



The learned Magistrate proceeded to hold as follows:-

"Sec. 5 of the Act specifically states that the Magistrate shall act upon a complaint of domestic violence. In this case no complaint is filed by the petitioner and the Court cannot find out what are the allegations against the respondent and the facts and circumstances of the case. As per the provisions of the Act the proceedings under this Act shall be commenced upon filing of a complaint either before a police officer, Protection Officer, Service Provider or before the magistrate, as stipulated in Sec. 5. In this case no such complaint is filed by the petitioner. She had sought for reliefs under [Sections 18, 19 and 21](#) of the Act."

5. I am afraid that the learned Magistrate has misconceived the object and purpose of the Act in question. The expression "domestic violence" has been defined in a very elaborate manner under Sec. 3 of the Act. The reliefs which can be granted by the Magistrate in an application under Sec. 12 read with Rule 6 of the Rules and Form - II are:-

- i) Protection Order under Sec. 18
- ii) Residence Order under Sec. 19
- iii) Monitory Relief under Sec. 20
- iv) Compensation Order under Sec. 22
- v) Interim custody Order under Sec. 21

vi) Compensation or damages for the injuries caused by the acts of violence committed by the respondent - [Section 12](#) (2) Eventhough as indicated by [Sections 12 and 27](#) of the Act, the forum to be approached for the above reliefs is the Court of the Magistrate, the reliefs provided for are all civil remedies. (Vide Sulochana v. Kuttappan - 2007 (2) KLT 1; [Dr. V.K. Vijayalekshmi Amma and Another v. Bindu V. and Others](#) - 2010 (1) KHC 57 and [Dr. Preceline George @ Antony Preceline George v. State of Kerala and Another](#) - 2010 (1) KHC 417).

The application to the Magistrate under Sec. 12 (1) can be made by -

- i) an aggrieved person or
- ii) a protection officer or
- iii) any other person on behalf of the aggrieved person "Aggrieved person" has been defined under Sec. 2 (a) as follows:

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

The word "respondent" has been defined under [Section 2](#) (q) as follows:-

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file complaint against a relative of the husband or the male partner"

It has been held that the words "relative of the husband"

occurring in the proviso to Sec. 2 (q) can include a female relative also. ([See Ramadevi and others v. State of Kerala and Another](#) - 2008 (1) KLD 734).

The expression "shared household" as defined under Sec. 2(s) is as follows:-

"2(s) "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 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"

The expression "domestic relationship" as defined under Sec. 2

(f) reads as follows:

"Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in the 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".

Thus, "domestic relationship" is a common ingredient of both "aggrieved person" and "the respondent" . Familial or conjugal relationship between the aggrieved woman and the perpetrator of domestic violence is a must before an application could be filed under Sec. 12.

While in the case of a criminal offence the place of trial is ordinarily before a Court within whose territorial limits the offence was committed, the forum for entertaining an application under [Section 12](#) of the Act is the Judicial Magistrate of the First Class or the Metropolitan Magistrate, as the case may be, within the local limits of which -

- a) the aggrieved person permanently or temporarily resides or carries on business or is employed; or
- b) the respondent resides or carries on business or is employed; or
- c) the cause of action has arisen (See [Section 27](#)) Even though [Section 28](#) (1) of the Act provides that most of the proceedings under the Act shall be governed by the provisions of [the Code](#) of Criminal Procedure, 1973, [Section 28](#) (2) of the Act gives sufficient latitude to the Court to lay down its own procedure for disposal of the main application under [Section 12](#) as well as the interlocutory application under Sec. 23 (2) of the Act.

As has already been noticed, what Sec. 12 of the Act contemplates is only an application to the Magistrate and not a complaint. Sec. 2 (d) [Cr.P.C.](#) defines a complaint as follows:-

(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Thus, in order to constitute a complaint there should be an allegation made to a Magistrate that some person has committed an offence . Here, except where a respondent is prosecuted under Sec. 31 of the Act for committing breach of a protection order under Sec. 18 or where a protection officer is prosecuted under Sec. 33 of the Act for not discharging his duty, the Magistrate is approached by a person for any of the aforementioned reliefs by filing an application under Sec. 12 read with Rule 6 of the Rules and Form II. The respondent who is the opposite party to such an application is not an accused. (Vide *Sreedivya v Sudheer* - 2009 (3) KLT 477) . Since he is not an accused , he cannot be arrested and produced or ordered to be arrested and produced before the Magistrate. The expression "complaint" found in the Act and the Rules has been used in a generic sense and is not to be understood in the context of a complaint as defined under the [Cr.P.C.](#)

