

In Amrut A Kulkarni vs In Aged About 35 Years on 17 June, 2021

BEFORE THE LXVI ADDL.CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY.
(CCH-67)

DATED: This the 17th day of June, 2021

PRESENT

Smt. K.KATHYAYANI, B.Com, L.L.M .
LXVI Addl.City Civil & Sessions Judge,
Bengaluru.

Crl.Appeal Nos.84/2020 & 205/2020

Appellant in
Crl.Appeal
No.84/2020 and

Amrut A Kulkarni,
Aged about 39 years,

S/o Anand N Kulkarni,
R/at No.127, BHEL Layout,
Kenchenahalli,
Rajarajeshwari Nagara,
Bengaluru - 560 098.
(By Sri.Manohar MRC., Advocate .)

Respondent in
Crl.Appeal
No.84/2020 and

/VS/
Rashmi Hongunti,
Aged about 35 years,
W/o Amrut A Kulkarni,
R/at No.H-103, Mantri Alpyne,
Uttaralli Main Road,
Banashankari 5th Stage,
Bengaluru 560 061.
(By Smt.T.R.Rajeshwari, Advocate.)

Appellant in
Crl.Appeal
No.205/2020

/Vs/
Rashmi Hongunti,
Aged about 35 years,

W/o Amrut A Kulkarni,
R/at No.H-103, Mantri Alpyne,
Uttaralli Main Road,
Banashankari 5th Stage,
Bengaluru 560 061.
(By Smt.T.R.Rajeshwari, Advocate.)
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Respondents in
Crl.Appeal
No.84/2020

/VS/
1. Amrut A Kulkarni,

S/o Anand N Kulkarni,
Aged 38 years.

2. Sharadha,
W/o Anand Rao,
Aged 65 years.

3. Anand N Kulkarni,
S/o Narayan Rao,
Aged 69 years.

4. Aditya Kulkarni,
S/o Anand Kulkarni,
Aged 34 years.

All are residing at No.127,
BHEL Layout, Kenchenahalli,
Rajarajeshwari Nagar,
Bengaluru 560 098.

(By Sri.Manohar MRC., Advocate .)

COMMON JUDGMENT

Both the above appeals are filed by the respective appellant/appellants under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short, "the Act") being aggrieved by the order passed on I.A.No.I in Crl.Misc.104/2019 (for short, "the present case") dated 20.12.2019 by the learned MMTC-III, Bengaluru.

2. For the sake of convenience, the ranks of the parties are retained as they are before the learned Magistrate Court.

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3. The record reveals that the petitioner has come up with the present case under Section 12 of the Act for an order to take cognizance of domestic violence and direct her husband/the 1st respondent,

a) to pay the EMI regularly to the State Bank of India, PBB, Jayanagar Branch, in respect of house loan availed for purchase of the Flat No.H103, Mantri Alpine,

Uttarahalli, Bengaluru under Section 19;

b) direct him to pay monetary relief for her and her child under Section 20;

c) to pay educational expenses of the child; and

d) to grant compensation or damages under Section 22 of the Act.

4. On 05.08.2019, the petitioner filed IA.No.1 under Section 19 read with Section 23 of the Act to direct her husband to clear the EMI that has fallen in arrears since August-2019 and to direct to keep paying EMIs regularly.

5. The grounds urged by the petitioner in the affidavit in support of IA.No.1 are that;

a) She and the 1st respondent/her husband both jointly decided to purchase a Flat for their separate
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residence considering the harassment at the hand of the 2nd respondent/her mother in law.

b) She and 1st respondent decided to purchase a 3 bed room Flat in Mantri Alpyne at Vishnuvardhana Road, Banashankari 5th Stage.

c) The project was just started and was about to complete by 2014.

d) In May 2012, she and the 1st respondent jointly paid down payment of Rs.6 lakhs. She contributed Rs.3 lakhs and the 1st respondent initially paid Rs.2 lakhs and later, they arranged for the remaining Rs.1 lakh.

e) The EMI started around from August-2012.

Initially, the loan account was in Axis Bank in the name of the 1st respondent. However, she used to transfer 50% of the EMI amount to the account of the 1st respondent.

f) Later, the 1st respondent insisted to have joint account and since then, 50% of EMI amount was directly transferred from her salary account.

g) She has been paying her 50% of EMI at the rate of Rs.24,500/- per month and the 1st respondent was also contributing the same amount towards the EMI.

