Kamatchi vs Lakshmi Narayanan on 13 April, 2022

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, S. Ravindra Bhat, Pamidighantam Sri Narasimha

RE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.627 OF 2022
(Arising out of Special Leave to Appeal (Crl.) No. 2514 of

KAMATCHI …App

versus

LAKSHMI NARAYANAN …Res

JUDGMENT

Uday Umesh Lalit, J.

1. Leave granted.

2. This appeal challenges the final judgment and order dated 16.03.2020 passed by the High Court1 in Crl. O.P. No. 28924 of 2018.

3. The present proceedings arise out of an application preferred by the appellant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the Act'), which was numbered as D.V.C. No.21 of 2018 in the Court of Judicial Magistrate, 1 High Court of Judicature at Madras Ambattur, Chennai. The application was filed seeking appropriate protection in terms of Sections 17 and 18 of the Act and was preferred against the respondent-husband as well as the father-in-law and sister-in-law of the appellant. The Protection Officer vide his Domestic Inspection Report dated 21.08.2018 tabulated the incidents of domestic violence as under:-

"4. Incidents of domestic violence:-

Sl.No.	Date, Place and Time of violence	Persons who caused domestic violence	Types of violence Physical violence	Remarks

1	25.08.2007 Husband's Home	Father-in-law Mother-in-law Sister-in-law	They came to our house for marriage invitation and demanded jewels. They also insulted my father saying normally all are giving 20 severing jewels to auto driver.
2	08.09.2007	Father-in-law Sister-in-law	My father-in-law and sister-in-law stated that my husband got bride from rich family but don't know what he saw in me and choose me.
3	09.09.2007	Sister-in-law Rajeshwari	On that day my husband unnecessarily fought with me. She disrespectfully spoke about me and my family members as what dowry was given by your family, what jewel you brought and came, like a beggar family.

4 14.09.2007 Father-in- All were fighting with Husband law my Husband in front of House Sister-in- me and told him not to law take me to London.

They spoke about me in disrespectful manner.

5 15.09.2007 Father-in- Tortured me stating that law you should not go Sister-in- London along with your law husband and they disconnected electricity connection in my room.

6 19.09.2007 Father-in- All person jointly spoke law disrespectfully with me Mother-in- about my parents that law they have not given car Sister-in- and other household law things.

7 20.01.2008 Husband I was pregnant at that time, based on the instigation of them, my husband compelled me to abort the cyst. But I did not accept, so he brought me to India from London, thereafter he left me and went to London.

8 16.09.2008 Father-in- They did not consider law me as a girl, who had Mother-in- undergone surgery, and law they entered my room Sister-in- and tried to attack me law stating that it was not proper marriage, jewel and household thing and this is not our heir.

9	20.04.2018	Sister-in-law	When I went to my husband house with the

Rajeshwary High Court order of restitution, my sister-in-law Rajeshwary obstructed me from entering the house and she pushed me and my child out of the house and told me to die somewhere.

II. SEXUAL VIOLENCE
Please tick mark the column applicable.

The basic allegations as culled out from the Report of the Protection Officer were:-

> "My name Kamakshi. Marriage solemnized in between me and my husband on 07.09.2007. The dowry, which was given to my marriage, 60 sovereign gold, 4 ½ kg silver, Rs.50,000/- and other household things placed at my Husband's House. My parents spent Rs. 15 lakhs for marriage. Before the marriage, my husband family members came to our home for give invitation and gave mental stress and stated that jewel and dowry are not enough. My father borrowed loan and conducted marriage with intention of marriage should be go in smooth manner. After next day of marriage, they spoke in disrespectful manner towards me and my parents stating that no sufficient jewel and household things were given. They did many tricks for I would not go with my husband to London and they tortured me. I gave birth to a male child on 06.09.2008. My husband family members came for Punyathanam function and spoke disrespectful as this is not our heir and refused to accept the child. I preferred many cases for to living together with my husband. I went to my husband home with the High Court order. Rajeshwari has not allowed me and my child and spoke disrespectful manner and drove us out and told me to go and die somewhere."

