Prabha Tyagi vs Kamlesh Devi on 12 May, 2022

Author: B.V. Nagarathna

Bench: B.V. Nagarathna, M.R. Shah

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REPORTAB

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 511 OF 2022

PRABHA TYAGI .....APPELLANT(S)

VS.

KAMLESH DEVI .....RESPONDENT(S)

JUDGMENT

NAGARATHNA J.

The aggrieved person, being the appellant herein, who had filed Miscellaneous Case No. 78 of 2007 on the file of the Court of Special Judicial Magistrate- I, Dehradun, has assailed judgment dated 23rd July, 2019 passed by the High Court of Uttarakhand at Nainital, in Criminal Revision No. 186 of 2014, by which the judgment dated 11th July, 2014 passed by the Vth Additional Sessions Judge, Dehradun, in Criminal Appeal No. 53 of 2011 setting aside the order passed by the Special Judicial Magistrate-I, was sustained.

2. For the sake of convenience, the parties herein shall be referred to in terms of their rank and status before the Trial Court. Factual Background:

3. According to the aggrieved person, her marriage with Kuldeep Tyagi (since deceased) son of late Vishnudutt Tyagi was solemnized on 18th June, 2005 at Haridwar District, Uttarakhand as per Hindu rites and rituals and in connection with the marriage, the family members of the aggrieved person had given dowry to the family of her deceased husband and Stridhana to the aggrieved person. For the period immediately following the wedding, the aggrieved person was residing at the ancestral home of the respondents along with her mother-in-law-respondent no.1, two

brothers-in-law, wife of her husband's elder brother and six sisters-in-law. Thereafter, the aggrieved person began living with her husband and the respondents in village Jhabreda. That Kuldeep Tyagi, husband of the aggrieved person died on 15th July, 2005 in a car accident and after the Terhanvi ceremony of her husband, the aggrieved person was constrained to reside initially at Delhi, at her father's house. That immediately prior to the death of her husband, the aggrieved person had conceived a child.

4. That on 30th March, 2006 the aggrieved person gave birth to a daughter and owing to the misbehavior and torture meted out to her by her matrimonial family after her husband's death, she moved to Dehradun, Uttarakhand with her daughter, where she began working as a teacher to support herself and her child. That the Stridhana given to her at the time of her wedding was never allowed to be enjoyed by her and even following her exit from her matrimonial home, the Stridhana was being used by her in-laws, respondent nos. 1 to 6. That the aggrieved person had sent a legal notice dated 22nd November, 2006, requesting them to return the articles of Stridhana, however, there was no response to the same.

5. That the father of the aggrieved person had gifted her a Maruti (Alto) car, at the time of her wedding and the same was registered in the name of her deceased husband. Owing to the accident that her husband had met with, resulting in his death, the said car had also been damaged. That the aggrieved person's mother-in-law had submitted an application before the insurance company, National Insurance Company which was processing the claim for damage caused to the car, stating therein that she was the mother of the deceased and was the only legal heir of the deceased and therefore any compensation may be made in her favour.

6. That there exists a land in village Jhabreda to which the deceased husband of the aggrieved person had right and title. That respondent no. 1- mother-in-law, on being instigated by the other respondents objected to the recording of the aggrieved persons' name in the revenue records of the said property. Respondent no. 1 objected by stating that the child borne by aggrieved person was not Kuldeep Tyagi's daughter. Owing to such objection, the Court of Tehsildar passed an order of status quo with respect to the said property.

7. That the respondents, on several occasions threatened the aggrieved person that she would face dire consequences if she ever attempted to claim any right over her husband's property. That the respondents, having no sympathy towards the aggrieved person who had, while pregnant, lost her husband in a fatal accident, tortured her mentally by denying that her child was the daughter of Kuldeep Tyagi.

8. With the aforesaid averments, the aggrieved person approached the Court of the Special Judicial Magistrate under Section 12 and sought protection orders, residence orders and compensation orders to be passed under various provisions of the Protection of Women from Domestic Violence Act, 2005 (for short, the 'D.V. Act'). Further, prayers were also made for monetary reliefs under Section 22 of the D.V. Act.

9. In response to the aforesaid application filed by the aggrieved person, the respondents filed a joint written statement to the effect that the marriage of the aggrieved person with Kuldeep Tyagi was solemnized at a simple ceremony in Haridwar, on 18th June, 2005. That no dowry or articles of Stridhana were handed over to the respondents at the time of the ceremony, therefore, the question of returning the same to the aggrieved person by the respondents would not arise. That the aggrieved person could not have conceived a child through the deceased in a span of twenty-eight days from the date of the marriage and as such a claim was not only false but unnatural.

10. That the respondents had, in no way, tortured the aggrieved person. That her statement to the effect that she was residing in the ancestral home of her husband, during the period immediately following her wedding, was untrue as she only stayed with the respondents for one night after her marriage.

11. As regards the Maruti (Alto) car, it was stated that the same was not a part of the Stridhana given in favour of the aggrieved person, but was purchased by Kuldeep Tyagi, after borrowing money for this purpose from respondent no. 1.

That the aggrieved person had, by presenting false facts had got her name entered as the legal heir of Kuldeep Tyagi in relation to a land owned by him. That in the said application dated 31st March, 2006, she had stated that Kuldeep Tyagi had no issue or heirs. That an order of status quo was obtained by respondent no. 1 by presenting the correct facts before the Tehsildar.

It was averred that the respondents had not committed any acts of domestic violence. In that background, the respondents prayed before the Trial Court that the application filed by the aggrieved person-victim be dismissed.

12. The Special Judicial Magistrate- I, Dehradun, by judgment dated 12th May, 2011 partly allowed the application filed by the aggrieved person and directed the respondents to pay Rs.10,000/- as monetary compensation for insulting and maligning the aggrieved person. The articles of Stridhana mentioned in the list enclosed with the application, except the Maruti (Alto) Car, were to be made available to the aggrieved person at her Dehradun residence. It was also directed that the respondents shall not obstruct the aggrieved person and her daughter from enjoying the property of late Kuldeep Tyagi.

The salient findings of the Trial Court are as under:

> i) As regards the contention of the respondents to the effect that it was unnatural that the aggrieved person was impregnated within twenty-eight days was unnatural, the Trial Court observed that there was an absolute possibility of such fact. In holding so, the Trial Court relied on the submission of the respondents to the effect that the aggrieved person left their ancestral home on 20th June, 2005 to live independently with her husband. In light of the said submission, the Trial Court noted that the aggrieved person lived with her husband till the day of his death and therefore there was nothing unnatural about her pregnancy and therefore, the contention of the

respondents that the daughter was not Kuldeep Tyagi's, was baseless.

ii) That no adverse inference could be drawn from the fact that the aggrieved person had wrongly stated in the application filed before the Tehsildar to the effect that Kuldeep Tyagi had no heirs other than the aggrieved person, as she had no knowledge of such statement.

iii) That allegation pertaining to the paternity of the aggrieved person's daughter was likely to have caused emotional harm to her, thereby also affecting her profession as a teacher. In that light, it was observed the aggrieved person was a victim of domestic violence under Section 1 (d) (iii) of the D.V. Act. A symbolic amount of Rs.10,000/- was awarded to compensate the victim for emotional loss suffered.

iv) That the victim left her matrimonial home thirteen days after her husband died, owing to repeated taunts and abuses by the respondents. That no cross examination was conducted by the respondents to controvert this fact.

Therefore, it was established that the victim did not leave her matrimonial home of her own will, but because of conduct of the respondents.

v) That the aggrieved person had not re-married, following the death of Kuldeep Tyagi. Therefore, she continued to remain the daughter-in-law of the respondents' family and had rights over the property of her deceased husband. Relief was granted under Section 19 of the D.V. Act, for independent residence with liberty to visit her husband's house since there was no evidence to show that the matrimonial home of the victim was in the sole ownership of the mother-in-law of the victim. That she would be entitled to enjoy the same facilities as enjoyed by her deceased husband during his lifetime. The respondents were restrained from disturbing the rights of the victim to her husband's property. However, it was clarified that the Judicial Magistrate had no jurisdiction to pass any orders in relation to getting the name of the victim entered in the revenue records.

vi) That no evidence was put forth by the respondents which would establish that no Stridhana was given at the time of the marriage. Therefore, all articles of Stridhana as listed in the list annexed with the application filed before the Magistrate, were directed to be returned to the victim.

13. Being aggrieved, respondent no. 1, mother-in-law of the aggrieved person, preferred Criminal Appeal No. 53 of 2011 before the Vth Additional Sessions Judge, Dehradun. By judgment dated 11th July, 2014, the First Appellate Court set aside the judgment of the Trial Court, dated 12th May, 2011.