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h) Since, there was a need to pay Rs.10 lakhs at the time of taking possession to the builder and to meet the other expenditures such as interiors and furnitures, the 1st respondent opened a RD account in ICICI Bank in his name and directed her to transfer Rs.15,000/- every month to that account.

i) The interior and other necessary things were done by November-2016. They did a house warming ceremony by doing homa and other poojas.

j) Thereafter, they were visiting the Flat to make the house livable for by making TV cabinets, lighting accessories etc.

k) At the end of March-2017, when it was decided to move to the apartment, the 1st respondent not only started behaving oddly and avoiding joining, but also started

picking up the quarrel with her for no reasons.

l) Later, he came with a demand to sell the Flat for which she was totally shocked and when she refused for the proposal to sell the Flat, the 1st respondent started her to pressurize to transfer her share of right to him so that he would sell the property.

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m) The 1st respondent got issued a legal notice to her giving a wrong address and by stating incorrect statements seeking restitution of conjugal rights and stopped paying the EMI from March-2018 and on confronting with the reply notice, he started paying the EMI.

n) The 1st respondent deliberately stopped paying the EMI since February-2019. She is unable to save any amount after spending the EMI and maintaining 2 houses and also the child. Due to threat of disconnection of water supply, she was forced to pay Rs.16,183/- on 27.08.2019 towards the part of arrears of Rs.38,000/-.

o) That apart, she paid Rs.1,25,000/- apart from Rs.70,000/- paid by the 1st respondent towards the admission of the child to the school.

p) Due to the financial crunch, she was unable to pay her part of EMI for the months of April , May and July-2019. She has taken hand loan from friends to meet the school expenditure of the child and also pay the arrears of maintenance charge of the Flat.

q) The 1st respondent is drawing a salary double to the amount of her, is liable to pay the EMI of the Flat. The
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1st respondent is not paying his part of EMI to the bank with an ulterior motive to throw her and the child on the road and instigating the bank to take necessary action.

r) The 1st respondent is working in Cisco Systems India Pvt. Ltd. and he is earning sum of Rs.3 lakhs per month. Apart from payment of Rs.25,000/- of EMI, he has no other liability as such.

s) The 3rd respondent is a retired employee and is getting pension of Rs.25,000/- per month and he owns properties in Hubli and Bengaluru. Hence, the 2 nd and 3rd respondents are not depending on the 1st respondent.

t) She has been receiving phone call from the bank demanding to pay the EMI although, she has paid her part of EMI. The bank has threatened her that they would initiate action under SARFACIA Act.

u) She is under constant threat and mental torture due to the 1st respondent not paying the EMI in spite of his financial capability.

6. On the other hand, admitting purchase of the Flat jointly, the defence raised by the 1 st respondent in his objections to IA.No.1 is that;

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a) The petition, itself is not maintainable, as they are

not living together as on the date of filing the above petition and in fact, they are living separately for the last more than 3½ years.

b) He never tortured the petitioner at any point of time and on the other hand, the petitioner herself tortured him and his family members without any valid reasons.

c) He incurred heavy financial losses for paying installment and interest on the borrowed loan and has not received any returns right from 2012 till date. Added to this, his mother is a cancer patient and he has to incur heavy medical expenses and hence, he is not in a position to pay the EMI.

d) The petitioner has deserted him and the matrimonial home since December-2015. She is gainfully employed. He sent a legal notice to her to join him back at the matrimonial home, but instead of joining the matrimonial home, she made false allegations in the reply notice and refused to join him in her matrimonial home.

e) The income stated by the petitioner i.e., Rs.76,000/- per month itself is sufficient to lead a

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comfortable life, wherein her actual income is more than her above stated income.

f) The Flat occupied by the petitioner has never been a shared household with any of the respondent at any point of time.

7. On hearing the above application and the objections thereto, the learned Magistrate was pleased to allow the said application vide order dated 20.12.2019 and directed her husband to pay EMI regularly towards housing loan as he was paying earlier from the date of petition till further orders.

8. Being aggrieved by the said order, the 1st respondent has come up with the above CrI.Appeal No.84/2020 reiterating his above noted case and on the grounds that;

a) The application under Section 19 read with Section 23 of the Act filed by the petitioner is frivolous, vexatious and not maintainable either in law or on facts and the same is liable to be set aside.

b) The allegations of the petitioner of domestic violence are false and far from truth.