4. Soon thereafter, father-in-law and sister-in-law of the appellant filed Crl.O.P.No.27097 of 2018 under Section 482 of the Code of Criminal Procedure, 1973 ('the Code', for short) before the High Court seeking quashing of the proceedings under the Act. Crl.O.P. No.28924 of 2018 was filed by the respondent-husband seeking identical relief under Section 482 of the Code. The main grounds taken by the respondent in said Original Petition were: -

> "E. It is submitted that the Petitioners are forced to face the ordeal of trial on no material or even probabilities or a real instance, thus, the impugned proceedings in D.V. No. 21 of 2018 against the Petitioner is illegal, unwarranted and it is nothing but an abuse of process of law and therefore it is liable to be quashed.

F. The Petitioner submits that a matrimonial dispute is sought to be given a criminal colour at the instance of the Respondent. The allegations against the petitioner is unsustainable in law and allowing the proceedings further would serve no purpose so far as the Petitioner is concerned. Therefore, on that ground, the proceedings against the Petitioner/Respondent in D.V. No.21 of 2018 on the file of the learned Judicial Magistrate, Ambattur, is liable to be quashed."

5. Both the Original Petitions came up before the High Court on 16.03.2020.

A. The Petition filed by the father-in-law and the sister-in-law was allowed and the proceedings against them were quashed. It was observed by the High Court :-

"5. In view of the above, this Court is inclined to quash the proceedings in D.V. No.21 of 2018, on the file of the Judicial Magistrate, Ambattur, insofar as the petitioners herein are concerned, on condition that, they shall ensure that the A1/husband of the respondent shall deposit a sum of Rs.5,000(Rupees Five Thousand only) before 5th of every English Calendar month to the credit of D.V. No.21 of 2018, on the file of the Judicial Magistrate, Ambattur, as ad-interim maintenance, without prejudice to both the parties, failing which this order shall stand automatically cancelled. On such deposit being made, the respondent is entitled to withdraw the same.

6. Insofar as A1/husband of the respondent is concerned, since the impugned proceedings in D.V.No.21 of 2018 is pending from the year 2018 onwards, it would be appropriate to direct the Trial Court to complete the trial within a period of six months from the date of receipt of copy of this order. A1/husband of the respondent is directed to appear before the Trial Court on the next hearing date, failing which, the respondent is at liberty to approach this Court." B. However, with regard to the petition filed by the respondent, the High Court took the view that the application ought to have been filed within one year of the incident and since the appellant had left the matrimonial home in the year 2008, the application was abuse of process of the court. The relevant observations made were :-

"5. The only point for consideration is limitation. In this regard, it is relevant to rely upon the judgment in the case of Inderjit Singh Grewal vs. State of Punjab & Anr., reported in 2012 Crl.L.J. 309. Sections 28 and 32 of the Protection of Women from Domestic Violence Act, 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules 2006, makes the provisions of Criminal Procedure Code applicable. Therefore, the respondent ought to have filed the complaint within a period of one year from the date of the incident.

6. In the case on hand, the respondent left the matrimonial home in the year 2008 itself, thereafter, there are so many proceedings pending against the petitioner and the respondent herein, in respect to their family disputes. The petitioner was directed to pay a sum of Rs.30,000/- to the respondent herein and a sum of Rs.15,000/- to

the minor son as maintenance in MC No.261 of 2013 and it is under challenge before this Court in Crl.R.C.No.567 of 2018 and the petitioner herein has been continuously paying the maintenance to the respondent.

7. Therefore, on the ground of limitation, the entire complaint is nothing but a clear abuse of process of Court and it cannot be sustained as against the petitioner."

6. In these circumstances, the instant appeal is preferred by the appellant against the order allowing the Petition filed by the respondent.

7. We have heard Mr. Sharath Chandran, learned Advocate in support of the appeal and Mr. Siddhartha Dave, learned Senior Advocate for the respondent.

8. Mr. Sharath Chandran, learned Advocate submits: -

a) The limitation prescribed under Section 468 of the Code postulates inter alia that no cognizance be taken by the Court more than a year after the commission of offence. Thus, the limitation is to be reckoned from the date of commission of offence.

b) Section 12 of the Act speaks of filing of an application seeking one or more reliefs under the Act, whereafter the relevant material is considered by the Magistrate including any Domestic Incident Report.

