REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).516/2016
(Arising out of SLP(Crl.) No. 1537/2016)

KUNAPAREDDY @ NOOKALA SHANKA BALAJI APPELLANT(S)

VERSUS

KUNAPAREDDY SWARNA KUMARI & ANR RESPONDENT(S)

J U D G M E N T

A.K. SIKRI,J.

Leave granted.

2. Learned counsel for both the parties have been finally heard at this stage.

3. The issue that arises for consideration in the instant case is whether a court dealing with the petition/complaint filed under the provisions of the Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act') has power to allow amendment to the petition/complaint originally filed. This issue has arisen in the petition/complaint filed by respondent no. 1/wife. Respondent No. 1 herein, who is the wife of the appellant, has filed a case against the appellant and his family members before the Court of IInd Additional Judicial First Class Magistrate, West Godavari, Eluru under Sections 9B & 37(2)(C) of the DV Act which is registered as

Domestic Violence Case No. 20/2008. It may be mentioned here that the said petition now stands transferred to the Court of Judicial First Class Magistrate (Mobile Court), Eluru and has been renumbered as DV Case No. 29/2012. In this case, respondent no. 1 has leveled various allegations against the appellant and his family members *inter alia* alleging that the appellant and his family members used to harass her physically as well as mentally and by also demanding dowry. It is further alleged that she was driven out from her matrimonial home in the month of March, 2015 and initially she took shelter at her brother's house along with the children in Eluru. Thereafter, on the appellant tendering an apology to respondent no. 1 by coming to Eluru they put up their family together in Gadam Ramakrishna's House at Ashok Nagar, Eluru,but the things did not change. The following prayers are made in the said petition:

> **"a) to provide protection to the life and limb of the complainant in the hands of the respondents;**
>
> **b) to grant monthly maintenance of Rs. 5,000/- to the complainant and her children each towards her maintenance, medicines etc. and her children education and maintenance;**
>
> **c) to grant such other relief or reliefs if the Hon'ble Court deems fit and proper in the circumstances of the case."**

4. Respondent no.1 has also filed a divorce petition before the Court of Senior Civil Judge, West Godavari, Eluru wherein she has made an application for interim maintenance as well. Thereafter, she also filed a maintenance petition under Sections 23(2) and 24 of the Hindu Marriage Act, 1955 before the Court of Family Judge,

Eluru.

5. On receiving notice in DV Petition, family members of the appellant filed a petition under Section 482 Cr.P.C. in the High Court of Judicature at Hyderabad for the States of Telengana and Andhra Pradesh for quashing the proceedings in the said DV Petition. This petition was allowed by the High Court vide order dated 17.04.2009 thereby quashing the domestic violence proceedings against the family members of the appellant on the ground that there was no specific allegations against them. After the DV Petition was transferred to the Court of Judicial First Class Magistrate, Eluru, respondent no. 1 filed an application seeking amendment of the petition. By way of the said amendment petition, respondent no. 1 wanted to amend the prayer clause by incorporating some more prayers, as is clear from the following amendment in this behalf which was sought by respondent no. 1:

> **a) To provide protection to life and limb of the complainant in the hands of the respondent.**
>
> **b) To grant monthly maintenance of Rs. 15,000/- to the complainant and her 2nd child to their maintenance instead of Rs.5000/-**
>
> **c) Direct the respondent to return the Sridhana amount of Rs.3,00,000/- and 15 sovereigns of gold ornaments and other sari samanas and marriage batuvu presented to the respondent worth about 2 sovereigns wrist watch, 7 sovereign gold chain presented by the complainant and her parents.**
>
> **d) Direct the respondent to pay the compensation of Rs.15 lakhs to the complaint for subjecting the compliant to physical and mental harassments besides including acts of Domestic Violence.**
>
> **e) Direct the respondent to return the sari samans and other goods like worth more than Rs.10,00,000/- as per the list annexed herewith.**

f) Direct the respondent to pay the cost of, litigation to the tune of Rs.25,000/- so far spent by the complainant persuing her litigation.

g) Direct the 1st respondent to provide separate residence by taking rent portion with monthly rent of Rs.10,000/-

h) Directing the respondent to return the original study certificates, medical certificates, deposits certificates and receipts etc.

in the prayer portion paragraphs the following amendment by deleting the prayer original para

b) to grant monthly maintenance of Rs.5,000/- to the complainant and her children each towards her maintenance, medicines etc. and her children education and maintenance."

