THE HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NOs.1137 OF 2017 AND BATCH

01-11-2017

Jallarapu Laxman Rao .Petitioner

Jallarapu Pedda Venkateswarlu and two others . Respondents

Counsel for the Petitioner : Sri Kowturu Pavan Kumar

Counsel for the Respondents: Public Prosecutor (Telangana)

<Gist :

>Head Note:

? Cases referred:

1. 2007 Criminal Law Journal 2057
2. (1997) 4 SCC 241
3. 2016(3) ALT (Crl.) 179 (A.P.)
4. 1981 AIR 746 = 1981 SCR (2) 516
5. (1996)2 SCC 549
6. (1994)6 SCC 349
7. (1974)4 SCC 3
8. 2009 Crl.L.J.889

9. (2006)8 SCC 726

10. AIR 1977 SC 2185

11. 2016 Crl.L.J.1970

12. 2012 Crl.L.J.1827

13. (2013)2 MLJ 406

14. (2008)1 KLT 750 to 752

15. (2009)1 JCC 520

16. (2007)3 KHC 757, 762 (Ker.)

17. (2010)1 (KHC) 417

18. (2016)5 ALJ 419

19. (2015)2 SCC 99

20. MANU/DE/8716/2007

21. (1952)1 SCR 218

22. 2007(2) K.L.T. 36

23. 2012(2) RCR (Criminal) 730

THE HONBLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NOs.1137 AND 1247 OF 2017

COMMON ORDER:

These two revisions are filed by two different petitioners aggrieved by the order in Crl.MP.No.348 of 2017 in DVC.No.4 of 2017 dated 06.03.2017 passed by the I Additional Judicial Magistrate of First Class, Kothagudem and order in Crl.MP.No.172 of 2016 in DVC.No.4 of 2015 dated 27.04.2016 passed by the I Additional Judicial Magistrate of First Class at Jagtial, respectively.

The common issue in these two matters is about maintainability of the revisions under Sections 397 and 401 of the

Code of Criminal Procedure, 1973 (Cr.P.C.) against an interlocutory order passed by the Courts below in respective petitions.

In Crl.MP.No.348 of 2017 in DVC.No.4 of 2017, the Court below directed the employer of the respondent i.e., the General Manager, Singareni Collieries Company Ltd., Kothaguda Area, Bhadradri Kothagudem District, to withhold an amount of Rs.5,00,000/- from and out of the retirement benefits of the respondent i.e., Jallarapu Laxman Rao, S/o.Pedda Venkateswarlu. In Crl.MP.No.172 of 2016 in DVC.No.4 of 2015, the Court below ordered payment of interim maintenance of Rs.5,000/- to the wife-second respondent herein. These two orders passed by two different Courts below are assailed in these two revisions questioning the illegality and irregularity of the said orders.

Sri M.V.Raja Raam, learned counsel for the petitioner in Crl.RC.No.1247 of 2017, would contend that against an interim passed under Section 23 of the Protection of Women from Domestic Violence Act, 2005 (the Act for brevity), a revision lies under Sections 397 and 401 Cr.P.C. before a High Court or under Section 397 Cr.P.C. before a Sessions Court, since an interim order would not decide the substantive rights of the parties. He also drawn the attention of this Court to Sections 23, 28 and 29 of the Act. Section 23 of the Act enables the Magistrate to pass an interim order in favour of the aggrieved person and Section 28 of the Act prescribes the procedure to be followed under the Act. Section 29 of the Act enables the person aggrieved by the interim order or final order passed under Section 12 of the Act or Section 23 of the Act to file an appeal before the Court of Session. Finally, he contended

that when an ex parte order is passed, the remedy available to the person aggrieved by the order is to file a petition before the Magistrate and whereas against an order passed on merits, after hearing both the counsel, revision would lie under Section 397 Cr.P.C. before the Sessions Court or under Sections 397 and 401 Cr.P.C. before the High Court. Since the revisional jurisdiction under Section 397 Cr.P.C. is concurrent, the party aggrieved by such an order passed by the Courts below may either approach the Sessions Court under Section 397 Cr.P.C. or the High Court under Sections 397 and 401 Cr.P.C. for redressal of his grievance. Therefore, a revision would lie against the orders under challenge and placed reliance on judgment of the Kerala High Court reported in Sulochana and Anr. v. Kuttappan and Ors. in support of his contention.

