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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 02.11.2023
Pronounced on: 01.12.2023

+ **CRL.M.C. 1951/2023 & CRL.M.A. 7426/2023**

ANISH PRAMOD PATEL Petitioner
Through: Mr. Prabhjit Jauhar, Mr.
Gautam Panjwani, Mr. Neeraj
Jain & Ms. Himanshi Nagpal,
Advocates.

versus

KIRAN JYOT MAINI Respondent
Through: Mr. Gaurav Bhatia, Sr.
Advocate with Mr. Utkarsh
Jaiswal, Mr. Vikas Tiwari, Ms.
Shubhangi Negi & Mr. Pawan
Shree Agrawal, Advocates.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J.

1. The present petition under Section 482 of Code of Criminal Procedure, 1973 ('Cr.P.C.') has been filed by the petitioner seeking quashing of summoning order dated 12.03.2019 passed under Section 31(1) of Protection of Women from Domestic Violence Act, 2005 for non-compliance of monetary relief or interim maintenance



order in Criminal Case No. 41/2019 (New Case No. 882 of 2022) titled as 'Kiran Jyot Maini v. Anish Pramod Patel'.

2. In the present case, marriage between the petitioner-husband and respondent-wife was solemnized on 30.04.2015 and subsequently, an FIR bearing no. 34/2016 was registered on the complaint of respondent at Police Station Mahila Thana, Gautam Buddh Nagar, U.P. under Sections 498A/323/504 of Indian Penal Code, 1860 and Sections 3/4 of Dowry Prohibition Act, 1961. Thereafter, the petitioner had filed a Criminal Miscellaneous Writ Petition before the High Court of Allahabad for stay on arrest and quashing of the FIR. Pursuant to the same, on 06.05.2016, the High Court of Allahabad had passed the order by way of which the matter was referred to mediation and an order of stay of arrest of petitioner was passed. However, on 22.09.2016, the High Court of Allahabad had dismissed the writ petition due to lack of merits. Thereafter, the respondent had filed an Application No. 4622 of 2016 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*'PWDV Act'*) before the learned Judicial Magistrate, Gautam Budh Nagar, wherein an application seeking interim maintenance had also been filed by her under Section 23 of the Act. The learned Judicial Magistrate vide order dated 10.05.2018 had directed the petitioner to pay interim maintenance of Rs. 35,000/- (Rupees Thirty-Five Thousand Only) to the respondent. Against the said order, appeals had been preferred by both the parties and the learned Additional Sessions Judge, Gautam Budh Nagar vide order dated 01.02.2019, had modified the order dated 10.05.2018 and had directed the



petitioner to pay Rs.45,000/- per month to the respondent as well as Rs.55,000/- per month to the daughter. Aggrieved by these orders granting interim maintenance, the petitioner herein had preferred an Application bearing No. 12860/2019 under Section 482 of Cr.P.C. before the High Court of Allahabad and the matter was again referred to mediation vide order dated 09.04.2019 and the counsel for the respondent at that time had given an undertaking that during the course of mediation, they will not initiate any action against the petitioner. However, the mediation between the parties had failed on 06.07.2019.

3. Subsequently, the respondent had moved a **Criminal Application No. 41/2019** under **Section 31(1) of PWDV Act** against the petitioner for non-compliance of order dated 01.02.2019 i.e. for non-payment of interim maintenance and summons were issued by the Court of learned Additional Civil Judge, Third, Gautam Budh Nagar, but these summons were challenged by the petitioner before High Court of Allahabad vide **Application No. 33533/2019** under Section 482 of Cr.P.C. and the summons were stayed vide order dated 16.09.2019 till next date of hearing.

4. Vide order dated 13.12.2019, the High Court of Allahabad had directed expeditious disposal of application filed by the respondent under Section 12 of PWDV Act which was pending before learned Judicial Magistrate as there was no stay of proceedings. Thereafter, the petitioner had ultimately preferred transfer petitions before the Hon'ble Supreme Court seeking transfer of all criminal cases and complaints filed by the wife as well as applications filed by him