The relevant findings of the First Appellate Court are encapsulated as under:

i) That the aggrieved person never lived in the shared household belonging to the respondents, situated in Jhabreda, but lived in Roorkee with her husband. That the aggrieved person maintained a house in Roorkee and used to travel daily to Jhabreda for work, but never shared a household with the respondents.

ii) Given that the aggrieved person never lived in Jhabreda with the respondents, it was improbable that her family had delivered the articles of Stridhana to the respondents in Jhabreda. That the possession of Stridhana was not vested with the respondents. Therefore, no question would arise as to the respondents disturbing or using the Stridhana, which in fact, was never in their possession.

iii) That the aggrieved person had not led any evidence to establish that following the death of her husband, she had lived in Jhabreda with the respondents for thirteen days.

That she continued to live at Roorkee even after the death of her husband. That in the absence of any evidence to demonstrate that the aggrieved person ever lived with the respondents, no case was made out for domestic violence on the part of the respondents. That the aggrieved person was not entitled to any relief in terms of a residence order, till such time as she is allotted a specific share following legal partition of the property held in joint ownership of her deceased husband and the respondents.

iv) That in the absence of any evidence as to the delivery of Stridhana to the respondents, no orders could be passed for restoration of possession of Stridhana articles in favour of the aggrieved person.

14. Aggrieved by the judgment of the First Appellate Court, the aggrieved person preferred a criminal revision petition before the High Court of Uttarakhand at Dehradun. By judgment dated 23rd July, 2019, the criminal revision petition was dismissed and the judgment of the Vth Additional Sessions Judge, Dehradun was sustained.

The following findings were recorded by the High Court in the impugned judgment:

i) That as per the provisions of Section 12 (1) of the D.V. Act, a Domestic Incident Report is required to be mandatorily filed by a Protection Officer or a service provider before the Magistrate and the Magistrate may take cognizance of an offence under the D.V. Act on the basis of such report. That in the present case, the aggrieved person had only filed an application alleging domestic violence and since the same was not accompanied by a report, the conditions of Section 12 (1) of the D.V. Act were not satisfied.

ii) That in order to establish that the respondents had committed violence as contemplated under the D.V. Act, it is required that the aggrieved person was sharing a household with the respondents and there was a domestic relationship between the parties. That the aggrieved person was residing separately from the respondents from the day of her marriage. That there was no domestic relationship between the aggrieved person and the respondents, therefore, no relief could be granted under the provisions of the D.V. Act.

iii) That it could not be accepted that all articles of Stridhana which were purchased in Roorkee as per the bills presented in this regard, were delivered to the respondents in Jhabreda.

The aggrieved appellant has approached this Court challenging the judgments of the First Appellate Court and the High Court.

Submissions:

15. We have heard Shri Gaurav Agrawal, learned amicus curiae on behalf of the appellant-aggrieved person and Shri K.K. Srivastava, learned counsel appearing on behalf of the respondent. We have perused the material on record.

16. The submissions of Shri Gaurav Agrawal, learned amicus curiae, are as under:

> (i) At the outset, he contended that the High Court and the First Appellate Court had erred in setting aside the judgment of the Court of the Special Judicial Magistrate- I, Dehradun, dated 12th May, 2011 on the primary ground that aggrieved person was not sharing a household with the respondents and there was no domestic relationship between the parties and therefore, no relief could be granted under the provisions of the D.V. Act. Elaborating on the said contention, learned amicus curiae for the appellant-

aggrieved person referred to Sections 2 (f) and 2 (s) of the D.V. Act to contend that an aggrieved person has to be in a 'domestic relationship' as defined under the D.V. Act in order to attract the provisions of the D.V. Act. If such a person is living, or has at any point of time lived together in a 'shared household' with the persons against whom allegations of domestic violence have been made, the provisions of the D.V. Act would apply. That in the present case, the aggrieved person, had, following the death of her husband on 15th July, 2005, resided in the family home of the respondents at Ulheda and resided there for a period of thirteen days. That such residence could not continue owing to the conduct of the respondents who subjected the aggrieved person to mental abuse, causing her to leave the shared household. That attempts made by the aggrieved person to re-enter the shared household were obstructed by the respondents. Having regard to the short span of her marital life owing to the death of her husband and the fact that she was denied entry and residence at the shared household following her husband's death, the length of the period during which household was shared by the parties, ought not be a consideration having the effect of denying the protection of the D.V. Act to the aggrieved person.

(ii) It was next contended that the death of the aggrieved person's husband would not result in cessation of the domestic relationship. That the appellant-aggrieved person would continue to be related to the respondents by virtue of her marriage. That the only factor disabling the aggrieved person from continuing in a domestic relationship with the respondents was the conduct of the respondents. Nevertheless, she would be eligible to claim protection under the D.V. Act because the definition of 'domestic relationship' as provided under Section 2 (s) of the D.V. Act which includes not only a relationship between two people who presently live together in a shared household, but also extends to persons who have, at any point of time lived together in a shared household. That the short period, following the death of her husband, during which the aggrieved person shared a household with the respondents would qualify as a period during which the aggrieved person and

the respondents were in a 'domestic relationship'.

(iii) It was submitted that it is not mandatory for the aggrieved person to reside, at the point of time when commission of violence, with those persons against whom the allegations of violence have been levelled. In this context, reference was made to the decision of this Court in Satish Chander Ahuja vs. Sneha Ahuja – [(2021) 1 SCC 414] wherein the phrase 'lives or at any stage has lived', as appearing in Section 2 (s) of the D.V. Act was interpreted to mean such household which the aggrieved person shared with the respondents, at the time of filing the application under the D.V. Act or a household which the aggrieved person had been excluded from in the recent past. In light of the said decision, it was urged that it is not necessary that the respondents must have been living with the aggrieved person at the time when the alleged acts of domestic violence were perpetuated as there is no statutory requirement to this effect. That subject to the caveat that an aggrieved person, has, at some point, shared a household with the persons who have allegedly committed acts of domestic violence, then any act of domestic violence committed by such persons during the period in which the parties were living in the shared household, or even subsequent to such period, would entitle the aggrieved person to approach a competent Court under Section 12 of the D.V. Act.

(iv) It was urged that the provisions of the D.V. Act must be interpreted in a manner, so as to, ensure that the protection granted to women under the D.V. Act is made available to them in the widest amplitude. That restricting the scope of domestic violence cases, only to matters wherein domestic violence was committed against the aggrieved person, while she was residing at the shared household, would not sufficiently achieve the objects of the enactment.

(v) Learned amicus curiae, Shri Gaurav Agrawal, next contended that the High Court had erred in holding that a Domestic Incident Report is required to be mandatorily filed by a Protection Officer before the Magistrate and it is only on the basis of such report that the Magistrate may take cognizance of the commission of domestic violence. Learned amicus curiae for the appellant-aggrieved person referred to Rule 5 of the Protection of Women from Domestic Violence Rules, 2006 (for short, the 'D.V. Rules') which requires a Protection Officer to prepare a Domestic Incident Report on receiving a complaint of domestic violence and submit the same to the Magistrate and forward copies of the Report to a police officer in charge of the police station having jurisdiction over the area were the alleged acts of domestic violence have taken place, and to the service providers in the area. Having regard to the said Rule, it was contended that the requirement to prepare a Domestic Incident Report arises only in cases where a complaint has been made by an aggrieved person, to a Protection Officer. That a Magistrate who entertains an application submitted under Section 12 of the D.V. Act, is not required by any statutory provision, to call for a Domestic Incident Report. That an application under Section 12, may be disposed of even without requiring a Domestic Incident Report to be submitted. That the only requirement of Section 12, is that, in the event that a complaint is made to a Protection Officer and such officer has submitted a report, the Magistrate shall consider the same. That in cases where a complaint is not made by a Protection Officer, there arises no reason to specifically call for and consider a Domestic Incident Report.

(vi) In this context, reference was made to Section 12 of the D.V. Act which enables an aggrieved person or a Protection Officer to make an application before the Magistrate seeking reliefs under the

D.V. Act. It was submitted that in cases where an aggrieved person independently makes an application before the Magistrate, there would be no requirement on the part of the Magistrate to consider or call for a Domestic Incident Report. However, in cases where the application has been made by a Protection Officer, the same shall be mandatorily accompanied by a Domestic Incident Report and when such report is submitted, the Magistrate is required to consider the same.

(vii) It was submitted that the statutory intention could not be to the effect that the Magistrate shall not entertain proceedings or grant relief under Sections 18 to 20 and Section 22 of the D.V. Act in the absence of the Domestic Incident Report. That such an interpretation would defeat the purposes of the D.V. Act as it would act as a bar against the Magistrate to pass orders in the absence of the report.

(viii) It was contended that the High Court and the First Appellate Court had failed to view the matter in the true and correct perspective, having regard to the purpose of enactment of the D.V. Act. In the above backdrop, it was prayed that the judgments of the High Court and the First Appellate Court may be set aside and the judgment of the Trial Court may be restored.

17. Per contra, learned counsel for the respondent supported the impugned judgments of the High Court and the First Appellate Court and contended that the said judgments are justified and hence, do not call for interference by this Court by submitting as under :

> (i) It was denied that the aggrieved person was in a domestic relationship with the respondents. It was submitted that the aggrieved person, following her marriage with Kuldeep Tyagi, was residing with him in Roorkee District, Haridwar and not with the respondents, in Jhabreda. That her place of residence, had been recorded as Roorkee, in the application filed under the D.V. Act before the Magistrate, as well as in the application submitted before the revenue authorities for mutation of her name in the revenue records pertaining to the property belonging to her deceased husband. That even following the death of Kuldeep Tyagi, the aggrieved person did not reside with the respondents.