6. The appellant herein opposed the said application. However, the learned Trail Court after hearing both the parties allowed the amendment. The appellant raised an objection that there was no power with the court to allow amendment of such a petition/complaint in the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'). This contention was rejected by the trial court on the premise that section 26 of the DV Act, which entitles a civil court, a family court or a criminal court as well to grant any relief which is available to the complainant under Sections 18, 19, 20, 21 & 22 of the said Act, gives an indication that the provisions of the Code of Civil Procedure would squarely apply and, therefore, the court had the power to allow amendment of the petition/complaint, more so, when it was necessary for the purpose of determining the real matter in controversy and to prevent multiplicity of the litigation.

7. This order was challenged by the appellant by filing an appeal before the Court of District and Sessions Judge, Eluru. The

District and Sessions Judge, Eluru set aside the order of the Trial Court holding that there was no specific provision for amendment of the complaint and allowed the appeal of the appellant. Aggrieved by that order, respondent no. 1 filed a revision petition in the High Court which has been allowed by the High Court vide impugned judgment permitting respondent no. 1 to amend the petition/complaint, thereby setting aside the order of the District and Sessions Judge and restoring the order of the Trial Court.

8. As mentioned above, in the present appeal preferred by the appellant questioning the validity of the order of the High Court, the contention of the appellant is that there is no such an provision under the DV Act which permits the Trial Court to allow such amendment. On this issue, we have heard the learned counsel for the parties at length.

9. The contention of Mr. G.V.Rao, learned counsel appearing for the appellant was that the proceedings under the DV Act are governed by the provisions of the Code of Criminal Procedure as prescribed under Section 28 of the DV Act and there is no provision for amendment in the Code. He further submitted that the court below was wrong in treating the application for amendment under Order VI Rule 17 of the Code of Civil Procedure which has no application to the proceedings under the DV Act.

10. In order to decide the aforesaid issue, we may take note of some of the salient provisions of the DV Act as well as relevant Rules framed under the said Act. We have gone through the concerned

provisions of the Code. We may start our discussion with Section 28 of the DV Act which reads as under:

> **"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."**

11. No doubt this provision provides that all proceedings under Sections 12, 19 to 23 as well as offences under Section 31 are to be governed by the provisions of the Code. The instant petition, as noted above, is filed under Section 9B and 37(2)(C) of the DV Act. Section 9 enumerates duties and functions of Protection Officer and Clause (b) of sub-Section (1) thereof reads as under:

> **"(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;"**

12. We have already mentioned the prayers which were made by respondent no.1 in the original petition and prayer 'A' thereof relates to Section 9. However, in prayer 'B', the respondent no.1 also sought relief of grant of monthly maintenance to her as well as her children. This prayer falls within the ambit of Section 20

of the DV Act. In fact, prayer 'A" is covered by Section 18 which empowers the Magistrate to grant such a protection which is claimed by the respondent no.1. Therefore, the petition is essentially under Sections 18 and 20 of the DV Act, though in the heading these provisions are not mentioned. However, that may not make any difference and, therefore, no issue was raised by the appellant on this count. In respect of the petition filed under Sections 18 and 20 of the DV Act, the proceedings are to be governed by the Code, as provided under Section 28 of the DV Act. At the same time, it cannot be disputed that these proceedings are predominantly of civil nature.