under Section 482 of Cr.P.C. before High Court of Allahabad, to the Courts in Delhi. The Hon'ble Supreme Court vide order dated 06.11.2020 had referred the matter to Supreme Court Mediation Centre and thereafter had also allowed transfer petitions vide order dated 13.08.2021 by transferring all the cases to Tis Hazari Court, Delhi, except applications under Section 482 of Cr.P.C. which were pending before the High Court of Allahabad since the prayer in this regard was not made. After the cases were transferred to Delhi, they were registered on 02.04.2022, and while **Case No. 41/2019 was registered at Delhi as Case No. 882/2022**, Case No. 4622/2016 was registered as Case No. 691/2022. On 04.04.2022, notices were issued to both the parties by the concerned Court at Tis Hazari. Further, the Mahila Court, Delhi vide order dated 15.09.2022 had sought clarification regarding stay on Criminal Case No. 882/2022, i.e. original Case No. 41/2019 filed under Section 31(1) of PWDV Act, by the High Court of Allahabad. On 14.03.2023, the High Court of Allahabad vide two separate orders dated 14.03.2023 had dismissed the applications filed by petitioner under Section 482 Cr.P.C. being Application No. 33533/2019 and Application No. 12860/2019 as infructuous on the statement made by his counsel.

5. After having withdrawn the Application No. 33533/2019 under Section 482 of Cr.P.C. from the Hon'ble High Court of Allahabad pursuant to transfer of cases from Uttar Pradesh to Delhi, the petitioner has now approached this Court assailing the order dated 12.03.2019 passed under Section 31(1) of PWDV Act in Case



No. 882/2022, now pending before learned Mahila Court, Tis Hazari Courts, Delhi.

6. **Learned counsel for the petitioner** argues that the summoning order dated 12.03.2019 has been passed by the learned Additional Civil Judge, Gautam Budh Nagar under Section 31(1) of PWDV Act without application of mind and without appreciating the fact that Section 31(1) would attract only when there is a breach of protection order under Section 18 of PWDV Act and would not apply to monetary relief(s). Thus, an interim order passed under Section 23 of PWDV Act cannot be enforced by way of a separate complaint under Section 31(1) of PWDV Act. It is argued that a perusal of Section 31(1) of PWDV Act would show that it only specifies/includes protection order(s) defined under Section 18 of PWDV Act and in the present case, the complaint under Section 31(1) has been filed with respect to enforcement of interim order passed under Section 23 which admittedly is not a protection order under Section 18 of the Act. It is also submitted that it is not *res integra* any more that monetary relief such as payment of maintenance, even if breached, would not attract penalty under Section 31 of PWDV Act.

7. It is also submitted by learned counsel for petitioner that an Application under Section 482 of Cr.P.C. which was pending before the Hon'ble High Court of Allahabad was dismissed as infructuous *vide* order dated 14.03.2023, since the petitioner herein had informed the Court that all the pending cases between the parties had been transferred to Tis Hazari Courts, Delhi and since the complaint under



Section 31 of PWDV Act, in which summoning order impugned before the Hon'ble High Court of Allahabad was passed, was now before the Tis Hazari Courts in Delhi, the petitioner has approached this Court seeking appropriate reliefs.

8. On the other hand, **learned Senior Counsel for the respondent** argues that the petitioner herein has filed this petition after his similar petition seeking similar relief bearing Application No. 33533 of 2019, under Section 482 of Cr.P.C., has been dismissed as infructuous by the Hon'ble High Court of Judicature at Allahabad *vide* its order dated 14.03.2023. It is stated that petitioner has not sought liberty from the Hon'ble High Court of Allahabad to approach this Court and file the present petition. It is also stated that while the Hon'ble Apex Court had transferred all the pending cases to Delhi *vide* order dated 13.08.2021 in Transfer Petition (Criminal) Nos. 76-80 of 2020, the petitioner herein had not sought transfer of the pending Applications under Section 482 of Cr.P.C. before Hon'ble High Court of Allahabad. Therefore, it is argued that in view of dismissal of the similar petition of the petitioner from another High Court, the Petitioner has wrongly invoked jurisdiction of this Court to entertain the present petition.

