a case, the Judicial Magistrate may, on application made by the person or Respondent pass an order altering, modifying or revoking any order passed earlier.

36.Section 29 of the Act refers to filing of an Appeal before the Court of Session within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the Respondents, as the case may be, which ever is later.

37.It is to be noted that the Protection of women from Domestic Violence Act, 2005, does not contemplate of the procedure to be followed by the Magistrate. However, Section 28 of the Act provides that proceedings relating to the application and orders for reliefs and offence of breach of protection order or interim protections orders shall be governed by the provisions of the Code of Civil Procedure, 1973. Sub-section (2) envisages that the Court may adopt its own procedure for disposal of applications for any relief or for Exparte order. But the Court of Session is to follow Cr.P.C. while entertaining an Appeal filed under Section 29 of the Act. It cannot be gainsaid that under Section 29 of the Act, an Appeal lies to the Court of Session. No wonder the ingredients of Cr.P.C. relating to Admission, Hearing and Disposal of Appeals will apply to an Appeal filed by an aggrieved person before a Court of Session as per Section 29 of the Act. Really speaking, when a Judicial Magistrate's orders is assailed before the 'Court of Session', the said order in fact is one passed by an inferior Court to the

Court of Session. As such, as per Section 29 of the Protection of Women from Domestic Violence Act , 2005, an appeal lies before the 'Court of Session'.

38.The judgment of the Court of Session in an Appeal under Section 29 of the Act, being an inferior criminal Court is revisable by Hon'ble High Court in exercises of its power under Section 397 (1) and Section 401 of Cr.P.C. As a matter of fact, the Court of First Class Magistrate or a Metropolitan Magistrate acts as a Criminal Court while discharging functions under the Act, 2005, though some of the relifs, he can grant are of civil in nature. It is not out of place for this Court to point out the term 'household' means all persons, who normally eat food prepared in the same kitchen (vide Uttar Pradesh Sugar Control Order, 1966, clause 2(j). Also the word 'household' means the individuals, who are held together in same house and normally eat food prepared in the same kitchen (vide Uttar Pradesh Scheduled Commodities Regulation of Distribution Order, 1989 clause 2(9).

39.Also, the term 'residence' signifies a man's abode or continuance in a place as per decision Steel Authority of India Limited Vs. Kanchanabala Mohanty 1995 ALJ 277 at 280 (Ori).

40.This Court worth recalls the decision of Hon'ble Supreme Court in Chanda Varkar Vs. Asha latha AIR 1987 SC at 117, wherein, it is observed "that the provisions embraced in non obstante clause would not be an impediment for an operation of the Act.

41.It is true that an Appeal is the Statutory right of a party/litigant as per decision reported in AIR 1935 Madras at page 673. Undoubtedly, in the decision Dilip Bhattacharjee alias Raghu Vs. State of Bihar 2010(1) B.L.J. 3 at page 4 (Pat.), it is held that the power to grant interim relief as envisaged under Section 23 of the Protection of women from Domestic Violence Act, 2005 does not contemplate of a maintenance order. However, in the decision Preceline George Vs. State of Kerala 2010 (1) (KHC) 417 at p.423 (Ker.), it is held that the order passed in sub Section (2) of Section 23 of the Act ,is of ad interim in nature. An exparte order passed under Section 23(2) of the Act can be modified, altered or revoked by the same Court based on the application filed by the aggrieved party as per Section 25(2) of the Act. The Learned Judicial Magistrate ought to be careful and circumspect while passing an Exparte order under Section 23 of the Act only to the extent required/necessary after subjectively satisfying himself, as to the materials available on record and as such, it is open to the Learned Judicial Magistrate to pass an Exparte interim order. The need to pass Exparte interim orders with great and caution cannot be over emphasised.

42.This Court aptly points out the decision in Rajkumar Rampal Pandey V. Sarita Rajkumar Pandey(AIR 2009(NOC) 1013 (Bom.), wherein, it is interalia observed and held that the Husband having interest in house by virtue of inheritance and he was not party to alleged sale transactions, the house can be treated as "shared household", wherein wife lived in domestic relationship with Husband. Moreover, in the said decision, it is observed that the Petitioner's husband producing bogus sale deed regarding house in question and making false statement to defeat legitimate right of wife, the petition is liable to be dismissed with costs quantified of Rs.25,000/-.

43.Also this Court point out the decision in Umesh Sharma V. State (AIR 2010 (NOC) 515 (DEL.), wherein, it is observed and held thus:

"Shared house/flat would only mean the house belonging to or taken on rent by the husband or the house which belongs to the joint family of which the husband is a member. The flat where wife is residing and which is owned by her father-in-law, cannot be said to be shared accommodation and she has no legal right to continue to live in that house, except with the consent of her father- in-law who is

not agreeable to her continuing to live in the flat owned by him. Therefore no restraint order against the father-in-law can be passed in respect of the flat."

44.In regard to the power to grant an interim Exparte order as per Section 23 of the Act, it is to be pointed out that the Learned Judicial Magistrate ought to be construed of repercussions and ramifications of the orders to be passed under Section 23 of the Act. Moreover, to attract the provisions of the Domestic Violence Act 2005, it may be shown that the parties lived in the 'share household' either jointly or singly/individually.

45.It is not in dispute that the Revisional jurisdiction of a concerned Court relates to the supervisory jurisdiction of a superior Court. A right of appeal is conferred only by a Statute. It is not itself a necessary part of procedure in an action but, it is the right of a person entering the superior forum invoking its assistance to correct the error committed by the lower forum. Furthermore, Section 372 of Cr.P.C. enjoins that "no appeal shall lie from any judgment or order of the criminal Court except as provided for by this Court or by any other Law for the time being in force

46.As far as the present case is concerned, as against the impugned order dated 21.09.2012 passed in D.V.O.P.No.29 of 2012, the Revision Petitioners are to prefer only Statutory Appeal as per Section 29 of the Act. It is a viable efficacious, effective and alternative remedy., as opined by this Court. In the instant case, obviously, the Petitioners have not filed any petition seeking alteration, modification or revocation of the order passed by the Learned Judicial Magistrate in D.V.O.P.No.29 of 2012 dated 21.09.2012 without seeking alteration, modification or revocation of the order so passed in D.V.O.P.No.29 of 2012 dated 2.09.2012 by the Learned Judicial Magistrate and also not filing the Statutory Appeal under Section 29 of the Act, the Petitioners have directly approached this Court by filing the instant Criminal Revision petition under Section 397 and Section 401 of Cr.P.C. Only when a Revision is filed as against the judgment or order passed by the Court of Session in Appeal as per Section 29 of the Act, then only, the right of availing the procedural facility of filing the Revision is available to the Petitioners, in the considered opinion of this Court. When a statutory right of filing an Appeal is provided to the Petitioners (as per Section 29 of the Act), then this Court is of the considered view that the Petitioners cannot invoke the Revisional Jurisdiction of this Court under Section 397 read with 401 of Cr.P.C.

47.In the result, it is held by this Court that the present Criminal Revision Petition filed by the Petitioners before this Court will not lie in the eye of Law. However, liberty is granted to the Petitioners to prefer a Statutory Appeal as per Section 29 of the Act before the Court of Session and to seek appropriate remedy, if they so desire/advised. It is open to the respective parties to raise all factual and legal pleas (even to place reliance on the citations/decisions/orders, which they rely upon before the Court of Session) when Appeal being filed by the aggrieved person. Consequently, connected miscellaneous petition is also dismissed.

Arul
To
1. The Judicial Magistrate, Valliyoor.
2.The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District. No.3,
Tirunelveli.

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