Sri Kowturu Pavan Kumar, learned counsel for the petitioner in Crl.RC.No.1137 of 2017, would contend that the remedy of revision under Section 397 Cr.P.C. is available to a person aggrieved by an interlocutory order and apart from that, the provisions of the Act would not override the general provisions of Cr.P.C. which confer revisional jurisdiction on the Court i.e., the Sessions Court and the High Court and therefore, in the absence of any bar under the Act, a revision is maintainable. He placed reliance on two judgments of the Supreme Court reported in Krishnan and another v. Krishnaveni and another and G.Venkata Mutya Venu Gopal v. G.Venkata Ramanamma and Ors. . On the strength of these principles, both the counsel requested to pass appropriate orders in these two revision petitions.

In view of the contentions raised by both the counsel, the

point that arises for consideration is:

Whether a revision under Sections 397 and 401 Cr.P.C is maintainable against an interim order passed under Section 23(1) and (2) of the Act?

POINT:

When the question of interpretation of a specific provision in the Act came up before this Court, it is the duty of the Court to decide the maintainability of an appeal or revision with reference to the provisions contained in the said enactment based on the object of the Act i.e., the Protection of Women from Domestic Violence Act, 2005. The Act is a remedial legislation intended to provide appropriate remedy to the aggrieved person who is subjected to domestic violence as defined in the Act. The present legislations in the country are not sufficient to provide appropriate remedy to the women who are subjected to domestic violence. Domestic violence is sadly a reality in Indian society, a truism, in the Indian patriarchal setup. It became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The role of the woman is to accept her fate and the violence employed against her meekly. The Act is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a

long way towards protection of women in the domestic setup. It is the first substantial step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists time and again. Admittedly, women could earlier approach the Courts under the Indian Penal Code (IPC) in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act and the victims recognized by it, make it more expansive in scope than the IPC. The IPC never used the term domestic violence to refer to this objectionable practice. In fact, the only similar class of offences addressed by the IPC dealt with cruelty to married women. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim. This posed a problem especially where the victims were children or women who were dependant on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under Section 498-A IPC, she would presumably have to move out of her matrimonial home to ensure her safety or face further violence as retaliation. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her. This, together with many other problems faced by women in the household, prompted this enactment.

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution of India. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions etc. The Domestic

Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. Since the right to be protected from domestic violence is a right enshrined and guaranteed under Articles 14, 15 and 21 of the Constitution of India, more particularly Article 21 of the Constitution of India confers the right to life and liberty in negative terms stating that it may not be taken away except by procedure established by law, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the right to be free of violence as held by the Apex Court in Francis Coralle Mullin v. Union Territory Delhi, Administrator stating that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21 of the Constitution of India. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence. Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of Domestic Violence.

An identical question with regard to interpretation of the provisions of the Act came up before the Apex Court in Chameli Singh v. State of U.P. and Gauri Shankar v. Union of India wherein it is held that the right to life would include the right to shelter and where the question had related to eviction of a tenant under the statue. Sections 6 and 17 of the Act reinforce this right.

Under Section 6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under Section 17, the partys right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless. In Royappa v. State of Tamil Nadu , the Apex Court further analysed that any law that is arbitrary is considered as violative of Article 14 of the Constitution of India and Article 15 of the Constitution of India disallows discrimination on the grounds of religion, caste, sex, race etc, but permits the State to make special provisions for certain classes of persons, including women and children. The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15 of the Constitution of India. Domestic Violence is one among several factors that hinder women in their progress and the Act seeks to protect them from the evil. It indeed effects a classification between women and men protecting only women from domestic violence, but the classification is founded on an intelligible differential, namely, gender and also has a rational nexus with the object of the Act. Therefore, the present Act is enacted to provide necessary remedies to the aggrieved person i.e., women, to whom no sufficient protection is provided under the present laws available in the country. When such provision is enacted with such an object to provide various remedies under the Act, the Court must construe such provisions in favour of the person for whose benefit the Act is enacted. The objectives of the Act are provided under the Act itself. The main object is primarily meant to provide protection to the wife