That the aggrieved person was working as a teacher and there was no evidence led to establish that she had taken leave from her job and resided in Jhabreda for thirteen days following the death of her husband.

It was contended that in view of the said facts, it could not be held that a ‘domestic relationship’ subsisted between the parties, on the basis of which relief could be claimed under the D.V. Act. That based on the very nomenclature of the D.V. Act, any violence alleged under the D.V. Act must always be in relation to a ‘domestic relationship’ and therefore, subsistence of a domestic relationship would be a precondition to invoke Section 12 of the D.V. Act and grant reliefs contemplated under Section 18 to 20 and Section 22 of the D.V. Act.

(ii) It was submitted that the facts, as narrated by the aggrieved person in the application made before the Magistrate are inaccurate and provide a fabricated version of events.

(iii) It was next contended that the aggrieved person had failed to prove that her family had delivered possession of articles of Stridhana to the respondents. That the receipts of the articles purchased, would show that the articles were purchased in Roorkee and therefore, it would be rather improbable that the same were delivered to the respondents at their residence in Jhabreda. It was therefore urged that no assumption could be made that the Stridhana stood in the custody of the in-laws of the aggrieved person.

(iv) It was further urged that in the absence of a Domestic Incident Report, the Magistrate could not have taken cognizance of the matter. That Section 12 (1) casts a mandatory duty on the Magistrate to consider the Domestic Incident Report submitted under the D.V. Act for initiation of proceedings, and it is only after consideration of the same that the substantive provisions of the Sections 18 to 20 and Section 22 of the D.V. Act may be applied to extend benefit of the same to an aggrieved person. In support of this contention, Shri K.K. Srivastava referred to the language of Section 12 (1) to contend that the phrase used in the proviso is 'shall take into consideration any Domestic Incident Report' thereby suggesting that the requirement to consider a Domestic Incident Report is a mandatory one, irrespective of whether or not a complainant was made before the Protection Officer prior to filing an application before the Magistrate. That non-consideration of the Domestic Incident Report would strike at the very root of the matter and such irregularity would render the decision of the Magistrate, a nullity.

(v) It was lastly submitted that proceedings under the D.V. Act were ill-motivated, misconceived and were initiated with the sole intention to harass the respondents and more specifically, respondent no. 1, being the mother-in-law of the aggrieved person, aged over 80 years. That the High Court and First Appellate Court rightly set aside the decision of the Magistrate and held that no relief could be granted to the aggrieved person under the D.V. Act. That the judgments of the High Court and First Appellate Court are based on a true and correct appreciation of the law, as applicable to the facts of the present case and the same may not be interfered with by this Court.

18. Learned counsel for the respective parties have relied upon certain judgments of this Court and various High Courts in support of their submissions. The same shall be referred to later. Points for Consideration:

19. The submissions of the learned amicus curiae /counsel for the respective sides were on the following points for consideration which were raised vide order dated 11th February, 2022:

> "(i) Whether the consideration of Domestic Incident Report is mandatory before initiating the proceedings under D.V. Act, in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?
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> (ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled at the point of commission of violence?

(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?" Legal Framework:

20. For an easy and immediate reference, the following provisions of the Protection of Women from D.V. Act are extracted as under:

"2. Definitions.—In this Act, unless the context otherwise requires,—

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

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(e) 'domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

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(s) 'shared household' means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household." "3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) 'physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) 'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) 'verbal and emotional abuse' includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested;

(iv) 'economic abuse' includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, house hold necessities for the aggrieved person and her children, if any, Stridhana, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared house hold and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her Stridhana or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes 'domestic violence' under this section, the overall facts and circumstances of the case shall be taken into consideration." xxx "12. Application to Magistrate.—(1)

An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

> Provided that before passing any order on such application, the Magistrate shall take into consideration any Domestic Incident Report received by him from the Protection Officer or the service provider.
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> (2) The relief sought for under Sub-Section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
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> Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off. (3) Every application under Sub-Section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
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> (4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.
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> (5) The Magistrate shall Endeavour to dispose of every application made under Sub-Section (1) within a period of sixty days from the date of its first hearing." xxx "17. Right to reside in a shared household.— (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.
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> (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law." xxx "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.
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> (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 section18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

21. Before proceeding further, it would be useful to refer to the following relevant judgments of this Court wherein this Court has interpreted various provisions of the D.V. Act :

> a) In Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Another – [(2014) 10 SCC 736], this Court while interpreting the definition of aggrieved person under Section 2(a) of the D.V. Act held that apart from the woman who is in a domestic relationship, any woman who has been in a domestic relationship with the respondent, if alleged to have been subjected to any act of domestic violence by the respondent comes within the meaning of aggrieved person.

Further, Section 2(f) of the D.V. Act states that a person aggrieved (widow herein) who, at any point of time has lived together with the husband in a shared household is covered by the meaning of domestic relationship. Also, Section 2(s) of the D.V. Act states that if the person aggrieved at any stage has lived in a domestic relationship with the respondent in a house, can claim a right in a shared household.

After analysing the relevant provisions of the D.V. Act, this Court while referring to V.D. Bhanot vs. Savita Bhanot – [(2012) 3 SCC 183], held that the conduct of the parties even prior to coming into force of the D.V. Act could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The wife who had shared a household in the past but was no longer residing with her husband can file a petition under section 12 if subjected to domestic violence. It was further observed that where an act of domestic violence is once committed, then a subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled to.

b) In the case of Krishna Bhattacharjee vs. Sarathi Choudhury and Another - [(2016) 2 SCC 705], this Court held that a claim for recovery of Stridhana, two years after a decree of judicial separation is maintainable. The Court held that judicial separation does not change the status of a wife as an aggrieved person under Section 2(a) read with Section 12 of the D.V. Act and does not end the domestic relationship under Section 2(f) of the D.V. Act. It was further held that a judicial separation was a mere suspension of husband-wife relationship and not a complete severance of relationship as in the case of a divorce. Moreover, an application filed under section 12 of the D.V. Act by the wife is not barred by any limitation.

In the said case, this Court referred to Saraswathy vs. Babu – [(2014) 3 SCC 712].

Further, Dipak Misra J. (as His Lordship then was) while speaking for the Two-Judge Bench held that the definition of domestic relationship under Section 2 (f) of the D.V. Act is very wide and protection under the said provision would be given to a wife even if she is judicially separated, by observing thus :

> “18. The core issue that is requisite to be addressed is whether the Appellant has ceased to be an ‘aggrieved person’ because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes different, but that is

not so when there is a decree for judicial separation. A three-Judge Bench in Jeet Singh and Ors. v. State of U.P. and Ors. (1993) 1 SCC 325 though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime." While referring to the case of Rashmi Kumar vs. Mahesh Kumar Bhada – [(1997) 2 SCC 397], this Court held that Stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the Stridhana property to her husband or any other member of the family. There is no need to establish further any special agreement to prove that the property was given to the husband or other member of the family.

While considering the issue of limitation and/or 'continuing offence'/ 'continuing cause of action', this Court held:

"32. Regard being had to the aforesaid statement of law, we have to see whether retention of Stridhana by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the Stridhana but it does not debar her to lodge a criminal complaint for criminal breach of trust……. The concept of 'continuing offence' gets attracted from the date of deprivation of Stridhana, for neither the husband nor any other family members can have any right over the Stridhana and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act."

c) We could also allude to the exposition of this Court in Ajay Kumar vs. Lata alias Sharuti and Others – [(2019) 15 SCC 352], wherein the husband of the respondent therein had died, and maintenance was claimed from the brother of the deceased husband. The Court held that at a prima facie stage, a case for grant of maintenance was made out since the respondent and her deceased husband resided in the same house and the appellant therein (brother of deceased person) also resided in the same household.

d) Further in Satish Chander Ahuja vs. Sneha Ahuja – [(2021) 1 SCC 414], a Three-Judge Bench of this Court, wherein one of us (Shah, J.) was a member, considered the expressions 'lives or have at any point of time lived' appearing in Section 2 (s) of the D.V. Act. This Court while considering the correctness of the law laid down in S.R. Batra vs. Taruna Batra – [(2007) 3 SCC 169], concluded that the said case had not correctly interpreted Section 2(s) of the D.V. Act and that the said

judgment does not lay down a correct law and observed as under :

"66. .....The expression 'at any stage has lived' occurs in Section 2(s) after the words 'where the person aggrieved lives'. The use of the expression 'at any stage has lived' immediately after words 'person aggrieved lives' has been used for object different to what has been apprehended by this Court in paragraph 26. The expression 'at any stage has lived' has been used to protect the women from denying the benefit of right to live in a shared household on the ground that on the date when application is filed, she was excluded from possession of the house or temporarily absent. The use of the expression 'at any stage has lived' is for the above purpose and not with the object that wherever the aggrieved person has lived with the relatives of husband, all such houses shall become shared household, which is not the legislative intent. The shared household is contemplated to be the household, which is a dwelling place of aggrieved person in present time.....