The matter is then heard in terms of Sub-Section (4) and finally an order may be made on the application.

c) As laid down in Section 31 of the Act, any breach of an order passed inter alia under Section 12 of the Act is punishable with imprisonment of either description for a term which may extend to one year, or with fine, or with both. Thus, the offence under Section 31 of the Act will be said to have been committed only after the breach of an order passed under Section 12 of the Act, occurs.

d) There is no limitation under the Code or under the provisions of the Act for filing of an application and as such, the High Court was not right in observing that the proceedings were barred by limitation.

e) The Judgments relied upon by the High Court were completely distinguishable. Reliance was placed on the decision of the Single Judge of the High Court in Dr. P. Padmanathan & Ors. v. Tmt. V. Monica & Anr.2.

9. Mr. Siddhartha Dave, learned Senior Advocate for the respondent submits: -

i) The tabular chart prepared by the Protection Officer in his Report indicates that after 16.09.2008 for almost 10 years nothing was alleged against the respondent or

the father-in-law or sister-in-law.

ii) The parties had been living separately for last several years and the application was nothing but a desperate attempt to file something against the respondent in a court of law; and was clearly an abuse of process of court.

2 2021 SCC Online Mad 8731.

iii) Going by the dictum of this Court in Sarah Mathew v.

Institute of Cardio Vascular Diseases3, the starting point for reckoning the period of limitation ought to be from the date of application and as such, the High Court was justified in observing that the action was barred by time.

In the written submissions, it is also submitted that: -

"This Hon'ble Court in Adalat Prasad v. Rooplal Jindal4 held that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused, or any material implicating the accused, or in contravention of provisions of Sections 200 and 202, the order of the Magistrate may be vitiated. However, the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code, because the Code does not contemplate a review of an order. Hence in the absence of any review power, or inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code."

10. Before we consider the rival submissions, the relevant provisions, namely Sections 12, 28, 31 and 32 of the Act may be extracted: -

"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.

3 (2014) 2 SCC 62.

4 (2004) 7 SCC 338.

(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:

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.

(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.

(5) The Magistrate shall endeavor to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

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

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

31. Penalty for breach of protection order by respondent. — (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused."

11. Similarly, Section 468 of the Code is also set out for facility: -

> "468. Bar to taking cognizance after lapse of the period of limitation: -
>
> (1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.
>
> (2) The period of limitation shall be-
>
> (a) six months, if the offence is punishable with fine only
>
> (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
>
> (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.
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> (3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

12. In terms of Section 468 of the Code, the cognizance of an offence of the categories specified in Sub Section 2 can not to be taken after the expiry of the period specified therein.

In following cases, the complaints alleging commission of an offence were filed well in time so that cognizance could have been taken within the prescribed period, but the matters were considered by the Magistrate after the expiry of the prescribed period, and as such the cognizance in each of the cases was taken after the expiry of the period prescribed.

(A) A bench of three Judges of this Court in Krishna Pillai v. T.A. Rajendran & Anr.5, while dealing with Section 9 of the Child Marriage Restraint Act, 1929, which mandates that no Court should take cognizance of an offence after the expiry of one year from the day when the offence was allegedly committed, observed: -

> "3. It is not disputed that cognizance has been taken by the court more than a year after the offence was committed. Counsel for the respondents has stated that since the complaint had been filed within a year from the commission of the offence it must be taken 5 1990 (Supp.) SCC 121.

that the court has taken cognizance on the date when the complaint was filed. In that view of the matter there would be no limitation.

4. Taking cognizance has assumed a special meaning in our criminal jurisprudence. We may refer to the view taken by a five Judge bench of this Court in A.R. Antulay v. Ramdas Sriniwas Nayak6. At p. 530 (para 31) of the reports this Court indicated:

> "When a private complaint is filed, the court has to examine the complainant on oath save in the cases set out in the proviso to Section 200 Cr.P.C. After examining the complainant on oath and examining the witnesses present, if any, meaning thereby that the witnesses not present need not be examined, it would be open to the court to judicially determine whether a case is made out for issuing process. When it is said that court issued process, it means the court has taken cognizance of the offence and has decided to initiate the proceedings and a visible manifestation of taking cognizance process is issued which means that the accused is called upon to appear before the court."" (B) In Bharat Damodar Kale & Anr. v. State of Andhra Pradesh 7 a complaint was lodged within one year but the cognizance was taken after the period of one year was over. The complainant had approached within time and the delay was because of an act of court, over which the prosecuting agency or the complainant had no control. A bench of two Judges of this Court observed that "Limitation for taking cognizance of certain offences" must be reckoned from the day when the complaint was filed or proceedings were initiated. The discussion on the point was: -
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> "10. On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned counsel for the appellants, the limitation prescribed under the above Chapter applies to taking of cognizance by the court concerned, therefore 6 (1984) 2 SCC 500 : 1984 SCC (Cri) 277 7 (2003) 8 SCC 559.