or female live-in partner from violence in the hands of the husband or male live-in partner or his relatives, the Act also extends its protection to women who are sisters, widows or mothers. Domestic Violence under the Act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands of the woman or her relatives would also be covered under the definition. Therefore, the Act seeks to cover those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or a relationship in the nature of marriage or adoption etc. In addition to relationship with family members living together as a joint family are also included sisters, widows, mothers and the other women who are closely related to the abuser living with them in a shared household. Therefore, while incorporating such provision in the Act, the Court must lean towards the women for whose benefit the Act was enacted. Even to interpret any of the provisions of the Act, the basic rules of statutory interpretation have to be taken into consideration.

Admittedly, the present legislation i.e. the present Act is a remedial legislation as held by this Court in Giduthuri Kesari Kumar v. State of Telangana (Criminal Petition No.16576 of 2014 dated 16.02.2015) wherein it is observed that if a statute does not provide an offender liable to any penalty (conviction or sentence) in favour of the State, it can be said that legislation will be classified as a remedial statute. Remedial statutes are known as welfare, beneficent or social justice oriented legislations. A remedial statute receives a liberal construction and is resolved in favour of the class

of persons for whose benefit the statute is enacted. The word remedial legislation is not defined. If its legal definition is applied to the present facts of the case, the present Act is purely a remedial legislation which was enacted for the benefit of a particular class of persons. Therefore, such provision has to be interpreted as nearly as possible in favour of the person for whose benefit the Act is enacted.

Here, the controversy in the present matters is maintainability of a revision under Sections 397 and 401 Cr.P.C. against an interlocutory order passed by the Courts below under Section 23 of the Act. Section 23 of the Act enables the Courts to grant interim and ex parte orders in favour of the person aggrieved which are covered by Sections 18, 19, 20 and 21 of the Act. The Bombay High Court in Abhijit Bhikaseth Auti v. State of Maharashtra had an occasion to deal with an identical case and in paragraph Nos.20 and 25 of the judgment, learned Single Judge of the Bombay High Court discussed about the power under Section 23 of the Act, to grant an ex parte ad interim order and therefore, the orders both under sub-Sections 1 and 2 are appealable. However, the scope of interference will be naturally limited. The orders contemplated by Section 23 of the Act are discretionary orders. The Apex Court had an occasion to deal with scope of appeals against interim orders which are discretionary in nature in Ramdev Food Products (P) Ltd., v. Srvindbhai Rambhai Patel & Ors. . The Apex Court dealt with an appeal provided under Rule 1 (r) of Order XLIII of the Code of Civil Procedure (CPC) against an interim order of injunction. In paragraph Nos.125 and 126 of the said judgment, it is made clear

that against an ex parte interim order, an appeal would lie under Order XLIII CPC.

According to Section 29 of the Act, an appeal would lie against every order passed by the Magistrate. The question that arises for consideration is that whether an appeal lies against an interim order passed under sub-Section (2) of Section 23 of the Act. The contention was based on the observation made in Amarnath v. State of Haryana but the Bombay High Court did not accede to the request of the counsel for the petitioner and finally concluded that an appeal under Section 29 of the Act would be maintainable against an order passed under Section 23 of the Act whether it is an ad interim order or an interim order under Clauses 1 and 2 of Section of the Act. Section 29 of the Act made it clear that an appeal lies against an ad interim order or an interim order which determine the rights of the parties.