67. ..... The entire Scheme of the Act is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved person lives or has lived. As observed above, the use of the expression 'at any stage has lived' was only with intent of not denying the protection to aggrieved person merely on the ground that aggrieved person is not living as on the date of the application or as on the date when Magistrate concerned passes an order under Section 19. The apprehension expressed by this Court in paragraph 26 in S.R. Batra v. Taruna Batra (supra), thus, was not true apprehension and it is correct that in event such interpretation is accepted, it will lead to chaos and that was never the legislative intent. We, thus, are of the considered opinion that shared household referred to in Section 2(s) is the shared household of aggrieved person where she was living at the time when application was filed or in the recent past had been excluded from the use or she is temporarily absent.

68. The words 'lives or at any stage has lived in a domestic relationship' have to be given its normal and purposeful meaning. The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household. The intention of the parties and the nature of living including the nature of household have to be looked into to find out as to whether the parties intended to treat the premises as shared household or not. As noted above, Act 2005 was enacted to give a higher right in favour of woman. The Act, 2005 has been enacted to provide for more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family.

The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.

69. ..... The definition of shared household as noticed in Section 2(s) does not indicate that a shared household shall be one which belongs to or taken on rent by the husband. We have noticed the definition of 'Respondent' under the Act. The Respondent in a proceeding under Domestic Violence Act can be any relative of the husband. In the event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household." Analysis:

> 22. Section 12 of the D.V. Act states that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the D.V. Act. The proviso, however, states that before passing any order on such an application, the Magistrate shall take into consideration any Domestic Incident Report received by him from the Protection Officer or the service provider. The expression 'aggrieved person' as defined under Section 2(a) means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Domestic relationship as defined in Section 2(f), means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. Domestic violence has the same meaning as assigned to it in Section 3.
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> 23. The expression 'shared household' in relation to the definition of domestic relationship as per the definition in Section 2(s) means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. The definition of shared household is thus an inclusive one.
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> 24. Section 17 speaks of right to reside in a shared household while Section 19 deals with residence orders which could be passed by a Magistrate while disposing of an application under Sub-Section (1) of Section 12, on being satisfied that domestic violence has taken place in a shared household. Thus, while Section 19 deals with residence orders, the right to reside in a shared household is dealt with in Section 17 of the D.V. Act. Sub-

Section (1) of Section 17, which begins with a non-obstante clause states that notwithstanding anything contained in any other law for the time being in force, every woman in a domestic

relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same. Sub- Section (2) states that an aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

25. While Section 19 deals with a multitude of directions or orders which may be passed against the respondent vis-à-vis the shared household in favour of an aggrieved person, Section 17 confers a right on every woman in a domestic relationship to reside in the shared household irrespective of whether she has any right, title or beneficial interest in the same. This right to reside in a shared household which is conferred on every woman in a domestic relationship is a vital and significant right. It is an affirmation of the right of every woman in a domestic relationship to reside in a shared household. Sub-Section (2) of Section 17 protects an aggrieved person from being evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law. The distinction between Sub-Section (1) and Sub-Section (2) of Section 17 is also to be noted. While Sub-Section (2) deals with an aggrieved person which is defined in Section 2(a) of the D.V. Act in the context of domestic violence, Sub-Section (1) of Section 17 is a right conferred on every woman in a domestic relationship irrespective of whether she is an aggrieved person or not. In other words, every woman in a domestic relationship has a right to reside in the shared household even in the absence of any act of domestic violence by the respondent.

26. It is necessary to appreciate the importance and significance of the right of every woman in a domestic relationship to reside in a shared household. As already noted, the expression 'shared household' is expansively defined in Section 2(s) of the D.V. Act but the expression contained in Section 17 namely, 'every woman in a domestic relationship shall have the right to reside in the shared household irrespective whether she has any right, title or beneficial interest in same', requires an expansive interpretation. In this context, Harbhajan Singh vs. Press Council of India - (AIR 2002 SC 1351) could be relied upon wherein, Cross on "Statutory Interpretation" (Third Edition, 1995) has been relied upon as follows:-

> "Thus, an 'ordinary meaning' or 'grammatical meaning' does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unresearched context and purpose in and for which they are used."

27. While the object and purpose of the D.V. Act is to protect a woman from domestic violence, the salutary object of Sub-Section (1) of Section 17 is to confer a right on every woman in a domestic relationship to have the right to reside in a shared household. Hence, the said provision commences with a non-obstante clause.

28. For a better understanding of the said right, it would also be useful to relate it to the societal and familial context in India.

29. As already noted, a domestic relationship means a relationship between two persons who live or have at any point of time, lived together in a shared household. The relationship may be by (i) consanguinity, (ii) marriage or, (iii) through a relationship in the nature of a marriage, (iv) adoption or (v) are family members living together as a joint family. The expression 'domestic relationship' is a comprehensive one. Hence, every woman in a domestic relationship in whatever manner the said relationship may be founded as stated above has a right to reside in a shared household, whether or not she has any right, title or beneficial interest in the same. Thus, a daughter, sister, wife, mother, grand-mother or great grand-mother, daughter-in-law, mother- in-law or any woman having a relationship in the nature of marriage, an adopted daughter or any member of joint family has the right to reside in a shared household.

30. Further, though, the expression 'shared household' is defined in the context of a household where the person aggrieved lives or has lived in a domestic relationship either singly or along with respondent, in the context of Sub-Section (1) of Section17, the said expression cannot be restricted only to a household where a person aggrieved resides or at any stage, resided in a domestic relationship. In other words, a woman in a domestic relationship who is not aggrieved, in the sense that who has not been subjected to an act of domestic violence by the respondent, has a right to reside in a shared household. Thus, a mother, daughter, sister, wife, mother-in-law and daughter-in-law or such other categories of women in a domestic relationship have the right to reside in a shared household de hors a right, title or beneficial interest in the same.

Therefore, the right of residence of the aforesaid categories of women and such other categories of women in a domestic relationship is guaranteed under Sub-Section (1) of Section 17 and she cannot be evicted, excluded or thrown out from such a household even in the absence of there being any form of domestic violence. By contrast, Sub-Section (2) of section 17 deals with a narrower right in as much as an aggrieved person who is inevitably a woman and who is subjected to domestic violence shall not be evicted or excluded from the shared household or any part of it by the respondent except in accordance with the procedure established by law. Thus, the expression 'right to reside in a shared household' has to be given an expansive interpretation, in respect of the aforesaid categories of women including a mother-in-law of a daughter-in-law and other categories of women referred to above who have the right to reside in a shared household.

31. Further, the expression 'the right to reside in a shared household' cannot be restricted to actual residence. In other words, even in the absence of actual residence in the shared household, a woman in a domestic relationship can enforce her right to reside therein. The aforesaid interpretation can be explained by way of an illustration. If a woman gets married then she acquires the right to reside in the household of her husband which then becomes a shared household within the meaning of the D.V. Act. In India, it is a societal norm for a woman, on her marriage to reside with her husband, unless due to professional, occupational or job commitments, or for other genuine reasons, the husband and wife decide to reside at different locations. Even in a case where the woman in a domestic relationship is residing elsewhere on account of a reasonable cause, she has the right to reside in a shared household. Also a woman who is, or has been, in a domestic relationship has the right to reside not only in the house of her husband, if it is located in another place which is also a shared household but also in the shared household which may be in a different location in which the

family of her husband resides.

32. If a woman in a domestic relationship seeks to enforce her right to reside in a shared household, irrespective of whether she has resided therein at all or not, then the said right can be enforced under Sub-Section (1) of Section 17 of the D.V. Act. If her right to reside in a shared household is resisted or restrained by the respondent(s) then she becomes an aggrieved person and she cannot be evicted, if she has already been living in the shared household or excluded from the same or any part of it if she is not actually residing therein. In other words, the expression 'right to reside in the shared household' is not restricted to only actual residence, as, irrespective of actual residence, a woman in a domestic relationship can enforce her right to reside in the shared household. Thus, a woman cannot be excluded from the shared household even if she has not actually resided therein that is why the expression 'shall not be evicted or excluded from the shared household' has been intentionally used in Sub-Section (2) of Section 17. This means if a woman in a domestic relationship is an aggrieved person and she is actually residing in the shared household, she cannot be evicted except in accordance with the procedure established by law. Similarly, a woman in a domestic relationship who is an aggrieved person cannot be excluded from her right to reside in the shared household except in accordance with the procedure established by law. Therefore, the expression 'right to reside in the shared household' would include not only actual residence but also constructive residence in the shared household i.e., right to reside therein which cannot be excluded vis-à-vis an aggrieved person except in accordance with the procedure established by law. If a woman is sought to be evicted or excluded from the shared household she would be an aggrieved person in which event Sub-Section (2) of Section 17 would apply.