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c) The main petition itself is not maintainable since they were residing separately for more than 3½ years.

d) He has issued a legal notice to the petitioner on 03.04.2018 calling upon her to come and join him. She instead of joining him has given vague reply on 17.04.2018 making false allegations and has stated that she has shifted to her parent's house in December-2015.

e) She has admitted that she is residing in the said apartment since March-2018 which clearly indicates that

she was not staying with him since December-2015. As per the decision of the Hon'ble High Court of Karnataka when the parties are not lived in a shared household, they cannot make an application under Section 12 of the Act.

f) Admittedly, the petitioner is residing separately for the last 3½ years and in terms of Section 468 of Cr.P.C. the petition is barred by limitation, she would have filed the petition within one year from the separation and hence, on this score itself, the petition is liable to be dismissed.

g) He has never tortured the petitioner, but she has subjected him and his family members to torture.

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h) The Flat was purchased for the purpose of investment only and not to reside separately due to harassment at the hands of his parents as alleged by the petitioner.

i) He has incurred heavy financial loss for paying installment and interest on borrowed loan and has not received any returns right from 2012 till date. His mother is a cancer patient and he has been incurring heavy medical and dietary expenses.

j) The petitioner has deserted him since December-2015 and also she is gainfully employed.

k) The petitioner has stated that her take home salary is Rs.76,000/- which is sufficient to live a comfortable life. But, she has concealed her actual income and deliberately

not produced her salary slip and she is getting take home salary of more than Rs.76,000/- and she also gets half yearly bonus from her employer CISCO.

l) The Flat occupied by the petitioner was never been a shared household with him at any point of time and his salary was never Rs.3 laksh as stated by her and she with mala fide intention has stated a blown up figure.

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m) The trial Court erred in passing the impugned order under Section 19 read with Section 23 of the Act as Section 19 of the Act mandates that (1) while disposing of an application under sub section (1) of Section 12, the Magistrate on being satisfied that domestic violence has taken place, pass a residence order.

n) Though the requirement under Section 12 of the Act was not proved still the evidence is not led and the documents were not placed before the Court. The Court erred in passing an order of residence under Section 19 read with Section 23 of the Act before the petitioner proves that there was a domestic violence.

9. The petitioner appeared through counsel and filed objections in Crl.Appeal No.84/2020 reiterating her aversions in support of IA.No.1 noted above and in addition, contending that since the 1 st respondent did not comply the order and obtained an order of stay, she has paid a sum of Rs.1,05,000/- in addition to her part of EMI

payable at Rs.25,000/- per month in January-2020 by taking hand loans towards the part of the EMIs payable by him.

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10. The petitioner has come up with the above Crl.Appeal No.205/2020 on the grounds that;

a) The order passed by the trial Court is without appreciation of the material on record and without considering the facts of the case.

b) She has specifically contended in the application that the 1st respondent has deliberately stopped paying the EMI towards the Flat since February-2019 and for the past 12 months, the EMI has not been paid and hence, the order suffers from infirmity on the said ground.

c) The trial Court ought to have allowed the application in toto instead of allowing in part since the Court has taken into consideration the admitted fact by the 1st respondent in the statement of objections that the Flat was purchased jointly by him along with her and both of them were paying the installment amount.

d) The trial Court has not assigned any reason while allowing the said application partly as to why the order is made from the date of petition and not from the day of the 1st respondent has fallen in arrears.

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e) The 1st respondent is working in Cisco Systems India Pvt. Ltd. and he is earning a sum of Rs.3 lakh per month. Apart from Rs.25,000/- of EMI, the 1st respondent has to pay maintenance and other charges. He has no other liability as such.

f) The bald statement that the 1st respondent is not financially in a position to pay the EMI is not sustainable. That apart, the 1st respondent justifies his action on the convention that the Flat does not fetch any rent. The moment the 1st respondent admitted to the said contention, he has committed economic offence so as to put her and the child in a threat of dispossession from the property at the hands of the Bank.

g) She in her pleadings has substantiated the domestic violence committed by the respondents at length and also the police complaint lodged by her before the RR Nagar police when the 1st respondent and his brother assaulted her on 20.04.2018.

h) The 1st respondent had committed default of EMI at that time and after the police admonished him, he paid the EMI from May-2018 to February-2019.

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i) The 2nd to 4th respondents are not dependents on the 1st respondent. The 3rd respondent is a retired employee and is getting pension of Rs.25,000/- per month. Apart from that, he owns the properties in Hubli and Bengaluru.