In the present case, the interim orders were passed by the Courts below in both the revisions and those orders will substantially affect the rights of the parties. Therefore, the judgment in Amarnath v. State of Haryana (10 supra) will have no application. Even otherwise, the orders under challenge are only interim orders as against which an appeal is provided in the statute itself under Section 29 of the Act. The reason for providing an appeal in all the credence is to provide effective machinery for redressal of the grievance of either aggrieved person or against whom the orders were passed by the Courts below. If a revision is preferred to the High Court under Sections 397 and 401 Cr.P.C., the jurisdiction of this Court is limited and the High Court while exercising power under Sections 397 and 401 Cr.P.C., normally do

not interfere with fact-finding since jurisdiction is mostly confined to law. But the Court can interfere with such fact findings if the Court finds that the findings recorded by the Courts below are manifestly or apparently erroneous. Therefore, if a woman or an aggrieved person is driven to the High Court even against simple interim orders passed under Section 23 of the Act, the women will have to face serious problems, more particularly when a woman is said to have abused as defined under Section 3 of the Act. For the reason that Magistrates in lower Courts are conferred with the jurisdiction to try and decide the cases under the Act and the Courts are located even in small towns and villages also, but the District Courts are located in various places of the District enabling the Courts to entertain an appeal under Section 29 of the Act and if the revisions under Sections 397 and 401 Cr.P.C. are entertained against such orders on the applications filed by the abuser or a person aggrieved have been the women will have to face serious problems in approaching the High Court. Perhaps this may be one of the reasons for providing an appeal against order passed by the Magistrates under Section 29 of the Act, so as to confer benefit to the aggrieved person (woman) and to avoid unnecessary delays in approaching the High Court and incurring expenditure. Therefore, in such cases, such provision has to be interpreted in favour of the women approaching the Court for whose benefit the Act is enacted.

In Krishna Murthy Nookula v. Y.Savitha , the learned Single Judge of Karnataka High Court had again dealt with an issue of maintainability of a revision against an order passed under Sections 23(1) and 23(2) of the Act. Learned Single Judge considered the scope of Sections 23, 28 and 29 of the Act and

concluded that an appeal would lie against an interim order passed under Section 23(1) or Section 23(2) of the Act. No distinction has been drawn between an order passed under Section 23(1) or Section 23(2) of the Act to maintain an appeal against such an order even after considering Section 28 of the Act. Therefore, when law permits an appeal even against an ex parte order in view of the decision in Ramdev Food Products (P) Ltd., (9 supra), a regular appeal would lie either against an ad interim order or an order passed by way of interim relief under Clause (2) of Section 23 of the Act is maintainable.

Sri M.V.Raja Raam, learned counsel, mainly based his contention on a judgment in Poonam Khanna v. V.P.Sharma and Anr. . Even in the judgment also the learned Single Judge of the Delhi High Court did not lay down any law disabling the person aggrieved by the interim order passed under Section 23 of the Act either under Clause (1) or Clause (2) but preferred an appeal under Section 29 of the Act, discussed about the scope of maintainability of revisions under Section 397 Cr.P.C. and criminal petition to invoke the inherent jurisdiction under Section 482 Cr.P.C. But this judgment is also of little assistance to the petitioners to substantiate the contention that a revision under Section 397 read with Section 401 Cr.P.C. is maintainable against such an order. The Kerala High Court in Sulochana (1 supra) while deciding about maintainability of an appeal against an interim order passed under Section 23 of the Act held as under.

A Court considering the entertainment of an appeal against an interim ex parte order under Section 29 will certainly be conscious of this fact that the

aggrieved persons can approach the Magistrate who passed the interim order and seek its variation under Section 23 read with Section 28(2) of the Act. A court considering admission of an appeal under Section 29 must always remind itself of the fact that such a course/remedy is available to the aggrieved person and as a reasonably prudent person, a Court will certainly look for answers as to why without and before exhausting that remedy resort is made to the provisions under Section 29 to prefer an appeal. But that is not to say that an appeal is not maintainable. Only in an appropriate case need the powers under Section 29 be invoked and the appeal entertained. That discretion vests with the appellate Court. But the jurisdiction or the competence to entertain an appeal cannot be doubted. (emphasis supplied)

As per the judgment of the Kerala High Court in Sulochana (1 supra) and judgment of the Bombay High Court in Abhijit Bhikaseth Auti (8 supra) an appeal would lie against an interim order whether under Clause (1) or Clause (2) under Section 29 of the Act, but not a revision. Similarly in the judgment of the Madras High Court in Mr. G.Balasubramanian v. Mrs. Jayashree Rajagopalan (order in Criminal Original Petition No.15455 of 2008 and M.P.Nos.1 and 3 of 2008 dated 11.09.2008), it was categorically held as under.