33. In support of this interpretation, another example may be noted. A woman on getting married, along with her husband may proceed overseas on account of professional or job commitments. Such a woman may not have had an opportunity of residing in the shared household after her marriage. If, for any reason, such a woman becomes an aggrieved person and is forced to return from overseas then she has the right to reside in the shared household of her husband irrespective of whether her husband (respondent) or the aggrieved person (wife) has any right, title or beneficial interest in the shared household. In such circumstances, parents-in-law of the woman who has returned from overseas and who is an aggrieved person cannot exclude her from the shared household or any part of it except in accordance with the procedure established by law.

Another situation is a case where, immediately after marriage, the wife actually resided in the shared household while her husband proceeded overseas. When such a woman is subjected to domestic violence, she cannot be evicted from the shared household except in accordance with the procedure established by law.

34. There may also be cases where soon after marriage, the husband goes to another city owing to a job commitment and his wife remains in her parental home and nevertheless is a victim of domestic violence. She has the right to remain in her parental home as she would be in a domestic relationship by consanguinity. Also in cases where a woman remains in her parental home soon after marriage and is subjected to domestic violence and is therefore an aggrieved person, she also has the right to reside in the shared household of her husband which could be the household of her

in-laws. Further, if her husband resides in another location then an aggrieved person has the right to reside with her husband in the location in which he resides which would then become the shared household or reside with his parents, as the case may be, in a different location. There could be a multitude and a variety of situations and circumstances in which a woman in a domestic relationship can enforce her right to reside in a shared household irrespective of whether she has the right, title or beneficial interest in the same. Also, such a right could be enforced by every woman in a domestic relationship irrespective of whether she is an aggrieved person or not.

35. In the Indian societal context, the right of a woman to reside in the shared household is of unique importance. The reasons for the same are not far to see. In India, most women are not educated nor are they earning; neither do they have financial independence so as to live singly. She may be dependent for residence in a domestic relationship not only for emotional support but for the aforesaid reasons. The said relationship may be by consanguinity, marriage or through a relationship in the nature of marriage, adoption or is a part of or is living together in a joint family. A majority of women in India do not have independent income or financial capacity and are totally dependent vis-à-vis their residence on their male or other female relations who may have a domestic relationship with her.

36. In our view, the D.V. Act is a piece of Civil Code which is applicable to every woman in India irrespective of her religious affiliation and/or social background for a more effective protection of her rights guaranteed under the Constitution and in order to protect women victims of domestic violence occurring in a domestic relationship. Therefore, the expression 'joint family' cannot mean as understood in Hindu Law. Thus, the expression 'family members living together as a joint family', means the members living jointly as a family. In such an interpretation, even a girl child/children who is/are cared for as foster children also have a right to live in a shared household and are conferred with the right under Sub-Section (1) of Section 17 of the D.V. Act. When such a girl child or woman becomes an aggrieved person, the protection of Sub-Section (2) of Section 17 comes into play.

37. In order to give an expansive interpretation to the expression 'every woman in a domestic relationship shall have the right to reside in shared household', certain examples by way of illustrations have been discussed above. However, those illustrations are not exhaustive and there could be several situations and circumstances and every woman in a domestic relationship can enforce her right to reside in a shared household irrespective of whether she has any right, title or beneficial interest in the same and the said right could be enforced by any woman under the said provision as an independent right in addition to the orders that could be passed under Section 19 of the D.V. Act; also an aggrieved woman who has the right to reside in the shared household is protected by Sub-Section (2) of the Section 17 of the D.V. Act.

38. In the case of Smt. Bharati Naik vs. Shri Ravi Ramnath Halarnkar and Another – [2010 SCC Online Bom 243], the High Court of Bombay at Goa held that the words 'has been' and 'have lived' appearing in the definition of 'aggrieved person' and 'respondent' in the D.V. Act are plain and clear. The Court held that the aforesaid words take in their sweep even a past relationship. The words have been purposefully used to show the past relationship or experience between the concerned parties.

It was further observed that the said D.V. Act has been enacted to protect a woman from domestic violence and there cannot be any fetter which can come in the way by interpreting the provisions in a manner to mean that unless the domestic relationship continues on the date of the application, the provisions of the D.V. Act cannot be invoked.

39. In a judgment of the High Court of Madras in Vandhana vs. T. Srikanth and Krishnamachari – [2007 SCC Online Mad 553], authored by Ramasubramanian, J., it was held that Sections 2(f), 2(s) and 17 of the D.V. Act ought to be given the widest interpretation possible. The Court, after observing various instances and situations, held that many a woman may not even enter into the matrimonial home immediately after marriage. Therefore, it was concluded that a healthy and correct interpretation to Sections 2(f) and 2(s) of the D.V. Act would be that the words 'live' or 'have at any point of time lived' would include in its purview 'the right to live' as interpreted above. It would be useful to quote from the said judgment as under:-

> "20. In a society like ours, there are very many situations, in which a woman may not enter into her matrimonial home immediately after marriage. A couple leaving for honeymoon immediately after the marriage and whose relationship gets strained even during honeymoon, resulting in the wife returning to her parental home straight away, may not stand the test of the definition of domestic relationship under Section 2(f) of the Act, if it is strictly construed. A woman in such a case, may not live or at any point of time lived either singly or together with the husband in the 'shared household', despite a legally valid marriage followed even by its consummation. It is not uncommon in our society, for a woman in marriage to be sent to her parental home even before consummation of marriage, on account of certain traditional beliefs, say for example, the intervention of the month of Aadi. If such a woman is held to be not entitled to the benefit of Section 17 of the Act, on account of a strict interpretation to Section 2(f) of the Act that she did not either live or at any point of time lived together in the shared household, such a woman will be left remediless despite a valid marriage. One can think of innumerable instances of the same aforesaid nature, where the woman might not live at the time of institution of the proceedings or might not have lived together with the husband even for a single day in the shared household. A narrow interpretation to Sections 2(f), 2(s) and 17 of the Act, would leave many a woman in distress, without a remedy. Therefore, in my considered view a healthy and correct interpretation to Sections 2(f) and 2(s) would be that the words 'live' or 'have at any point of time lived' would include within their purview 'the right to live'. In other words, it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of institution of the proceedings or as a thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to live in the shared household. Therefore, she would be entitled to protection under Section 17 of the Act, even if she did not live in the shared household at the time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection under Section 17 of the Act, co-exists with her right to live in the shared household and it does not depend upon whether she had marked her physical

> presence in the shared household or not. A marriage which is valid and subsisting on the relevant date, automatically confers a right upon the wife to live in the shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid and subsisting marriage, she is definitely in 'domestic relationship' within the meaning of Section 2(f) of the Act and her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship. Therefore, irrespective of the fact whether the applicant/plaintiff in this case ever lived in the house of the first respondent/first defendant after 7.2.2007 or not, her marriage to the first respondent/first defendant on 7.2.2007 has conferred a right upon her to live in the shared household.

Therefore, the question as to whether the applicant/plaintiff ever lived in the shared household at any point of time during the period from 7.2.2007 to 13.6.2007 or not, is of little significance."

40. Bearing in mind the aforesaid discussion, question no. 2, namely, 'whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levelled' is accordingly answered. It is held that it is not mandatory for the aggrieved person to have actually lived or resided with those persons against whom the allegations have been levelled at the time of seeking relief. If a woman has the right to reside in a shared household, she can accordingly enforce her right under Section 17(1) of the D.V. Act. If a woman becomes an aggrieved person or victim of domestic violence, she can seek relief under the provisions of the D.V. Act including her right to live or reside in the shared household under Section 17 read with Section 19 of the D.V. Act.

41. Hence, the appellant herein had the right to live in a shared household i.e., her matrimonial home and being a victim of domestic violence could enforce her right to live or reside in the shared household under the provisions of the D.V. Act and to seek any other appropriate relief provided under the D.V. Act. This is irrespective of whether she actually lived in the shared household.

42. This takes us to the next question raised for consideration being 'whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed'. As already noted, the expression 'domestic relationship' is an expansive one and means the relationship between two persons who live or have at any point of time lived together in a shared household when they are related by (i) consanguinity; (ii) marriage; (iii) through a relationship in the nature of marriage; (iv) adoption; (v) are family members living together as a joint family. The expressions 'consanguinity', 'marriage' and 'adoption' do not require elaboration as they are well understood concepts both in common law as well as in the respective personal law applicable to the parties. However, it is relevant to note the expression 'marriage' also encompasses a relationship in the nature of marriage. Secondly, the expression 'adoption' also takes into consideration family members living together as a joint family. The aforesaid aspects require elaboration.