9. It is submitted by learned Senior Counsel for the respondent that the summoning order dated 12.03.2019 has been passed against the petitioner under Section 31(1) of PWDV Act by the learned ACJM-II, Gautam Budh Nagar, for non-payment of maintenance amount of Rs. 45,000/- per month to the respondent and Rs. 55,000/- per month to the daughter of the respondent and for non-compliance



of the order dated 01.02.2019 passed by learned ASJ, Gautam Budh Nagar in Appeal No. 39 & 62 of 2018. It is stated that the maintenance order has been in operation since last 5 years (approximately) and the petitioner has never complied with the terms of the orders, and till date, the petitioner had to pay an amount of about Rs. 65,00,000/- to the respondent and her daughter in pursuance to the order dated 10.05.2018 & 01.02.2019. However, out of Rs. 65,00,000/-, the petitioner has only paid an amount of Rs. 4,05,000/- on his own and Rs. 5,45,000/- after indulgence of this Hon'ble Court *vide* interim order dated 08.05.2023 passed in CrI.M.C. No. 406 of 2023.

10. This Court has **heard** arguments addressed by learned counsel for the petitioner as well as learned Senior counsel for the respondent, and has carefully gone through the material placed on record.

11. At the outset, this Court would address the argument of maintainability raised on behalf of the respondent. In the present case, learned Senior counsel for the respondent had vehemently argued that the present petition under Section 482 of Cr.P.C. was not maintainable before this Court since the petitioner had earlier filed a similar petition seeking same relief before the High Court of Allahabad and he had not pressed for the transfer of the same to this Court before the Hon'ble Supreme Court and further that the petitioner had withdrawn the said petition from the High Court of Allahabad without taking any liberty or leave to approach this Court



for the same relief i.e. challenging the summoning order dated 12.03.2019 passed under Section 31(1) of PWDV Act.

12. This Court notes that in the present case, it is not in dispute that the order dated 12.03.2019 passed by the learned Additional Civil Judge under Section 31(1) of PWDV Act for non-compliance of interim maintenance order was assailed by the petitioner herein before the High Court of Allahabad in an application filed under Section 482 of Cr.P.C. i.e. Application No. 33533 of 2019.

13. The Hon'ble Apex Court, while hearing the transfer petitions filed by the petitioner, *vide* order dated 13.08.2021 had directed transfer of three cases pending before the Courts at Uttar Pradesh i.e. (i) the complaint under Section 12 of PWDV Act, (ii) FIR bearing no. 34/2016, registered at Police Station Mahila Thana, Gautam Buddh Nagar, U.P. under Sections 498A/323/504 of IPC and Sections 3/4 of Dowry Prohibition Act, and (ii) the complaint under Section 31 of PWDV Act, to the competent courts in Delhi. However, at that stage, the counsels for the petitioner had not pressed for transfer of applications under Section 482 of Cr.P.C. pending before the High Court of Allahabad. The relevant portion of order dated 13.08.2021 of the Hon'ble Apex Court in Transfer Petition (Criminal) Nos. 76-80 of 2020, reads as under:

“The petitioner before me is the husband involved in a matrimonial dispute with his wife. In this set of petitions he seeks transfer of three cases registered as Criminal Case No. 4622 of 2016, Criminal case No.151 of 2017 and Criminal Case No. 41 of 2019, all pending before the Courts of appropriate jurisdiction in Gautam Budh Nagar, State of Uttar Pradesh. The first of these cases has been instituted under the Protection of Women from Domestic Violence Act, 2005 and



is pending before the Civil Judge (Junior Division), Gautam Budh Nagar whereas the second case has been filed under Sections 498A, 323, 504 IPC read with Sections 3 and 4 of the Dowry Prohibition Act, 1961. This proceeding is pending before the Fast Track Court. The third case is under Section 31(1) of the Protection of Women from Domestic Violence Act, 2005 and Section 498A of the Indian Penal Code pending before the Additional Civil Judge (Senior Division-III)/ACJM, Gautam Budh Nagar

There are also two applications under Section 482 pending before the High Court of Judicature at Allahabad but learned counsel appearing for the petitioner herein has not pressed for transfer of those two cases at the time of hearing. Thus, the plea for transfer of the said two cases registered as Transfer Petition (Crl.) Nos. 79-80 of 2020 shall stand dismissed.

I have considered submissions of the learned counsel for the parties. I choose to direct transfer of the aforesaid three proceedings from the respective Courts at Gautam Budh Nagar, Uttar Pradesh to the Tis Hazari Court, Delhi. Such transfer, in my opinion would serve the ends of justice mainly for two reasons.

First is that the Suit for divorce already stands transferred to the said Court.