A plain reading of Section 29 of the Act does not make any distinction between the final order and the

interim order and therefore in the considered view of this Court an appeal will lie both against the final order and an interim order passed by the learned Magistrate in the exercise of powers conferred on him under this Act. Therefore this Court is of the considered view that the preliminary objection raised by the learned counsel for the respondent merits acceptance and accordingly accepted.

A similar view was expressed by learned Single Judge of Madras High Court in K.Rajendran and Another v. Ambikavathy and Another had liberally considered various provisions of the Act relying on Karthikeyan v. Sheeja and held that the writ petition cannot hence be entertained as the petitioner has an efficacious remedy. In Ramesh Chand v. State of NCT of Delhi , it is held that the petitioner has been directed to withdraw the petition with liberty to file an appeal before the Court of the learned Assistant Sessions Judge while holding that a revision is not maintainable. A similar view was expressed by Kerala High Court in Chitrangathan v. Seema.C . While discussing about the scope of Section 29 of the Act, the Court concluded that Section 29 of the Act is wide enough not only to take in the parties to the petition/application, but also a Protection Officer or a person who has moved the Magistrate on behalf of the aggrieved person. Therefore, Section 29 of the Act enables even a Protection officer or a person, who has moved the Magistrate, as competent to file an appeal. Section 23 of the Act enables the Judicial Magistrate to grant interim and ex parte orders as he deems just and proper. He may also pass ex parte orders on the basis of affidavits furnished

by the affected party. 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, whichever is later but the Court of Session is to follow Criminal Procedure Code 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 Magistrates order 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 Act, an appeal lies before the Sessions Court. The judgment of the Court of Session in an appeal under Section 29 of the Act, being an inferior Criminal Court is revisable by the High Court in exercise of its power under Sections 397(1) and 401 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 reliefs he can grant are of civil in nature. However, in Preceline George v. State of Kerala , it is held that the order passed in sub-section (2) of Section 23 of the Act, is of ad interim in nature. An ex parte 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 ex parte 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 ex parte interim order and it is concluded that the revision petitioner is entitled to file an appeal only against an interim order passed under Section 23 of the Act either under Clause (1) or Clause (2) since it is a viable, efficacious, effective and alternative remedy under the provisions of the Act.

Similarly, in Chiranjeev Kumar Arya v. State of U.P. , the Allahabad High Court while considering the maintainability of a revision against an order passed under Section 29 of the Act in the appeal had an occasion to decide the maintainability of revision based on Shalu Ojha v. Prashant Ojha wherein it was observed that as seen from the provisions of the Act, no further appeal or revision is provided to the High Court or any other Court under Section 29 of the Act. The Apex Court in the said judgment held that appeal would lie against an order passed in the appeal in the Sessions Court under Section 29 of the Act. But the Court projected the provisions in a different way while holding that since the application of Cr.P.C. is not included to the provisions of the Act, the revision is maintainable against such an order under Section 29 of the Act.

Similarly, the Delhi High Court in Smt. Maya Devi v. the State of N.C.T. of Delhi held that Section 29 of the Act provides for appeal within 30 days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent. When specific remedy by way of appeal or by way of alteration, modification or revocation of any order, has been

provided under the Act, prima facie, the petition under Article 227 of the Constitution of India or Section 482 Cr.P.C. is not maintainable before the Court. The Delhi High Court, while placing reliance on the judgment in N.P.Ponnuswami v. Returning Officer, Namakkal Constituency concluded that if an efficacious remedy is available to an aggrieved person, no revision under Article 227 of the Constitution of India or under Section 482 Cr.P.C. is maintainable. In Arivazhagan v. M.Uma (Crl.R.C. (MD) No.287 of 2012), the Madras High Court relying on Chandrasekhara Pillai v. Valsala Chandran held in paragraph Nos.35 and 36 as under.