It would be useful to refer to the following judgments of this Court which have been taken into consideration relationship in the nature of marriage :

(a) In D. Velu Samy v. D. Patchaiammal - [(2010) 10 SCC 469], this Court discussed the concept of "relationship in the nature of marriage" in the context of the DV Act, and it was held to be akin to a common law marriage. It was held that the parties must have lived together in a 'shared household' as defined in Section 2(s) of the DV Act. It was opined that not all live-in relationships would amount to a relationship in the nature of marriage to get the benefit of D.V. Act, but only to such relationships, which qualify as common law marriages. The requirements prescribed under law in order for a relationship to be recognized as a common law marriage were adumbrated as follows:

(i) The couple must hold themselves out to society as being akin to spouses;

(ii) They must be of legal age to marry;

(iii) They must be otherwise qualified to enter into a legal marriage;

(iv) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(b) In Indra Sarma v. V.K.V. Sarma - [(2013) 15 SCC 755], the question as to whether disruption of a live-in relationship by failure to maintain a woman involved in such a relationship amounted to "domestic violence" within the meaning of Section 3 of the D.V. Act, was considered. It was held that entering into a marriage either under the Hindu Marriage Act or Special Marriage Act or any other personal law applicable to the parties, is entering into a relationship of public significance, since marriage, being a social institution, many rights and liabilities flow out of that relationship. Thus, the concept of marriage gives rise to civil rights. This Court referred to the following guidelines, which would determine whether a relationship between persons was in the nature of marriage, to ultimately hold that the DV Act had been enacted to cover a couple who had a relationship in the nature of marriage, so as to provide a remedy in Civil Law for protection of women in relationships, which are in the nature of marriage as per paragraph 56 which is extracted as under :

"56. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the D.V. Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationship :

56.1. Duration of period of relationship. – Section 2(f) of the D.V. Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

56.2. Shared household.- The expression has been defined under Section 2(s) of the D.V. Act and, hence, needs no further elaboration. 56.3. Pooling of resources and financial arrangements.- Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long-term investments in business, shares in separate and joint names, so as to have a long-standing relationship, may be a guiding factor.

56.4. Domestic arrangements.- Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc., is an indication of a relationship in the nature of marriage.

56.5. Sexual relationship.- Marriage-like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring, etc. 56.6. Children.- Having children is a strong indication of a relationship in the nature of marriage.

The parties, therefore, intend to have a long-standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication. 56.7. Socialisation in public.- Holding out to the public and socialising with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

56.8. Intention and conduct of the parties.- Common intention of the parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship."

43. Further, the expression 'family members living together as a joint family' is not relatable only to relationship through consanguinity, marriage or adoption. As observed above, the expression 'joint family' does not mean a joint family as understood in Hindu Law. It would mean persons living together jointly as a family. It would include not only family members living together when they are related by consanguinity, marriage or adoption but also those persons who are living together or jointly as a joint family such as foster children who live with other members who are related by consanguinity, marriage or by adoption. Therefore, when any woman is in a domestic relationship as discussed above, is subjected to any act of domestic violence and becomes an aggrieved person, she is entitled to avail the remedies under the D.V. Act.

The further question is, whether, such a domestic relationship should be subsisting between the aggrieved person and the respondent against whom relief is claimed at the time of claiming the relief. Before answering the same, it would be useful to analyse the relationships noted in the D.V. Act as under:

(a) Any relationship by consanguinity is a lifelong relationship.

(b) Marriage is also a lifelong relationship unless a separation by a decree of divorce is ordered by a competent authority of law.

(i) If there is judicial separation ordered by a court of law, that does not put an end to marriage and hence the domestic relationship continues between the spouses even though they may not be actually living together.

(ii) In the event of a divorce, marriage would be no longer be subsisting, but if a woman (wife) is subjected to any domestic violence either during marriage or even subsequent to a divorce decree being passed but relatable to the period of domestic relationship, the provisions of this D.V. Act would come to the rescue of such a divorced woman also.

(iii) That is why, the expression 'domestic relationship' has been defined in an expansive manner to mean a relationship between two persons who live or have at any point of time lived together in a shared household when they are related by marriage. We have also interpreted the word 'live' or 'lived' in the context of right to reside in Sub-Section (1) of Section 17. The right to live in the shared household, even when the domestic relationship may have been severed for instance when a woman has been widowed owing to the death of her husband, entitles her to have remedies under the D.V. Act.

(iv) Therefore, even when the marital ties cease and there is no subsisting domestic relationship between the aggrieved woman and the respondent against whom relief is claimed but the acts of domestic violence are related to the period of domestic relationship, even in such circumstances, the aggrieved woman who was subjected to domestic violence has remedies under the D.V. Act.

(c) Even in the case of relationship in the nature of marriage, during which period the woman suffered domestic violence and is thus an aggrieved person can seek remedies subsequent to the cessation of the relationship, the only pre-condition is that the allegation of domestic violence must relate to the period of the subsistence of relationship in the nature of marriage.

(d) In the same way, when a girl child is fostered by family members living together as a joint family as interpreted above and lives or at any point of time has lived together in a shared household or has the right to reside in the shared household being a member living together as a joint family and has been ousted in any way or has been a victim of domestic violence has remedies under the D.V. Act.

In our view, the question raised about a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed must be interpreted in a broad and expansive way, so as to encompass not only a subsisting domestic relationship in presentia but also a past domestic relationship. Therefore, the Parliament has intentionally used the expression

'domestic relationship' to mean a relationship between two persons who not only live together in the shared household but also between two persons who 'have at any point of time lived together' in a shared household.

44. Applying the aforesaid discussion to the facts of the case at hand, the appellant was married to the respondent's son Kuldeep Tyagi on 18th June, 2005 and shortly thereafter, on 15th July, 2005, he died in a car accident. According to the appellant, the respondent and her family members started harassing the appellant and forced her to leave the matrimonial home. She started working as a teacher at Dehradun in order to support herself. That Stridhana was given at the time of her wedding and that was used by the respondent and her family and the legal notice dated 22nd November, 2006 demanding return of the articles of Stridhana did not receive any response from the respondent and her family. Even though as on the date of filing of the application before the Magistrate under Section 12 of the D.V. Act the appellant was not actually living in the shared household; she nevertheless lived in a domestic relationship with her husband and further had the right to reside in a shared household as a daughter-in-law. The appellant-aggrieved person had to leave the shared household on account of harassment and mental torture given to her by respondent - mother-in-law and her family. She had to leave the same and fend for herself. Thus, as an aggrieved person, the appellant could not have been excluded from the shared household as there was no valid reason to do so. As the appellant had a right to reside in the shared household as she was in a domestic relationship with her husband till he died in the accident and had lived together with him therefore she also had a right to reside in the shared household despite the death of her husband in a road accident. The aggrieved person continued to have a subsisting domestic relationship owing to her marriage and she being the daughter-in-law had the right to reside in the shared household.

45. This takes us to the first question which has been raised by us namely, 'whether the consideration of domestic incident report is mandatory before initiating the proceedings under the D.V. Act in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said D.V. Act?'.

46. Clause (e) of Section 2 defines a Domestic Incident Report to be a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person. As noted from Section 12, an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person including the service provider vide Sub-Section (1) of Section 10 of the D.V. Act, may present an application to the Magistrate seeking one or more reliefs under the D.V. Act. Proviso to Sub-Section (1) of Section 12 states that before passing any order on such an application, the Magistrate shall take into consideration any Domestic Incident Report received by him from the Protection Officer or the service provider. Protection Officer as defined in Clause (n) of Section 2, means an officer appointed by the State Government under Sub- Section (1) of Section 8. Sub-Section (2) of Section 8 states that the Protection Officers shall, as far as possible, be women and shall possess such qualifications and experience as may be prescribed.

47. On a conjoint reading of the aforesaid provisions, it is clear that an aggrieved person on her own or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the D.V. Act but the proviso states that when a Domestic Incident

Reported is received by the Magistrate from the Protection Officer or the service provider, in such a case, the same shall be taken into consideration. Therefore, when an aggrieved person files an application by herself or with the assistance of an advocate and not with the assistance of the Protection Officer or a service provider, in such a case, the role of the Protection Officer or a service provider is not envisaged. Obviously, there would be no Domestic Incident Report received by a Magistrate from the Protection Officer or a service provider. Can it be said that in the absence of a Domestic Incident Report, the Magistrate cannot pass any order under the D.V. Act particularly when an application is filed before the Magistrate by the aggrieved person by herself or through a legal counsel? In our view, that is not the intention of the proviso. Although, the expression 'shall' is used in the proviso, it is restricted to only those cases where a Protection Officer files any Domestic Incident Report or, as the case may be, the service provider files such a report. When a Domestic Incident Report is filed by a Protection Officer or a service provider, in such a case the Magistrate has to take into consideration the said report received by him. But if such a report has not been filed on behalf of the aggrieved person then he is not bound to consider any such report. Therefore, the expression 'shall' has to be read in the context of a Domestic Incident Report received by a Magistrate from the Protection Officer or the service provider as the case may be in which case, it is mandatory for the Magistrate to consider the report. But, if no such report is received by the Magistrate then the Magistrate is naturally not to consider any such Domestic Incident Report before passing any order on the application. As already noted, this could be in a case where an aggrieved person herself approaches the Magistrate or the services of an advocate is engaged to present an application seeking one or more reliefs under the D.V. Act or for a valid acceptable cause/reason a Domestic Incident Report has not been filed by a Protection Officer or a service provider, as the case may be.

48. We are, therefore, of the view that the High Court was not right in holding that the application filed by the appellant herein was not accompanied by a Domestic Incident Report and therefore under the proviso to Sub-Section (1) of Section 12 of the D.V. Act, the Magistrate had no authority to issue orders and directions in favour of the appellant.