Secondly, distance between the Courts at Gautam Budh Nagar and Tis Hazari Court is negligible and no major inconvenience would be caused to the respondent-wife in commuting from NOIDA to Tis Hazari for the purpose of prosecuting the said cases. I also direct that the Courts to which the aforesaid cases are allocated at the Tis Hazari Court by the District and Sessions Judge, Head Quarters shall proceed with the matters from the stages the proceedings have reached at present in the Courts where these cases are pending.

The District and Sessions Judge, Head Quarters shall allocate the three cases to the Courts of jurisdiction within the said judgeship and effort shall be made to hear out the cases on day to day basis, as far as practicable and if possible, simultaneous hearing of these cases shall be undertaken. The concerned Courts shall make an attempt for early conclusion of the trial of these cases.

There is dispute as regards payment of maintenance and the respondent-wife's complaint is that there are sums due on



that account. It has been asserted on behalf of the respondent wife that without paying the entire sum, the petitioner ought not to be permitted to approach this Court for transfer of a case, which is a discretionary relief. While hearing Transfer Petition, however, I would be lacking in my jurisdiction to direct release of the sum, if any, is due to the respondent-wife. It shall be open to the respondent to apply before the appropriate Court for relief on this count.”

14. However, the petitioner herein had thereafter withdrawn the two applications, including the application in controversy in the present case i.e. Application No.33533 of 2019 wherein the petitioner had then challenged the summoning order dated 12.03.2019 and the Hon’ble High Court of Allahabad had dismissed the said application vide order dated 14.03.2023 and the relevant portion of the order reads under:

“Heard learned counsel for the applicant, learned A.G.A. for the State and learned counsel for the private parties. Learned counsel for the applicant submits that in light of the order passed by Hon’ble Apex Court in Transfer Petition (Criminal) Nos.76-80 of 2020 vide order dated 13.08.2021, the case bearing Complaint Case No.41 of 2019 (Kiran Jot Maini Vs. Anish Pramod Patel), under Sections 31(1) Domestic Violence Act, 2005 and Section 498-A I.P.C., Police Station, Mahila Thana, Gautam Budh Nagar, which is pending before Additional Chief Judicial Magistrate-II, Gautam Budh Nagar was transferred from Gautam Budh Nagar, Uttar Pradesh to Tis Hazari Court, Delhi, hence, the matter has become infructuous and the same may be dismissed as infructuous. Accordingly, the present application u/s 482 Cr.P.C. is dismissed as infructuous. Learned A.G.A. for the State as well as learned counsel for the private parties has no objection to the same. Interim order, if any, stands vacated.”

15. Having perused the aforesaid order, this Court notes that the petitioner had withdrawn the application under Section 482 pending



before the High Court of Allahabad on the premise that the proceedings, in which the order impugned therein had been passed, had already been transferred from the jurisdiction of Courts of Gautam Budh Nagar, Uttar Pradesh to the jurisdiction of competent Courts in Delhi by the Hon'ble Apex Court and therefore, those applications under Section 482 had become infructuous since the High Court of Allahabad was not the competent High Court to adjudicate upon such *lis* since the subject matter i.e. the impugned orders herein and the proceedings emanating therefrom were all transferred to Trial Court in Delhi.

16. In these circumstances, this Court finds merit in the argument of the learned counsel of petitioner that the petitioner cannot be rendered remediless by accepting the arguments raised on behalf of respondent that the petitioner cannot approach this Court assailing the summoning order passed by Court concerned and should now approach the Hon'ble Apex Court challenging the same, since the petitioner had withdrawn the similar petition filed under Section 482 of Cr.P.C. from the High Court of Allahabad because the said High Court could not have adjudicated upon the issue in question, since the Hon'ble Apex Court had transferred all the pending cases between the parties to Delhi for all effective and future hearings and proceedings, and this Court is now vested with the jurisdiction to entertain the challenge to the impugned order vide which the petitioner had been summoned as an accused under Section 31(1) of PWDV Act.



17. In this Court's opinion, the present case is not a case where litigant had withdrawn a petition from a High Court without obtaining the liberty to file afresh and had thereafter again filed a petition seeking same relief before the same High Court. To the contrary, the present case is one where due to transfer of cases from one State to another, a pending application under Section 482 of Cr.P.C., having become infructuous, was withdrawn from one High Court and was immediately thereafter filed before another High Court i.e. this Court.