even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus:

> "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence

either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be, after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control. Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase "actus curiae neminem gravabit" which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the earlier decision of this Court in the case of Rashmi Kumar v. Mahesh Kumar Bhada8 .

11. If this interpretation of Chapter XXXVI of the Code is to be applied to the facts of the case, then we notice that the offence was detected on 5-3-1999 and the complaint was filed before the court on 3-3-2000 which was well within the period of limitation, therefore, the fact that the court took cognizance of the offence only on 25-3-2000, about 25 days after it was filed, would not make the complaint barred by limitation.

12. In view of our above finding, we do not think it is necessary for us to go to the next question argued on behalf of the appellants that the court below was in error in invoking Section 473 of the Code for extending the period of limitation nor is it necessary for us to discuss the case of State of Himachal Pradesh v. Tara Dutt & Anr.9 relied on by the appellants." (Emphasis added) (C) In Japani Sahoo v. Chandra Sekhar Mohanty 10 the offence was allegedly committed on 2.2.1996 and the complaint was filed on 5.2.1996 but the cognizance of the offence was taken on 8.8.1997 when the period of limitation under Section 468 of the Code for the concerned offence was only six months. After considering the relevant cases on the point including Bharat Damodar Kale7, a bench of two Judges of this Court observed:

"48. So far as the complainant is concerned, as soon as he files a complaint in a competent court of law, he has done everything which is required to be done by him

at that stage. Thereafter, it is for the Magistrate to consider the matter, to apply his mind and to take an appropriate decision of taking cognizance, issuing process 8 (1997) 2 SCC 397 : 1997 SCC (Cri) 415 9 (2000) 1 SCC 230 : 2000 SCC (Cri) 125 10 (2007) 7 SCC 394.

or any other action which the law contemplates. The complainant has no control over those proceedings.

49. Because of several reasons (some of them have been referred to in the aforesaid decisions, which are merely illustrative cases and not exhaustive in nature), it may not be possible for the court or the Magistrate to issue process or take cognizance. But a complainant cannot be penalized for such delay on the part of the court nor can he be non-suited because of failure or omission by the Magistrate in taking appropriate action under the Code. No criminal proceeding can be abruptly terminated when a complainant approaches the court well within the time prescribed by law. In such cases, the doctrine 'actus curiae neminem gravabit' (an act of court shall prejudice none) would indeed apply. (vide Alexander Rodger v. Comptoir D' Escompte.11 One of the first and highest duties of all courts is to take care that an act of court does no harm to suitors.

50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.

51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of 11 (1871) LR 3 PC 465 : 17 ER 120 process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution.

52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the

period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.

53. In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible." (Emphasis added) (D) In Sarah Mathew v. Institute of Cardio Vascular Diseases etc. and others12, a bench of two Judges of this Court noted the facts of the case as under: -

> "1. Mr. K. Swami, learned counsel appearing for the appellant, submitted that the High Court [Institute of Cardio Vascular Diseases v. Sarah Mathew, Criminal OP No. 12001 of 1997, decided on 17-7-2002 (Mad)] was clearly wrong in holding that the proceeding against the respondents was barred by limitation, as provided under Section 468(2)(c) of the Code of Criminal Procedure, 1973, because the order issuing summons against the accused was passed by the Magistrate after three years from the date of the occurrence, even though the complaint was admittedly filed within the period of limitation. In support of the contention, he relies upon a two-Judge Bench decision of this Court in Bharat Damodar Kale7 in which, on an examination of the provisions 12 (2014) 2 SCC 102 contained in Chapter XXXVI of the Code of Criminal Procedure, it was held that the Court can take cognizance of an offence, the complaint of which is filed before it, within the period of limitation prescribed and, if need be, after excluding such time which is legally excludable. It further held that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code of Criminal Procedure. The decision in Bharat Damodar Kale7 is followed in another two-Judge Bench decision of this Court in Japani Sahoo v. Chandra Sekhar Mohanty10. In para 52 of the decision in Japani Sahoo10, it was reiterated that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court." Thereafter, noticing the conflict in the view taken in Bharat Damodar Kale7 and Japani Sahoo10 as against that in Krishna Pillai5, the matter was referred to a three Judge bench, which in turn referred13 the matter to a larger Bench. While doing so, the three-Judge Bench observed:
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> ".....The three-Judge Bench in Krishna Pillai5 has not adverted to diverse aspects including the aspects that inaction on the part of the court by not taking cognizance swiftly or within limitation, although the complaint has been filed within time or the prosecution has been instituted within time, should not act prejudicial to the prosecution or the complainant." (E) A Constitution Bench of this Court in Sarah