6. Cruelty against woman, whether she be a grandmother, mother, wife, sister or daughter, is not a new species of crime. Reports indicate that every 20 minutes at least one woman is subjected to domestic violence in India. The modesty of woman continues to be outraged by man who considers himself to be an unquestionable dictator in this field of male chauvinism. The sad part of this institutionalised atrocity is that women themselves play a vital role in trivialising violence against their own folk. Despite inadequate data to capture the statistics, it is reasonably believed that the total number of separated and divorced

women in our country is alarmingly increasing and may even touch 10 percent of the total population. Marital breakdown and desertion are disconcertingly on the increase. For a great majority of females it is safer to be on the streets outside, than to be in the bosom of their own family, for, it is there that violence of the worst order awaits them. Domestic violence is the most common but least reported crime in India. Indisputably, it is a facet of human rights violation. Many women suffer the atrocities in silence for fear of graver offences that may be committed on them if they were to muster sufficient courage to divulge to others the acts of cruelties done to them during coverture. Separation or divorce between the connubial partners can never be the solution for this intra-mural atrocity mostly taking place at the matrimonial habitat. Indian women do not want a divorce since they have realised that they have no means of survival once they are alone. Separated or divorced women constitute the most vulnerable section in this male-dominated society. The problem of preventing, curbing and eradicating all forms of violence against women is a major concern of the nation. With the pronouncement of the Apex Court in Visaka's case, (Visaka v. State of Rajasthan - AIR 1997 SC 3011) occupational violence against women in their workplaces stands, by and large, abated eventhough there are shortcomings, in that area also. It is not the dearth of adequate legal framework which is the cause for the escalating crimes against women but it is the disinclination of the victims to come out with complaints against the perpetrators of the crimes. To a woman who is bold enough to complain, offences like Sections 354, 294, 509, 498 A and 376 etc. of [the Indian Penal Code](#) and even attempts to commit the said offences and punishable under Sec. 511 of [I.P.C.](#) are sufficient to take care of almost every situation. But to a timid and non-complaining woman, even Visaka's case may not provide sufficient protection. What is lacking is the bold and courageous disposition among the victims and the preparedness to shed all their fears and to boldly prosecute the wrongdoers by lodging complaints before persons in authority and relentlessly pursue the same. The words of Pandit Jawaharlal Nehru that success always goes to those who dare and act and seldom it goes to the timid should motivate every Indian woman in distress. Thus, the mindset of the Indian woman should change. What we need is a fearless class of women who will not take the disgrace silently. It was after taking note of the increasing prevalence of domestic violence in this country that the Parliament came out with this piece of legislation namely the Protection of Women from [Domestic Violence Act](#), 2005 to combat this particular species of violence mainly occurring within the four walls of the home. This law has been enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India and provides for a speedier remedy under the civil law through the instrumentality of the Magistracy. Every person in authority dealing with victims of domestic violence has to approach the problem with a spirit of gender sensitivity. There is nothing wrong in the repositories of power showing empathy towards women in distress except in cases where the provisions of the Act are abused for self-aggrandizement or for obtaining undue advantage over the opposite party. [This Act](#) which was published in the Gazette in the year 2005 came into force only on 26-10-2006. Eventhough by providing for very strong remedies to the victims of domestic violence, amelioration of the weaker sex and women empowerment have been uppermost in the mind of the Parliament, everyone concerned should not forget that violence is not to be met by violence. It is very easy to misuse the provisions of the Act and gain an unfair advantage over the adversary. Such tendencies will ultimately turn out to be counter productive.

7. After bestowing my anxious consideration to the facts and circumstances of the case, I am convinced that the learned Magistrate approached the whole matter from a wrong angle resulting in miscarriage of justice. The impugned order is accordingly set aside and the matter is remitted to the Court below for disposal of the application (C.M.P. 3532 of 2009) afresh and in accordance with law.

In the result, this Revision is allowed and the matter remitted to the Court below as above.

Dated this the 10th day of December, 2010.

V. RAMKUMAR, (JUDGE) ani.

it is pertinent to note that explanation II of Sec. 3 of the Protection of Women from [Domestic Violence Act](#) contemplates that for the purpose of determining whether any Act, omission, commission or conduct of the respondent constitutes domestic violence under this section, the over all facts and circumstances of the case shall be taken into consideration. But the application filed in Form No. II does not disclose or reveal any circumstances which requires this Court to grant the reliefs"