18. Therefore, in this Court's view, the present petition is maintainable.

19. The impugned order dated 12.03.2019 passed in Criminal Case No. 41/2019 (New Case No. 882 of 2022), vide which the petitioner herein was summoned under Section 31(1) of PWDV Act, reads as under:

“Record is put up. Heard, the argument of the learned advocate of the Complainant. Learned advocate of Complainant has submitted that, on the date of 10.05.18 by Judicial Magistrate, Gautama Buddha Nagar, disposing the case filed under section 23 of Protection of Woman from Domestic Violence Act, direction was issued to accused-Anish Pramod Patel to make sure payment of Rs. 35, 000/- per month in cash or through Cheque to the Lady Complainant by the date of 7th of every month, up to disposal of complaint case concerned with domestic violence. Passing the judgment dated 1.2.19 by Hon'ble Fourth Additional Session Judge, Gautama Buddha Nagar, disposing said both Criminal Appeal observation is made that, Lady Complainant is entitled to get Rs. 45, 000/- per month for her maintenance. Besides this, the minor daughter of Lady Complainant namely- 'Anya' is entitled to get Rs. 55, 000/- per month for her maintenance. To both aforesaid amounts shall be paid from date of presentation of Application under



section 23 of Protection of Woman from Domestic Violence Act, i.e. from date of 5.2.18.

In light of said statements, in court examination is made of Lady Complainant. In light of documentary evidences filed on record, and the judgment dated 1.2.19 passed by Hon'ble Fourth Additional Session Judge, Gautama Buddha Nagar, and judicial precedents filed on behalf of Lady Complainant, which were held in cases like- Surya Prakash Vs. Smt. Rachna 2018 Cr. L. J. 2545 and Vincent Shantha Kumar Vs. Smt. Christina Geetha Rani 2015 Cr. L.J. 1874: 2015 (1) AKR 834, sufficient ground is appearing for summoning to accused- Anish Pramod Patel under section 31 (1) of Protection of Woman from Domestic Violence Act. Accordingly issue summons to Opponent. The Lady Complainant is directed to make necessary pairvi. Put up the record on the date of 16.04.2019 for hearing.”

20. In the case at hand, the petitioner was summoned as accused under Section 31(1) of PWDV Act pursuant to a complaint filed by the respondent whereby she had alleged that despite there being orders of learned Magistrate and learned Sessions Court granting her interim maintenance under PWDV Act, the petitioner/accused had failed to comply with the same, and he was thus, liable to be summoned and punished under Section 31(1) of PWDV Act and further under Section 498A of IPC. The relevant portion of the complaint filed under Section 31(1) by the respondent, reflecting her grievance, is extracted hereunder:

“8.That due to intentionally nonpayment of the amount of interim maintenance amount payable per month from 05.02.2018 firstly in compliance with the order dated 10.05.2018 passed by the Hon'ble Judicial Magistrate Gautam Budh Nagar in case No.4622/2016 and further in compliance with the order dated 01.02.2019 passed by the Hon'ble Additional Sessions Judge-IV, Gautam Budh Nagar in Criminal Appeal No.39/2018 and Criminal appeal No.62/



2018 by the accused Anesh Pramod Patel the applicant has to face great mental and economical harassment and from the said act of the accused Aneesh Pramod Patel the complainant and great mental and economical shock has been caused to the applicant the complainant and because of the nonpayment of the amount of interim maintenance relief the applicant has to face great hardship for the maintenance of herself and her daughter.

9. That the said act of the accused Aneesh Pramod Patel are offences cognizable and punishable under section 31 (1) of the Protection of Woman from Domestic Violence Act, 2005 and section 498A Indian Penal Code.

10. That the cause of action to institute the said case arose by non-compliance of the order dated 10.05.2018 passed by the Hon'ble Judicial Magistrate Gautam Budh Nagar in case No.4622 / 2016 and the order dated 01.02. 2019 passed by the Hon'ble Additional Sessions Judge-IV, Gautam Budh Nagar in Criminal Appeal No . 39 / 2018 and Criminal appeal No.62 / 2018 by the accused Anesh Pramod Patel and the present case is being filed within time.

Hence it is prayed from this Hon'ble court that the accused Anesh Pramod Patel be summoned and punished for the offences under section 31(1) of the Protection of Woman from Domestic Violence Act , 2005 and section 498A Indian Penal Code.”