Mathew v. Institute of Cardio Vascular Diseases etc. and others 3 framed the questions for its consideration as under:

"3. No specific questions have been referred to us. But, in our opinion, the following questions arise for our consideration:

13 (2014) 2 SCC 104.

3.1. (i) Whether for the purposes of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of the prosecution or whether the relevant date is the date on which a Magistrate takes cognizance of the offence?

3.2. (ii) Which of the two cases i.e. Krishna Pillai5 or Bharat Kale7 (which is followed in Japani Sahoo10, lays down the correct law?" After noticing the 42nd Law Commission's Report and the relevant provisions and scheme of Chapter XXXVI of the Code, the Constitution Bench stated:

"37. We are inclined to take this view also because there has to be some amount of certainty or definiteness in matters of limitation relating to criminal offences. If, as stated by this Court, taking cognizance is application of mind by the Magistrate to the suspected offence, the subjective element comes in. Whether a Magistrate has taken cognizance or not will depend on facts and circumstances of each case. A diligent complainant or the prosecuting agency which promptly files the complaint or initiates prosecution would be severely prejudiced if it is held that the relevant point for computing limitation would be the date on which the Magistrate takes cognizance. The complainant or the prosecuting agency would be entirely left at the mercy of the Magistrate, who may take cognizance after the limitation period because of several reasons; systemic or otherwise. It cannot be the intention of the legislature to throw a diligent complainant out of the court in this manner. Besides, it must be noted that the complainant approaches the court for redressal of his grievance. He wants action to be taken against the perpetrators of crime. The courts functioning under the criminal justice system are created for this purpose. It would be unreasonable to take a view that delay caused by the court in taking cognizance of a case would deny justice to a diligent complainant. Such an interpretation of Section 468 CrPC would be unsustainable and would render it unconstitutional. It is well settled that a court of law would interpret a provision which would help sustaining the validity of the law by applying the doctrine of reasonable construction rather than applying a doctrine which would make the provision unsustainable and ultra vires the Constitution. (U.P. Power Corpn.

Ltd. v. Ayodhya Prasad Mishra14) 14 (2008) 10 SCC 139 : (2008) 2 SCC (L&S) 1000 *** *** ***

41. There can be no dispute about the rules of interpretation cited by the counsel. It is true that there is no ambiguity in the relevant provisions. But, it must be borne in mind that the word "cognizance" has not been defined in CrPC. This Court had to therefore interpret this word. We have adverted to that interpretation. In fact, we have proceeded to answer this reference on the basis of that interpretation and keeping in mind that special connotation acquired by the word "cognizance". Once that interpretation is accepted, Chapter XXXVI along with the heading has to be understood in that light. The rule of purposive construction can be applied in such a situation. A purposive construction of an enactment is one which gives effect to the legislative purpose by following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose or by applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (see Francis Bennion on Statutory Interpretation). After noticing this definition given by Francis Bennion in National Insurance Co. Ltd. v. Laxmi Narain Dhut15 , this Court noted that : (SCC p. 718, para 35) "35. More often than not, literal interpretation of a statute or a provision of a statute results in absurdity. Therefore, while interpreting statutory provisions, the courts should keep in mind the objectives or purpose for which statute has been enacted." In the light of this observation, we are of the opinion that if in the instant case literal interpretation appears to be in any way in conflict with the legislative intent or is leading to absurdity, purposive interpretation will have to be adopted.