(i) Following are the judgments where the High Courts have held that the Domestic Incident Report is not a sine qua non for entertaining or deciding the application under Section 12 of the D.V. Act by the learned Magistrate.

a) In Nayanakumar vs. State of Karnataka – [ILR 2009 Kar 4295], the High Court of Karnataka (Kalaburagi Bench) while dealing with Section 12 of the D.V. Act, held that in case a Domestic Incident Report is received by the Magistrate either from the Protection Officer or from the Service Provider, then it becomes obligatory on the part of the Magistrate to take note of the said Domestic Incident Report before passing an order on the application filed by the aggrieved party. It was further clarified that the scheme of the D.V. Act makes it clear that it is left to the choice of the aggrieved person to go before the service provider or the Protection Officer or to approach the Magistrate under Section 12 of the D.V. Act.

b) In Abhiram Gogoi vs. Rashmi Rekha Gogoi – [(2011) 4 Gauhati Law Reports 276], the Gauhati High Court held that Section 9(1)(b) of the D.V. Act makes it clear that it is the duty of the

Protection Officer to make a Domestic Incident Report to the Magistrate 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.

c) In the case of Md. Basit vs. State of Assam and Others – [(2012) 1 Gauhati Law Reports 747], the Gauhati High Court differed with the view taken by the Madhya Pradesh and Jharkhand High Courts and held that Section 12 only contemplates as to who can file a complaint under Section 12 of the D.V. Act, what relief may be sought for, what the contents of the complaint must be and how the complaint ought to be examined. That if the complaint conforms to the said pre-conditions, the same may be taken cognizance of. The High Court noted that an application under Section 12(1) of the D.V. Act may be filed either by an aggrieved person herself, or by a Protection Officer. The Court went on to hold that the provision does not require a Magistrate to specifically call for a Domestic Incident Report. That it would only be mandatory to consider such report, if the same had been filed by the Protection Officer before the Magistrate. The Gauhati High Court differed with the view taken by the Madhya Pradesh and Jharkhand High Courts, to the extent that the latter Courts observed that the Magistrate would not be obligated to consider the Domestic Incident Report even if the same was filed by the Protection Officer.

d) Delving on the same issue, the High Court of Himachal Pradesh in Rahul Soorma vs. State of Himachal Pradesh – [(2012) SCC Online HP 2574], held that the purpose of the D.V. Act is to give immediate relief to the aggrieved person; therefore, it was wrong to suggest that the Magistrate has no jurisdiction to take cognizance of the application under Section 12 of the D.V. Act before the receipt of a Domestic Incident Report by the Protection Officer or the service provider.

e) Further, the High Court of Andhra Pradesh in A. Vidya Sagar vs. State of Andhra Pradesh – [2014 SCC Online Hyd 715], rejected the contention of the petitioner therein that a domestic violence case can be instituted and taken cognizance of on the basis of the Domestic Incident Report only and not otherwise.

f) In its judgment in the case of Ravi Kumar Bajpai vs. Renu Awasthi Bajpai – [ILR (2016) MP 302], the High Court of Madhya Pradesh speaking through J.K. Maheshwari, J., while discussing on the legislative intent of the D.V. Act, held that if the legislative intent was to call for a report from the Protection Officer as a pre- condition by the Magistrate to act upon a complaint of aggrieved person, then it would have expressed that intention emphasizing the words in the main section. The High Court relied on various judgments pertaining to the interpretation of a provision and proviso thereof.

g) The Division Bench of the High Court of Delhi in Shambhu Prasad Singh vs. Manjari – [190 (2012) DLT 647] speaking through Ravindra Bhat, J. dealt with the conflicting views of the two Single Judges on the question whether a Magistrate can act straightaway on the complaint made by an aggrieved person under the D.V. Act. It was held that Section 12(1) of the D.V. Act does not mandate that an application seeking relief under the said D.V. Act must be accompanied with a Domestic Incident Report or even that it should be moved by a Protection Officer. So also, Rule 6

which stipulates the form and manner of making an application to a Magistrate does not require that the Domestic Incident Report must accompany an application for relief under Section 12.

It was further held that an obligation to submit a Domestic Incident Report is imposed only on the Protection Officers under Section 9 of the D.V. Act and upon the service providers under Section 10 of the D.V. Act and the learned Magistrate 'shall' take into consideration, the Domestic Incident Report if it is filed and not otherwise.

h) In Rakesh Choudhary vs. Vandana Choudhary – [2019 SCC Online J&K 512], the High Court of Jammu and Kashmir rejected the argument of the petitioner therein that the report of the Protection Officer is sine qua non for issuing process in a petition under Section 12 of the D.V. Act. The Court held that the proviso to Section 12(1) of the D.V. Act only stipulates that the learned Magistrate shall take into consideration the Domestic Incident Report filed by the Protection Officer or the Service Provider, but it does not stipulate that a report 'shall be called for' before any relief could be granted.

i) Further, the High Court of Bombay at Aurangabad Bench, while dealing with a criminal writ petition in the case of Vijay Maruti Gaikwad vs. Savita Vijay Gaikward – [2018 (1) HLR 295], observed that if the matter is before the Court and the wife preferred not to approach the Protection Officer, the Court is not bound to call the report of Protection Officer.

j) Lastly, in the case of Suraj Sharma vs. Bharti Sharma – [2016 SCC Online Chh 1825], the High Court of Chhattisgarh while expressing its view on Section 12 of the D.V. Act also held that the Domestic Incident Report shall not be conclusive material for making any order.

49. On the contrary, the following judgments of High Courts have observed that the Proviso to Section 12 is mandatory and an order passed by the learned Magistrate on an application under Section 12 of the D.V. Act, without having a report of the Protection Officer is liable to be quashed.

a) In Rama Singh vs. Maya Singh – [(2012) 4 MPLJ 612]1, the High Court of Madhya Pradesh, in the facts and circumstances of the said case, while quashing the petition under Section 482 of the Code of Criminal Procedure, 1973, held that the impugned order therein was passed without taking into consideration, the report prepared by the Protection Officer and proviso to Section 12 of the D.V. Act was ignored. The Court went on to hold that the proviso ordinarily carves out an exception from the general rule enacted in the main provision. The Court emphasized that the word 'any' in the proviso would mean one or more out of several and includes all. Therefore, even an interlocutory order directing issuance of notice would not be excluded from the rigour of the proviso.

b) In the case of Ravi Dutta vs. Kiran Dutta and Another – [208 (2014) DLT 61]2, the High Court of Delhi reiterated that non-consideration of Domestic Incident Report by the Trial Court while deciding an application under Section 12 of the D.V. Act violates the mandate of the said provision This judgment was explained in later decision of Ravi Kumar Bajpai (supra). This judgment did not consider the earlier judgment in Shambhu Prasad Singh (supra) passed by the Delhi High Court itself.

and therefore the order passed by the Trial Court was held to be unsustainable.

On an analysis of the aforesaid judgments from various High Courts, we find that the High Courts of Andhra Pradesh, Bombay, Delhi, Gauhati, Himachal Pradesh, Jammu & Kashmir, Karnataka, and Madhya Pradesh, are right in holding that if Domestic Incident Report has been received by the Magistrate either from the Protection Officer or the service provider then it becomes obligatory on the part of the Magistrate to take note of the said report before passing an order on the application filed by the aggrieved party, but if no complaint or application of domestic violence is received by the Magistrate from the Protection Officer or the service provider, the question of considering such a report does not arise at all. As already discussed, the D.V. Act does not make it mandatory for an aggrieved person to make an application before a Magistrate only through the Protection Officer or a service provider. An aggrieved person can directly make an application to the jurisdictional Magistrate by herself or by engaging the services of an Advocate. In such a case, the filing of a Domestic Incident Report by a Protection Officer or service provider does not arise. In such circumstances, it cannot be held that the Magistrate is not empowered to make any order interim or final, under the provisions of the D.V. Act, granting reliefs to the aggrieved persons. The Magistrate can take cognizance of the complaint or application filed by the aggrieved person and issue notice to the respondent under Section 12 of the D.V. Act even in the absence of Domestic Incident Report under Rule 5. Thus, the Magistrate has jurisdiction to take cognizance of the complaint under Section 12 of the D.V. Act in the absence of a Domestic Incident Report under Rule 5 when the complaint is not filed on behalf of the aggrieved person through a Protection Officer or service provider. Such a purposeful interpretation has to be given bearing in mind the fact that the immediate relief would have to be given to an aggrieved person and hence the proviso cannot be interpreted in a manner which would be contrary to the object of the D.V. Act which renders Section 12 bereft of its object and purpose.

50. In this context, it would be useful to adumbrate on the principles that govern the interpretation to be given to proviso in the context of main provision.

(a) The normal function of a proviso is to except something out of the provision or to qualify something enacted therein which, but for the proviso, would be within the purview of the provision. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. In other words, a proviso qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main provision. Further, a proviso cannot be construed as nullifying the provision or as taking away completely a right conferred by the enactment.