21. The **issue** raised in this petition by the petitioner is that since the grievance of the respondent was that the order granting interim maintenance i.e. an order under Section 20 of PWDV Act (monetary relief) read with Section 23 of PWDV Act (interim relief) was not being complied with, the petitioner could not have been summoned under Section 31 of PWDV Act since the said provision only governs cases of breach of protection or interim protection order, and the same does not cover monetary reliefs under its ambit.

22. The stand of the respondent, on the other hand, has been that there is no infirmity with the impugned summoning order, which has



been passed after taking into account that accused/petitioner had failed to pay any maintenance to the respondent herein, despite there being clear orders of the learned Trial and Sessions Court.

23. When one looks at the scheme of PWDV Act, it can be seen clearly that the Act provides for different forms of reliefs which an aggrieved woman can seek from the Court, while preferring an application before the Magistrate under Section 12 of the Act. These reliefs have been enlisted in the form of different ‘orders’ under the Act, and these are as follows:

- a) Protection Orders, under Section 18
- b) Residence Orders, under Section 19
- c) Monetary Reliefs, under Section 20
- d) Custody Orders, under Section 21
- e) Compensation Orders, under Section 22

24. To adjudicate the legal controversy here, it shall be first necessary to consider the scope of Section 31 of PWDV Act, which reads as under:

“(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 had 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.”

25. A bare reading of Section 31 clarifies that only a breach of ‘protection order’ or ‘interim protection order’ by the respondent shall be considered as an offence under the Act. Punishment for the same is provided under sub-section (1) and the procedure qua the same has been mentioned under sub-sections (2) and (3) of Section 31 of PWDV Act.

26. The term ‘protection order’ stands defined under Section 2(o) of PWDV Act, and the same reads as under:

“...(o) “protection order” means an order made in terms of section 18...”

27. Therefore, it shall be necessary to consider the scope of Section 18 of PWDV Act, which has been explained in Section 18 of the Act, which reads as under:

“**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;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;



- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.”

28. The power to grant ‘interim’ or ‘ex-parte’ reliefs is prescribed under Section 23 of PWDV Act. While sub-section (1) provides for grant of interim reliefs in proceedings under the Act, sub-section (2) empowers the Magistrate to pass ex-parte orders for reliefs sought by the aggrieved person. Section 23 of PWDV Act reads as under:

- “23. Power to grant interim and ex parte orders.—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
- (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.”

29. Therefore, Section 31 of PWDV Act would include within its ambit, a breach of protection order passed under Section 18 or an interim protection order passed under Section 18 read with Section 23 of PWDV Act.



30. On the other hand, the term ‘monetary relief’ has been defined under Section 2(k) of PWDV Act, which reads as under:

“2(k) “monetary relief” means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence..”

31. Further, the scope of an order granting monetary relief can be understood from Section 20 of PWDV Act, which reads as under:

“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 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.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to



the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”

(Emphasis supplied)

32. In this Court’s opinion, Section 20 of PWDV Act comprehensively deals with the issue of ‘monetary relief’. When a Magistrate grants maintenance or interim maintenance to the aggrieved women while disposing of an application under Section 12 of the Act, such an order is passed as per the provisions of Section 20(1)(d), which empowers the Magistrate to pass an order granting maintenance to the aggrieved person as well as her children if any, which may even be in addition to maintenance granted under Section 125 of Cr.P.C. Significantly, Section 20 also provides for the consequence and approach to be adopted in case the aggressor fails to pay the maintenance. Section 20(6) of the Act prescribes that in such cases, the Magistrate can direct the employer or debtor of the aggressor to directly pay the amount of maintenance to the aggrieved person or deposit a portion of the wages/salary etc. of the aggressor



with the Court which may then be adjusted towards the monetary relief payable to the respondent.

33. The Hon'ble Apex Court in case of *Rajnish v. Neha* (2021) 2 SCC 324 also, while addressing the issue of enforcement of maintenance orders, had observed that the remedy for non-compliance of maintenance orders passed under PWDV Act and to seek its enforcement was provided under Section 20(6) of the Act. The relevant portion of the decision reads as under:

“...Enforcement of orders of maintenance

Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law.

(i) An application for execution of an Order of Maintenance can be filed under the following provisions :

(b) Section 20(6) of the DV Act (before the Judicial Magistrate)...”

(Emphasis supplied)

34. However, it is also clear from the reading of Section 20(6) that the provision would come into effect only when the aggressor i.e. respondent under the PWDV Act would be a salaried person, or in case the person would have some accrued credit, and not in any other case.