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49. It is true that penal statutes must be strictly construed. There are, however, cases where this Court has having regard to the nature of the crimes involved, refused to adopt any narrow and pedantic, literal and lexical construction of penal statutes. (See Murlidhar Meghraj Loya v. State of Maharashtra16 and Kisan Trimbak Kothula v. State of Maharashtra.17 In this case, looking to the legislative intent, we have harmoniously construed the provisions of Chapter XXXVI so as to strike a balance between the right of the complainant and the right of the accused. Besides, we must bear in mind that Chapter XXXVI is part of the Criminal Procedure Code, which is a procedural law and it is well settled 15 (2007) 3 SCC 700 : (2007) 2 SCC (Cri) 142 16 (1976) 3 SCC 684 : 1976 SCC (Cri) 493 17 (1977) 1 SCC 300 : 1977 SCC (Cri) 97 that procedural laws must be liberally construed to serve as handmaid of justice and not as its mistress. (See Sardar Amarjit Singh Kalra (D) by Lrs. & Ors. v. Pramod Gupta (D) by Lrs. & Ors. 18, N. Balaji v. Virendra Singh19 and Kailash v. Nankhu & Ors.20" Finally, it was concluded in paragraphs 50 and 51 as under:

> "50. Having considered the questions which arise in this reference in the light of legislative intent, authoritative pronouncements of this Court and established legal principles, we are of the opinion that Krishna Pillai5 will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC, primarily because in that case, this Court was dealing with Section 9 of the Child Marriage Restraint Act, 1929 which is a special Act. It specifically stated that no court shall take cognizance of any offence under the said Act after the expiry of one year from the date on which offence is alleged to have been committed. There is no reference either to Section 468 or Section 473 CrPC in that judgment. It does not

> refer to Sections 4 and 5 CrPC which carve out exceptions for the special Acts. This Court has not adverted to diverse aspects including the aspect that inaction on the part of the court in taking cognizance within limitation, though the complaint is filed within time may work great injustice on the complainant. Moreover, reliance placed on Antulay '1984' case6, in our opinion, was not apt. In Antulay '1984' case6 this Court was dealing inter alia with the contention that a private complaint is not maintainable in the Court of the Special Judge set up under Section 6 of the Criminal Law (Amendment) Act, 1952 ("the 1952 Act"). It was urged that the object underlying the 1952 Act was to provide for a more speedy trial of offences of corruption by a public servant. It was argued that if it is assumed that a private complaint is maintainable then before taking cognizance, a Special Judge will have to examine the complainant and all the witnesses as per Section 200 CrPC. He will have to postpone issue of process against the accused and either inquire into the case himself or direct an investigation to be made by a police officer and in cases under the Prevention of Corruption Act, 1947 by police officers of designated rank for the purpose of deciding whether or not there is sufficient ground for proceeding. It was submitted that this would thwart the object of the 1952 Act

18 (2003) 3 SCC 272 19 (2004) 8 SCC 312 20 (2005) 4 SCC 480] which is to provide for a speedy trial. This contention was rejected by this Court holding that it is not a condition precedent to the issue of process that the court of necessity must hold the inquiry as envisaged by Section 202 CrPC or direct investigation as therein contemplated. That is matter of discretion of the court. Thus, the questions which arise in this reference were not involved in Antulay '1984' case6: since there, this Court was not dealing with the question of bar of limitation reflected in Section 468 CrPC at all, in our opinion, the said judgment could not have been usefully referred to in Krishna Pillai5 while construing provisions of Chapter XXXVI CrPC. For all these reasons, we are unable to endorse the view taken in Krishna Pillai5.

51. In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that Bharat Kale7 which is followed in Japani Sahoo10, lays down the correct law. Krishna Pillai5 will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC."

13. It is, thus, clear that though Section 468 of the Code mandates that 'cognizance' ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over.

14. The dictum in Sarah Mathew3 has to be understood in light of the situations which were dealt with by the Constitution Bench. If a complaint was filed within the period prescribed under Section 468 of the Code from the commission of the offence but the cognizance was taken after the expiry of such period, the terminal point for the prescribed period for the purposes of Section 468, was shifted from the date of taking cognizance to the filing of the complaint or initiation of proceedings so that a complaint ought not to be discarded for reasons beyond the control of the complainant or the prosecution.

15. Let us now consider the applicability of these principles to cases under the Act. The provisions of the Act contemplate filing of an application under Section 12 to initiate the proceedings before the concerned Magistrate.