13. In fact, the very purpose of enacting the DV Act was to provide for a remedy which is an amalgamation of civil rights of the complainant i.e aggrieved person. Intention was to protect women against violence of any kind, especially that occurring within the family as the civil law does not address this phenomenon in its entirety. It is treated as an offence under Section 498A of the Indian Penal Code. The purpose of enacting the law was to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. It is for this reason, that the Scheme of the Act provides that in the first instance, the order that would be passed by the Magistrate, on a complaint by the aggrieved person, would be of a civil nature and if the said order is violated, it assumes the character of criminality. In order to demonstrate it, we may reproduce the introduction as well as relevant portions of the Statement of Objects and Reasons of the

said Act, as follows:

"INTRODUCTION.

The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women in its General Recommendations has recommended that State parties should act to protect women against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code. In order to provide a remedy in the civil law for the protection of women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the protection of Women from Domestic Violence Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human Right issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation NO. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially the occurring within the family.

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3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14,15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, *inter alia,* seeks to provide for the following:-

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(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, secual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii)It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting the communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence."

14. Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorizes the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act include giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests the Magistrate with the power to grant interim ex-parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by

the Magistrate, Section 31 terms such a breach to be a punishable offence.

15. In the aforesaid scenario, merely because Section 28 of the DV Act provides for that the proceedings under some of the provisions including Sections 18 and 20 are essentially of civil nature. We may take some aid and assistance from the nature of the proceedings filed under Section 125 of the Code. Under the said provision as well, a woman and children can claim maintenance. At the same time these proceedings are treated essentially as of civil nature.

16. In *Ramesh Chander Kaushal vs. Venna Kaushal (1978) 4 SCC 70,* Justice Krishna Iyer, dealing with the interpretation of Section 125 of the Code, observed as follows:

> **"9. This provision is a measure of social justice and specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3) reinforced by Article 39. We have no doubt that sections of statutes calling for construction by courts are not petrified print but vibrant words with social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social functions to fulfill. The brooding presence of the constitutional empathy for the weaker sections like women and children must inform interpretation if it has to have social relevance. So viewed, it is possible to be selective in picking out that interpretation out of two alternatives which advance the cause of the derelicts."**

17. We understood in this backdrop, it cannot be said that the Court dealing with the application under DV Act has no power and/or jurisdiction to allow the amendment of the said application. If the amendment becomes necessary in view of subsequent events

[escalation of prices in the instant case] or to avoid multiplicity of litigation, Court will the have power to permit such an amendment. It is said that procedure is the handmaid of justice and is to come to the aid of the justice rather than defeating it. It is nobody's case that respondent no. 1 was not entitled to file another application claiming the reliefs which she sought to include in the pending application by way of amendment. If that be so, we see no reason, why the applicant be not allowed to incorporate this amendment in the pending application rather than filing a separate application. It is not that there is a complete ban/bar of amendment in the complaints in criminal Courts which are governed by the Code, though undoubtedly such power to allow the amendment has to be exercised sparingly and with caution under limited circumstances. The pronouncement on this is contained in the recent judgment of this Court in *S.R.Sukumar vs. S. Sunaad Raghuram* (2015) 9 SCC 609 in the following paras:

> **"17. Insofar as merits of the contention regarding allowing of amendment application, it is true that there is no specific provision in the Code to amend either a complaint or a petition filed under the provisions of the Code, but the Courts have held that the petitions seeking such amendment to correct curable infirmities can be allowed even in respect of complaints. In U.P. Pollution Control Board vs. Modi Distillery And Ors., (1987) 3 SCC 684, wherein the name of the company was wrongly mentioned in the complaint that is, instead of Modi Industries Ltd. The name of the company was mentioned as Modi Distillery and the name was sought to be amended. In such factual background, this Court has held as follows:-**
>
> **"…The learned Single Judge has**

focused his attention only on the [pic]technical flaw in the complaint and has failed to comprehend that the flaw had occurred due to the recalcitrant attitude of Modi Distillery and furthermore the infirmity is one which could be easily removed by having the matter remitted to the Chief Judicial Magistrate with a direction to call upon the appellant to make the formal amendments to the averments contained in para 2 of the complaint so as to make the controlling company of the industrial unit figure as the concerned accused in the complaint. All that has to be done is the making of a formal application for amendment by the appellant for leave to amend by substituting the name of Modi Industries Limited, the company owning the industrial unit, in place of Modi Distillery…. Furthermore, the legal infirmity is of such a nature which could be easily cured..."