35. In such situations, it is also relevant to take note of Section 28 of PWDV Act, which mandates that otherwise as provided under the Act specifically, all the proceedings under Sections 12, 18, 19, 20,



21, 22 and 23 of the Act shall be governed by the provisions of Cr.P.C. In this regard, Section 20 is reproduced hereunder:

“28. Procedure.—(1) Save as otherwise provided in this Act, all proceedings under sections 12,18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.”

36. Section 9(1)(h) of PWDV Act also provides one of the duties of the protection officers that they shall ensure that order for monetary relief under Section 20 is complied with and executed in accordance with procedure prescribed under the provisions of Cr.P.C. Section 9(1)(h) reads as under:

“9. Duties and functions of Protection Officers.—(1) It shall be the duty of the Protection Officer—

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

37. Thus, the scheme of PWDV Act leave no scope of doubt that the non-compliance of monetary relief including order granting maintenance/interim maintenance has to be dealt with as per provisions of Section 20(6) of PWDV Act and further as per provisions of Cr.P.C. As regards what could be the procedure under Cr.P.C. to enforce the orders of maintenance, reference can be made to Protection of Women from Domestic Violence Rules, 2006



(‘PWDV Rules’) wherein Rule 6(5) provides that for the enforcement of orders passed on applications under Section 12 of PWDV Act, the procedure laid down under Section 125 of Cr.P.C. has to be followed. Rule 6(5) of PWDV Rules reads as under:

“6. Applications to the Magistrate.-

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

(Emphasis supplied)

38. Section 125 of Cr.P.C. provides for the procedure for granting maintenance to wives, children and parents and sub-section (3) provides for execution of maintenance orders, in the following manner:

“125. Order for maintenance of wives, children and parents.—

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:..”

39. Thus, in view of the statutory framework of PWDV Act and Rules, the order granting maintenance or interim maintenance under Section 20 of PWDV as monetary relief to the aggrieved women will have to be enforced in the manner as provided under Section 20(6) of PWDV Act or otherwise as per provisions of Cr.P.C. including



manner for enforcement of orders passed under Section 125 of Cr.P.C.

40. As discussed in preceding paragraphs, Section 31 of PWDV Act exclusively deals with breach of ‘protection order’ or ‘interim protection order’ and an order granting maintenance in an application filed under Section 12, which is an order passed under Section 20 which provides for ‘monetary relief’, cannot be interpreted to fall within the ambit of term ‘protection order’ as used in Section 31 of the Act. The scheme of PWDV Act envisages different categories of reliefs and orders, as discussed previously, and the term ‘protection order’ has been specifically defined in Section 2(o) and its scope in Section 18, whereas monetary relief has been defined under Section 2(k) and its scope in Section 20, which is distinct in nature. Therefore, while deciding the issue in question, this Court has kept in consideration the intent of the legislature behind legislating separate provisions for different reliefs under the PWDV Act.

41. The aforesaid view is also supported by the decisions of several other High Courts in *Velayudhan Nair v. Karthiayani* 2009 (3) KHC 377, *Kanka Raj v. State of Kerala* 2009 SCC OnLine Ker 2822, *Kanchan v. Vikramjeet Setiya* 2012 SCC OnLine Raj 3614, *Francis Cyril C Cunha v. Smt. Lydia Jane D'Cunha* 2015 SCC OnLine Kar 8760, *Manoj Anand v. State of U.P.* 2012 SCC OnLine All 308, *S. Jeeva Ashok v. Kalarani* 2015 SCC OnLine Mad 3719, *Suneesh v. State of Kerala* 2022 SCC OnLine Ker 6210, wherein also, it was held that Section 31 of PWDV Act cannot be invoked for breach of order granting maintenance.



42. This Court has also carefully considered the opposite view expressed by some other High Courts in cases of *Vincent Shanthakumar v. Christina Geetha Rani* 2014 SCC OnLine Kar 12409, *Surya Prakash v. Rachna* M.Cr.C. No.16718/2015. However, with utmost respect to the observations made in these judgments, this Court does not agree with the ratio laid down therein.