(b) In this regard, learned Author, Justice G.P. Singh, in "Principles of Statutory Interpretation", 15th Edition, has enunciated certain rules collated from judicial precedents. Firstly, a proviso is not to be construed as excluding or adding something by implication i.e., when on a fair construction, the principal provision is clear, a proviso cannot expand or limit it. Secondly, a proviso has to be construed in relation to which it is appended i.e., normally, a proviso does not travel beyond the provision to which it is a proviso. A proviso carves out an exception to the main provision to which it

has been enacted as a proviso and to no other. However, if a proviso in a statute does not form part of a section but is itself enacted as a separate section, then it becomes necessary to determine as to which section the proviso is enacted as an exception or qualification. Sometimes, a proviso is used as a guide to construction of the main section. Thirdly, when there are two possible construction of words to be found in the section, the proviso could be looked into to interpret the main section. However, when the main provision is clear, it cannot be watered down by the proviso. Thus, where the main section is not clear, the proviso can be looked into to ascertain the meaning and scope of the main provision.

(c) According to Justice G.P. Singh, the learned author, the proviso should not be so construed as to make it redundant. In certain cases, "the legislative device of the exclusion is adopted only to exclude a part from the whole, which, but for the exclusion, continues to be a part of it", and words of exclusion are presumed to have some meaning and are not readily recognized as mere surplusage. As a corollary, it is stated that a proviso must be so construed that the main enactment and the proviso should not become redundant or otiose. This is particularly so, where the object of a proviso sometimes is only by way of abundant caution, particularly when the operative words of the enactment are abundantly clear. In other words, the purpose of a proviso in such a case is to remove any doubt. There are also instances where a proviso is in the nature of an independent enactment and not merely, an exception or qualifying what has been stated before. In other words, if the substantive enactment is worded in the form of a proviso, it would be an independent legislative provision concerning different set of circumstances than what is worded before or what is stated before. Sometimes, a proviso is to make a distinction of special cases from the general enactment and to provide it specially.

(d) At this stage, the construction or interpretation of a proviso could be discussed as gathered from various judgments of this Court.

(i) In Ishverlal Thakorelal Almaula vs. Motibhai Nagjibhai – [AIR 1966 SC 459], while dealing with the Bombay Tenancy and Agricultural Lands Act, 1948, this Court held, that a proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso, would be within that clause.

(ii) In Kaviraj Pandit Durga Dutt Sharma vs. Navaratna Pharmaceutical Laboratories – [AIR 1965 SC 980], while considering the proviso to Section 6 of Trade Marks Act, 1940, it was observed that it would not be a reasonable construction for any statute, if a proviso which in terms purports to create an exception and seeks to confer certain special rights on a particular class of cases included in it should be held to be otiose and to have achieved nothing.

(iii) In Kedarnath Jute Manufacturing Co. Ltd. vs. The Commercial Tax Officer and Others, [AIR 1966 SC 12], it was observed that "the effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment or to qualify something enacted therein, which, but for the proviso, would be within it". [See "Craies" on Statute Law - 6th Edition - P. 217]. In this case, the Court was considering Section 5(2) (a) (ii) of Bengal Finance Sales Tax Act, 1941 and Rule 27-A of Bengal Sales Tax Rules.

(iv) In Dattatraya Govind Mahajan and Others Vs. The State of Maharashtra and another – [AIR 1977 SC 915], a Constitution Bench of the Apex Court, while considering the amendment made to Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, in the context of Article 31B of the Constitution and the second proviso thereto, reiterated what was stated in Ishverlal's case, (supra).

(v) In S. Sundaram Pillai, etc, vs. V.R. Pattabiraman – [AIR 1985 SC 582], while dealing with the scope of a proviso and explanation to sub - section (2) of Section 10 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, this Court held that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or qualifying some thing enacted therein which, but for the proviso, would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment, nor can it be used to nullify or set at naught the real object of the main enactment. Sometimes, a proviso may exceptionally have the effect of a substantive enactment.

(e) After referring to several legal treatises and judgments, this Court held in the above judgment as under:-

> "43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:
>
> (1) qualifying or excepting certain provisions from the main enactment;
>
> (2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;
>
> (3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(f) The approach to the construction and interpretation of a proviso is enunciated in the following cases.

(i) In M. Pentiah vs. Muddala Veeramallappa – [AIR 1961 SC 1107], it was observed that while interpreting a section or a proviso, if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, one should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.

(ii) In Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal vs. Abani Maity - [AIR 1979 SC 1029], this Court observed that the statute is not to be interpreted merely from the

lexicographer's angle. The Court must give effect to the will and in-built policy of the Legislature as discernible from the object and scheme of the enactment and the language employed therein. The words in a statute often take their meaning in the context of a statute as a whole. They are, therefore, not to be construed in isolation.

51. In the instant case, when the proviso is read in the context of the main provision which begins with the words 'an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the D.V. Act' would clearly indicate that the aggrieved person can by herself or through her advocate approach the Magistrate for seeking any of the reliefs under the D.V. Act. In such an event, the filing of a Domestic Incident Report does not arise. The use of the expression 'shall' in the proviso has to be read contextually i.e., the Magistrate is obliged to take into consideration any Domestic Incident Report received by him when the same has been filed from the Protection Officer or the service provider in a case where the application is made to the Magistrate on behalf of the aggrieved person through a Protection Officer or a service provider. If the intention of the Parliament had been that filing of the Report by the Protection Officer is a condition precedent for the Magistrate to act upon the complaint filed by an aggrieved person even when she files it by herself or through her advocate then it would have been so expressed. But a conjoint reading of Sub-Section (1) of Section 12 with the proviso does not indicate such an intention. Thus, the plenitude of power under Section 12 of the D.V. Act is accordingly interpreted and pre-requisite for issuing notice to the respondent on an application filed by the aggrieved person without the assistance of a Protection Officer or service provider and thus there being an absence of Domestic Incident Report, does not arise. If a contrary interpretation is to be given then the opening words of Sub-Section (1) of Section 12 would be rendered otiose and it would be incumbent for every aggrieved person to first approach a Protection Officer or a service provider, as the case may be, and get a Domestic Incident Report prepared and thereafter to approach the Magistrate for reliefs under the D.V. Act, which is not the intention of the Parliament. Hence, in our view, the judgments of the Madhya Pradesh High Court in Rama Singh vs. Maya Singh – [(2012) 4 MPLJ 612] and the Delhi High Court in Ravi Dutta vs. Kiran Dutta and Another – [2018 (2014) DLT 61], do not lay down the correct law and are hereby overruled while we affirm all other judgments referred to supra which are in consonance with the line of interpretation made above.

52. In view of the above discussion, the three questions raised in this appeal are answered as under:

> "(i) Whether the consideration of Domestic Incidence Report is mandatory before initiating the proceedings under Domestic Violence Act, 2005 in order to invoke substantive provisions of Sections 18 to 20 and 22 of the said Act?" It is held that Section 12 does not make it mandatory for a Magistrate to consider a Domestic Incident Report filed by a Protection Officer or service provider before passing any order under the D.V. Act. It is clarified that even in the absence of a Domestic Incident Report, a Magistrate is empowered to pass both ex parte or interim as well as a final order under the provisions of the D.V. Act.

"(ii) Whether it is mandatory for the aggrieved person to reside with those persons against whom the allegations have been levied at the point of commission of violence?" It is held that it is not mandatory for the aggrieved person, when she is related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family, to actually reside with those persons against whom the allegations have been levelled at the time of commission of domestic violence. If a woman has the right to reside in the shared household under Section 17 of the D.V. Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of D.V. Act including enforcement of her right to live in a shared household.

"(iii) Whether there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed?" It is held that there should be a subsisting domestic relationship between the aggrieved person and the person against whom the relief is claimed vis-à-vis allegation of domestic violence. However, it is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. In other words, even if an aggrieved person is not in a domestic relationship with the respondent in a shared household at the time of filing of an application under Section 12 of the D.V. Act but has at any point of time lived so or had the right to live and has been subjected to domestic violence or is later subjected to domestic violence on account of the domestic relationship, is entitled to file an application under Section 12 of the D.V. Act.

53. Consequently, the judgment dated 23rd July, 2019 passed by the High Court of Uttarakhand in Criminal Revision No. 186 of 2014 as well as the judgment dated 11th July, 2014 passed by the Vth Additional Sessions Judge, Dehradun in Criminal Appeal No. 53 of 2011 are set aside and the order passed by the Special Judicial Magistrate-I in Miscellaneous Case No. 78 of 2007, Dehradun is affirmed.

54. The appeal is allowed in the aforesaid terms.

55. Parties to bear their respective costs.

56. Before parting with this case, we express our appreciation to the valuable services rendered by Shri Gaurav Agarwal, learned amicus curiae, who has painstakingly researched all the relevant judgments on the questions raised in this case arising from various High Courts and has made his submission schematically with particular reference to the facts of the case and all relevant provisions of the D.V. Act.

.....J. (M.R. Shah) .....J. (B.V. Nagarathna) New Delhi;

12th May, 2022