Be that as it may, in view of the fact that as per Section 29of the Protection of Women from Domestic Violence Act, 2005, there is an effective and alternative remedy of filing of an appeal by the Revision Petitioner/Husband as against the order dated 23/4/2012 in C.M.P.No.9459 of 2010 (M.C.No.5 of 2009) passed by the Learned Judicial Magistrate, Aranthangi, this Court is of the considered view that the present Revision Petition field by the Revision Petitioner/Husband is not per se maintainable in the eye of Law. Furthermore, this Court is of the opinion that ordinarily, the Learned Judicial Magistrate exercising his functions under the Protection of Women from Domestic Violence Act, 2005 as a Criminal Court inferior to the Court of Sessions and the High Court. No wonder, a Court of Session is a Criminal Court inferior to High Court for the purpose of exercise of

Revisional Power under Section 397(1) and Section 401 of the Criminal Procedure Code. Also, it cannot be lost sight of that revisional power of a High Court is a supervisor jurisdiction to correct miscarriage of Justice arisen out of irregularity of procedure being adopted or misconception of Law etc. To put it succinctly, the power of revision is parental supervisory in character. However, the Protection of Women from Domestic Violence Act, 2005 is a special Act and even though the Learned Judicial Magistrate is empowered to adopt his own procedure for disposal of an application under Section 12 of Sub-Section 12 or Section 23 of the Act. Section 28 of the act speaks of save as otherwise provided unless Act of proceeding under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 23(1) shall be governed by the provisions of the Criminal Procedure Code, 1973(2) of 1974, yet the proceedings of the Magistrate are civil in nature. Looking at from any angle, the present Criminal Revision Petition filed by the Revision Petitioner/Husband is not maintainable in limini, when he has an alternative viable and efficacious remedy of filing of an Appeal as per Section 29 of the act. Viewed in that perspective, this Criminal Revision Petition fails.

In the result, this Criminal Revision Petition is dismissed as not maintainable. It is open to the Revision Petitioner/Husband to prefer an appeal as per

the Protection of Women from Domestic Violence Act, 2005 as against the impugned order dated 23.04.2012 in C.M.P.No.9429 of 2010 passed by the Learned Judicial Magistrate, Aranthangi in the manner known toLaw and in accordance with law before the Court of Session and to seek appropriate remedy thereto, if he is so desires/advised. Consequently, the connected Miscellaneous Petition is also dismissed.

In Md. Sabir Hussain v. State of West Bengal , the learned Single Judge of the Calcutta High Court had an occasion to deal with similar issue regarding maintainability of an appeal under Section 29 of the Act against, an interim order passed under Section 23 of the Act and finally concluded that when a remedy by way of appeal is provided under the special statute, the petitions under Articles 226 or 227 of the Constitution of India or Section 482 Cr.P.C. are not maintainable.

In view of the views expressed by various High Courts in catena of judgments referred to supra, an appeal would lie against an interim order passed under Section 23 of the Act but no Revision under Article 227 of the Constitution of India or a petition under Section 482 Cr.P.C. or a revision under Sections 397 and 401 Cr.P.C. are maintainable. Even though the Delhi High Court took a contrary view, it did not express any opinion and therefore, the law declared by the Delhi High Court cannot be applied. Even otherwise, the law declared by various other High Courts is not a binding precedent on this Court but can place reliance on the judgments based on the principles with relation to the provisions

of the Act.

Sri Kowturu Pavan Kumar, learned counsel for the petitioner in Crl.RC.No.1137 of 2017, mainly drawn the attention of this Court to the judgment of the Apex Court in Krishnan and another (2 supra) where the Apex Court held that Court of Session and Magistrates were inferior Criminal Courts to High Court and the High Court is vested with inherent power under Section 482 Cr.P.C. and the power of revision under Sections 397 and 401 Cr.P.C. against the orders passed by the subordinate Courts in the State under the control and superintendence of the High Court. In paragraph No.4 of the said judgment, it is held as under.