After hearing both sides and after taking into account the material on record, the Magistrate may pass an appropriate order under Section 12 of the Act. It is only the breach of such order which constitutes an offence as is clear from Section 31 of the Act. Thus, if there be any offence committed in terms of the provisions of the Act, the limitation prescribed under Section 468 of the Code will apply from the date of commission of such offence. By the time an application is preferred under Section 12 of the Act, there is no offence committed in terms of the provisions of the Act and as such there would never be a starting point for limitation from the date of application under Section 12 of the Act. Such a starting point for limitation would arise only and only after there is a breach of an order passed under Section 12 of the Act.

16. We may now deal with the case on which reliance was placed by the High Court.

Inderjit Singh Grewal v. State of Punjab and another 21 was a case where the marriage between the parties was dissolved by judgment and decree dated 20.03.2008. Thereafter, the wife preferred an application under the provisions of the Act on 4.5.2009 alleging that the decree of divorce was sham and that even after the divorce the parties were living together as husband and wife; and that she was thereafter forced to leave the matrimonial home. It was, in these circumstances, that an application under Section 482 of the Code was filed by the husband seeking quashing of the proceedings under the Act. It was observed that a suit filed by the wife to declare the judgment and decree of divorce as a nullity was still pending consideration before the competent court. The effect of the proceedings culminating in decree for divorce was considered by this Court as under:-

> 21 (2011) 12 SCC 588 “16. The question does arise as to whether the reliefs sought in the complaint can be granted by the criminal court so long as the judgment and decree of the civil court dated 20-3-2008 subsists.

Respondent 2 has prayed as under:

> “It is therefore prayed that Respondent 1 be directed to hand over the custody of the minor child Gurarjit Singh Grewal forthwith. It is also prayed that Respondent 1 be directed to pay to her a sum of Rs 15,000 per month by way of rent of the premises to be hired by her at Ludhiana for her residence. It is also prayed that all the

> respondents be directed to restore to her all the dowry articles as detailed in Annexures A to C or in the alternative they be directed to pay to her a sum of Rs.22,95,000 as the price of the dowry articles. Affidavit attached." Thus, the reliefs sought have been threefold: (a) custody of the minor son; (b) the right of residence; and (c) restoration of dowry articles.

17. It is a settled legal proposition that where a person gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law." It is trite that "fraud and justice never dwell together" (fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine." An act of fraud on court is always viewed seriously. (Vide Meghmala v. G. Narasimha Reddy22)

18. However, the question does arise as to whether it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court. The issue is no more res integra and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. [Vide State of Kerala v. M.K. 22 (2010) 8 SCC 383 Kunhikannan Nambiar Manjeri Manikoth23 and Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd.24]" The plea based on the issue of limitation was then considered in paragraphs 32 and 33 and it was observed: -

> "32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty10 and NOIDA Entrepreneurs Assn. v. NOIDA25.
>
> 33. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the 2005 Act is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court.

Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

17. Another case on which reliance was placed during the hearing was Krishna Bhattacharjee v. Sarathi Choudhary 26. In that case, a decree for judicial separation was passed by a competent court. Thereafter, an application under Section 12 of the Act was preferred by the wife seeking 23 (1996) 1 SCC 435 24 (1997) 3 SCC 443 25 (2011) 6 SCC 508 26 (2016) 2 SCC 705 return of Stridhan articles and allied reliefs. A plea was taken by the husband that the proceedings under the Act were barred by time. The Magistrate held that as a result of decree for judicial separation, the parties ceased to be in domestic relationship and as such, no relief could be granted.

The appeal arising therefrom was dismissed by the lower appellate court and finally revision preferred by the wife was also dismissed by the High Court.

In light of these facts, the issue of limitation was considered by this Court as under: -

> "32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan 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 stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which has been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in Inderjit Singh Grewal21 that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan 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.
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> 33. In the present case, the wife had submitted the application on 22-5-2010 and the said authority had forwarded the same on 1-6-

2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well

as the High Court had fallen into a grave error by dismissing the application being barred by limitation."