43. It is also relevant to note that offence under Section 31(1) Act has been made as cognizable and non-bailable under Section 32(1) of PWDV Act. Thus, the provision of Section 31 is punitive in nature, in an Act which is otherwise a beneficial and welfare legislation. However, it is cardinal rule of interpretation of statutes that in case of a provision which is punitive in nature, and where penalties are imposed for infringement, the provision is to be construed strictly. In this regard, reference can be made to the observations of Constitution Bench of Hon'ble Apex Court in case of *Tolaram Rerumal v. State of Bombay* 1954 SCC OnLine SC 22, which read as under:

“8. ...It may be here observed that the provisions of section 18(1) are penal in nature and it is a **well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty.** It is not competent to the Court to stretch the meaning of an expression used by the Legislature in order to carry out the intention of the Legislature. As pointed out by *Lord Macmillan in London and North Eastern Railway Co. v. Berriman* 1946 AC 278 “**where penalties for infringement are imposed it is not legitimate to stretch the language of a rule, however beneficent its intention, beyond the fair and ordinary meaning of its language**”...”

(Emphasis supplied)



44. In this Court’s opinion, the intent of the legislature is spelt out clearly from the words used in the enactment and the provisions therein, and an examination of Section 20, 28 Section 9 of PWDV Act and Rule 6 of PWDV Rules clarifies the procedure and manner in which the non-compliance of monetary orders including order for maintenance is to be addressed and dealt with.

45. Thus, when there is no ambiguity in the scheme of legislature and the purport of provisions of the Act and Rules, no purpose would be served by giving a different interpretation to the provisions, which are otherwise clear and unambiguous.

46. The High Court of Kerala in case of *Suneesh v. State of Kerala*(*supra*) had also expressed its opinion on the implications and ramification of widening the scope of Section 31 and the relevant observations are extracted hereunder:

“...Another very pertinent aspect to be noted in this context is the implication and ramification of widening the scope of Section 31. Say for instance, a person when ordered to pay a specified amount on every month as maintenance or interim maintenance and under Section 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 Section 31 of the D.V Act. Similar is the position inasmuch as other orders excluding the order under Section 18. Moreover, if such a wide interpretation is given, the Courts will be over-flooded with cases under Section 31 of the D.V Act and the said situation cannot said to have intended by the legislature...”

47. While deciding such issues, particularly in relation to interpretation of provisions of PWDV Act, it is important to carefully



analyse and examine the aim and objects which were sought to be achieved through enactment of PWDV Act. It was realized by the legislature that while criminal recourse was available for women facing domestic violence in matrimonial settings, as provided under Section 498A of the Indian Penal Code, the same only led to the punishment of the accused without immediate remedies for the woman's specific needs and livelihood challenges. In response to this gap in legal provisions, the PWDV Act was enacted to offer certain civil remedies to the victims of domestic violence. These remedies encompass an array of protective measures, residence orders, and monetary reliefs, designed to address the multifaceted nature of abuse. The aim of the Act was, therefore, to provide for protection, rehabilitation and upliftment of victims of domestic violence, in contrast to sending the aggressor to prisons. In other words, the purpose behind enforcement of monetary orders would be to provide monetary sustenance to the victim, and not the incarceration of the aggressor.

48. Thus, it can safely be concluded that the focus of PWDV Act is on providing immediate and effective relief to victims of domestic violence by way of maintenance or interim maintenance orders, and the idea is not to immediately initiate criminal proceedings against the aggressor i.e. 'respondent' as defined in the Act for non-payment of maintenance and to send such person to prison forthwith.

49. Therefore, for the reasons recorded in the preceding discussion, this Court is of the view that a person cannot be summoned under Section 31 of PWDV Act for non-compliance of



monetary order such as order for payment of maintenance passed under Section 20 of PWDV Act.

50. The respondent in the present case had filed a complaint under Section 31 of PWDV Act before the Court concerned solely on the ground that the petitioner had failed to pay the amount of interim maintenance so granted by the learned Trial and Sessions Court under PWDV Act, and thus, he was liable to face consequences under Section 31 of the Act and further under Section 498A of IPC for commission of cruelties against the complainant.

51. Having held that a the 'respondent' under the PWDV Act cannot be summoned as an accused under Section 31 for non-compliance of an order of monetary relief, this Court is inclined to quash the impugned order dated 12.03.2019 passed by learned Additional Civil Judge, Third, Gautam Budh Nagar, and all consequential proceedings which are pending before learned Mahila Court, Tis Hazari Courts, Delhi, in Case No. 882/2022.

52. Accordingly, the present petition stands disposed of.

53. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

DECEMBER 1, 2023/kd