Shri Krishnamurthy, learned counsel for the appellants, contended that the State as well as the respondents having availed of the remedy of revision under Section 397 of the CrPC, 1973 (for short, the Code) the High Court was devoid of power and jurisdiction to entertain the second revision due to prohibition by Sub-section (3) of Section 397 of the Code. Therefore, the impugned order is one without jurisdiction and vitiated by manifest error of law warranting interference. In support of his contention, the learned counsel placed strong reliance on the abovesaid two decisions of this Court. He further contended that when there is a prohibition under Section 397(3) of the Code, the exercise of the power being in violation thereof, is non est. He further placed reliance on the decisions of this Court in Simrikhia v. Dolley Mukherjee and Chhabi

Mukherjee and Deepti alias Aarati Rai v.Akhil Rai (MANU/SC/0787/1995 : (1995)5 SCC 751). The question, therefore, is : whether the High Court has power to entertain a revision under Section 397(1) in respect of which the Sessions Judge has already exercised revisional power and whether, under the circumstances of the present case, it could be considered to be one under Section 482 of the Code?

In G.Venkata Mutya Venu Gopal (3 supra), the learned Single Judge of this Court entertained a revision and decided the legality of the order passed by the Magistrate in D.V.C.No.28 of 2012 issuing a direction to pay an amount of Rs.1,00,000/- to the petitioner and passed appropriate orders. But in the said judgment, this Court did not decide the maintainability of a revision under Sections 397 and 401 Cr.P.C. Therefore, in the absence of laying down any law in the two judgments referred to supra regarding maintainability of revision against an order passed under Section 23 of the Act, the general provisions of CPC cannot be applied though it enables the Court to follow the procedure under Cr.P.C. in view of Section 28 of the Act. When a special remedy is provided under the Act itself i.e. the Protection of Women from Domestic Violence Act, 2005, which prescribes various reliefs to be granted and the hierarchy of the Courts to redress their claims in the petitions filed under the provisions of the Act and the orders passed by the Courts and the remedies against the orders passed by the Court keeping in view of the harassment of a woman on account of domestic violence and perhaps to provide a cheaper

remedy in the District Court without driving them to High Court by filing various petitions under Sections 397 and 401 Cr.P.C. If the Courts entertain such petitions directly against the orders passed by the Magistrate under Section 23 of the Act, the power of the High Court would frustrate the very purpose of filing petitions as appeal is provided against any order passed by the Magistrate under the provisions of the Act. Therefore, to avoid frustration of the remedy available to the parties under the Act and to avoid driving the woman who is subjected to domestic violence to approach this Court, an appeal alone can be maintained either against a final order passed under Sections 18, 19, 20, 21 and 22 of the Act or against an interim order passed under Section 23(1) and (2) of the Act.

The scope of appeal is wider than the scope of revision. In a revision under Sections 397 and 401 Cr.P.C, mostly the jurisdiction is limited to law whereas in an appeal, the appellate Court has got wider power of re-appreciating the entire evidence to come to an independent conclusion and reverse the orders passed by the Courts below. In a revision, unless the Court finds apparent error in the findings recorded by the Courts below shall not exercise power of revision and interfere with the orders passed by the subordinate Courts under its jurisdiction. In view of wider scope of appeal provided under Section 29 of the Act, revision against an order passed under Section 23(1) and (2) of the Act cannot be entertained keeping in view the intention of Legislature in enacting the law for the benefit of the women who are subjected to domestic violence. Therefore, any other interpretation to the provision i.e. Section 29 of the Act would frustrate the intention of

the Legislature to disable the aggrieved person to redress their claim within the ambit of the provision and driving such aggrieved person may render the remedy under the Act redundant. Therefore, in view of the law laid down by the various High Courts, I am of the view that a revision under Sections 397 and 401 is not maintainable, against, either an order passed under Clause (1) or Clause (2) of Section 23 of the Act and only an appeal is maintainable against such order under Section 29 of the Act. Accordingly, the point is answered.

In view of my foregoing discussion, I need not decide the merits of these two revisions. Accordingly, both the Criminal Revision Cases are dismissed holding that revisions under Sections 397 and 401 Cr.P.C. are not maintainable and only appeal lies against an order passed under Section 23 of the Act.

Miscellaneous petitions, if any, pending shall stand dismissed.

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(M.SATYANARAYANA MURTHY, J)

1st November 2017