18. What is discernible from the U.P. Pollution Control Board's case is that easily curable legal infirmity could be cured by means of a formal application for amendment. If the amendment sought to be made relates to a simple infirmity which is curable by means of a formal amendment and by allowing such amendment, no prejudice could be caused to the other side, notwithstanding the fact that there is no enabling provision in the Code for entertaining such amendment, the Court may permit such an amendment to be made. On the contrary, if the amendment sought to be made in the complaint does not relate either to a curable infirmity or the same cannot be corrected by a formal amendment or if there is likelihood of prejudice to the other side, then the Court shall not allow such amendment in the complaint.

19. In the instant case, the amendment application was filed on 24.05.2007 to carry out the amendment by adding paras 11(a) and 11 (b). Though, the proposed amendment was not a formal amendment, but a substantial one, the Magistrate allowed the amendment application mainly on the ground that no cognizance was taken of

the complaint before the disposal of amendment application. Firstly, Magistrate was yet to apply the judicial mind to the contents of the complaint and had not taken cognizance of the matter. Secondly, since summons was yet to be ordered to be issued to the accused, no prejudice would be caused to the accused. Thirdly, the amendment did not change the original nature of the complaint being one for defamation. Fourthly, the publication of poem 'Khalnayakaru' being in the nature of subsequent event created a new cause of action in favour of the respondent which could have been prosecuted by the respondent by filing a separate complaint and therefore to avoid multiplicity of proceedings, the trial court allowed the amendment application. Considering these factors which weighed in the mind of the courts below, in our view, the High Court rightly declined to interfere with the order passed by the Magistrate allowing the amendment application and the impugned order does not suffer from any serious infirmity warranting interference in exercise of jurisdiction under Article 136 of the Constitution of India."

18. What we are emphasis1 ing is that even in criminal cases governed by the Code, the Court is not powerless and may allow amendment in appropriate cases. One of the circumstances where such an amendment is to be allowed is to avoid the multiplicity of the proceedings. The argument of the learned counsel for the appellant, therefore, that there is no power of amendment has to be negated.

19. In this context, provisions of Sub-Section(2) of Section 28 of the DV Act gain significance. Whereas proceedings under certain sections of the DV Act as specified in sub-Section (1) of Section 28 are to be governed by the Code, the Legislature at the same time incorporated the provisions like sub-Section(2) as well which empowers the Court to lay down its own procedure for disposal of the application under Section 12 or Section 23(2) of the DV Act.

This provision has been incorporated by the Legislature keeping a definite purpose in mind. Under Section 12, an application can be made to a Magistrate by an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person to claim one or more reliefs under the said Act. Section 23 deals with the power of the Magistrate to grant interim and ex-parte orders and sub-Section (2) of Section 23 is a special provision carved out in this behalf which is as follows:

> **"(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.**

20. The reliefs that can be granted by the final order or an by interim order, have already been pointed out above wherein it is noticed that most of these reliefs are of civil nature. If the power to amend the complaint/application etc. is not read into the aforesaid provision, the very purpose which the Act attempts to sub-serve itself may be defeated in many cases.

21 We, thus, are of the opinion that the amendment was rightly allowed by the Trial Court and there is no blemish in the impugned judgment of the High Court affirming the order of the Trial Court. This appeal is, thus, devoid of any merits and is, accordingly, dismissed with costs.

.....J.
[A.K. SIKRI]

.....J.
[R.K.AGRAWAL]

NEW DELHI;
APRIL 18, 2016.