18. Inderjit Singh Grewal21 was decided before the decision of this Court in Sara Mathew3. Rather than the issue of limitation, what really weighed with this Court in Inderjit Singh Grewal21 was the fact that the domestic violence was alleged after the decree for divorce, when any relationship between the parties had ceased to exist. It is true that the plea based on Section 468 of the Code was noted in paragraph 32 of said decision but the effect and interplay of Sections 12 and 31 of the Act was not noticed. In Krishna Bhattarcharjee27 as is evident from paragraph 33 of the said decision, the plea of limitation was rejected as the offence was found to be continuing one and as such there was no terminal point from which date the limitation could be reckoned.

Thus, none of these decisions is material for the purposes of the instant matter.

19. The special features with regard to an application under Section 12 of the Act were noticed by a Single Judge of the High Court in Dr. P. Padmanathan & Ors.2 as under:

> "19. In the first instance, it is, therefore, necessary to examine the areas where the D.V. Act or the D.V. Rules have specifically set out the procedure thereby excluding the operation of Cr.P.C. as contemplated under Section 28(1) of the Act. This takes us to the D.V. Rules. At the outset, it may be noticed that a "complaint" as contemplated under the D.V. Act and the D.V. Rules is not the same as a "complaint" under Cr.P.C. A complaint under Rule 2(b) of the D.V. Rules is defined as an allegation made orally or in writing by any person to a Protection Officer. On the other hand, a complaint, under Section 2(d) of the Cr.P.C. is any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person, whether known or unknown has committed an offence. However, the Magistrate dealing with an application under Section 12 of the Act is not called upon to take action for the commission of an offence. Hence, what is contemplated is not a complaint but an application to a Magistrate as set out in Rule 6(1) of the D.V. Rules. A complaint under the D.V. Rules is made only to a Protection Officer as contemplated under Rule 4(1) of the D.V. Rules.

20. Rule 6(1) sets out that an application under Section 12 of the Act shall be as per Form II appended to the Act. Thus, an application under Section 12 not being a complaint as defined under Section 2(d) of the Cr.P.C, the procedure for cognizance set out under Section 190(1)(a) of the Code followed by the procedure set out in Chapter XV of the Code for taking cognizance will have no application to a proceeding under the D.V. Act. To reiterate, Section 190(1)(a) of the Code and the procedure set out in the subsequent Chapter XV of the Code will apply only in cases of complaints, under Section 2(d) of Cr.P.C, given to a Magistrate and not to an application under Section 12 of the Act."

20. It is thus clear that the High Court wrongly equated filing of an application under Section 12 of the Act to lodging of a complaint or initiation of prosecution. In our considered view, the High Court

was in error in observing that the application under Section 12 of the Act ought to have been filed within a period of one year of the alleged acts of domestic violence.

21. It is, however, true that as noted by the Protection Officer in his Domestic Inspection Report dated 2.08.2018, there appears to be a period of almost 10 years after 16.09.2008, when nothing was alleged by the appellant against the husband. But that is a matter which will certainly be considered by the Magistrate after response is received from the husband and the rival contentions are considered. That is an exercise which has to be undertaken by the Magistrate after considering all the factual aspects presented before him, including whether the allegations constitute a continuing wrong.

22. Lastly, we deal with the submission based on the decision in Adalat Prasad4. The ratio in that case applies when a Magistrate takes cognizance of an offence and issues process, in which event instead of going back to the Magistrate, the remedy lies in filing petition under Section 482 of the Code.

The scope of notice under Section 12 of the Act is to call for a response from the respondent in terms of the Statute so that after considering rival submissions, appropriate order can be issued. Thus, the matter stands on a different footing and the dictum in Adalat Prasad4 would not get attracted at a stage when a notice is issued under Section 12 of the Act.

23. We, therefore, allow this appeal and set aside the view taken by the High Court. Crl. O.P. No.28924 of 2018 is accordingly, dismissed. The husband shall file his response before the Magistrate within two weeks and the matter shall thereafter be considered by the Magistrate in terms of the provisions of the Act.

24. We must clarify that we have considered the instant matter from the perspective whether the application preferred under Section 12 of the Act was rightly considered by the High Court for reckoning the period of limitation. We have not and shall not be taken to have expressed any view on merits of the matter which shall be gone into independently at every stage.

25. The appeal is, thus, allowed. No order as to costs.

……J. [Uday Umesh Lalit] ……J. [Pamidighantam Sri Narasimha] New Delhi;

April 13, 2022.