The 4th respondent is also gainfully employed.

j) The trial Court has not assigned any reasons for not directing her to pay EMI from February 2019 to August 2019. The same will be financial burden on her for which she is not in a position to pay the EMI for those months.

k) The bank has issued possession notice on 20.11.2019 and sale notice on 27.11.2019 to her and the 1st respondent. At any point of time, the bank may initiate proceedings in public auction of the house and if it is so, then her life along with her child will be in jeopardy. Hence, the impugned order deserves to be modified.

11. In this appeal of the petitioner, the 1st respondent filed his statement of objections contending that;

a) He has filed the appeal challenging the impugned order directing him to pay the EMI from the month of February-2019 which amounted to Rs.1,50,000/- as on date of filing of the petition and also for issuance of
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direction to keep paying the EMI regularly towards the housing loan and if he succeeds in his appeal, this appeal will not survive.

b) The petitioner left the matrimonial home during December-2015. From that day onwards, she is residing separately and hence, she is not in the shared household and as such, she is not entitled to claim any reliefs under Sections 12, 19, 21 and 23 of the Act.

c) The petitioner is working as a IT Engineer in CISCO an American MNC and gainfully employed drawing a monthly take home salary of Rs.1,25,000/- and able to maintain herself and the child comfortably. As such, she is not entitled for any interim relief as claimed by her.

d) He is sharing expenses towards the welfare of the child and the same is admitted by the petitioner in the present case filed under Section 12 of the Act.

12. Secured the trial Court record.

13. During the trial, the counsel for the 1 st respondent retired from the case and the 1 st respondent in person contested the matter.

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14. Heard both the sides on merits of the case. In addition, the 1st respondent has also filed his written arguments.

a) In support of his oral arguments, the counsel for the petitioner has produced the online printout of the decisions/judgments in;

1) Criminal Revision Petition No.730/2019 on the file of the Hon'ble High Court of Karnataka, Bengaluru.

2) CRM-M-37116 of 2012 (O&M) and

3) CRM-M-No.29008 of 2014, both on the file of the Hon'ble High Court of Punjab and Haryana at Chhattisgarh.

4) Criminal Revision Application No.611/2015 on file of the the Hon'ble High Court of Gujarat at Ahmedabad.

5) (2016) 2 Supreme Court Cases 705.

b) On the other hand, the 1st respondent has produced the online printouts of the decisions/judgments in;

1) CrL.M.C.No.3878/2009 on the file of the Hon'ble High Court of Delhi.

2) CRR.No.3104/2014 with CRAN No.559/2015 on the file of the Hon'ble High Court of Calcutta.

3) S.B.Criminal Revision Petition No.364/2012 on the file of the Hon'ble High Court of Rajasthan.
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4) No.34053/2019 on the file of the Hon'ble Supreme Court of India.

5) Criminal Application No.160/2011 on the file of the Hon'ble High Court of Bombay.

6) Criminal Petition No.2419/2009 and

7) Criminal Revision Petition No.1146/2019 both on the file of the Hon'ble High Court of Karnataka.

8) CRL.O.P.No.29476 of 2017 and CrL.MP.Nos.16653-16654 of 2017 on the file of the Hon'ble High Court of Madras.

9) FAM.No.97 of 2014 on the file of the Hon'ble High Court of Chhattishgarh.

10) Cr.C.No.19979/2019 on the file of the Hon'ble High Court of Madhya Pradesh.

11) FA0(OS)341/2007 on the file of the Hon'ble High Court of Delhi.

12) Civil Appeal No.4666 of 2008 (Special Leave Petition (Civil No.17260 of 2007));

13) Civil Appeal No.2500/2017;

14) Criminal Appeal No.1635 of 2011; and

15) Criminal Appeal No.1545 of 2015 all on the file of the Hon'ble Supreme Court of India.

c) This Court has carefully gone through the written

arguments filed by the 1st respondent in person and also the above noted decisions/judgments relied on by the respective parties and perused the record.

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15. On the basis of the grounds made out, following points are arisen for the due determination of this Court in both the appeals.

- 1) Whether the respective appellants prove the grounds urged by them in support of their respective appeals?
- 2) Whether the impugned order requires interference by this Court?
- 3) What Order?

16. The findings of this Court on the above points are;

- 1) Points Nos.1 & 2 : In Affirmative in respect of Crl.A.No.205/2020 and in Negative in respect of Crl.A.No.84/2020.
- 2) Point No.3 : As per the final order for the following reasons.

REASONS

17. POINTS Nos.1 AND 2:- As the findings on point No.2 is consequential to the findings on point No.1, they are taken together for consideration.

18. The above noted pleadings clearly demonstrate that there is no dispute between the parties with regard to the facts that;

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- a) The petitioner is the wife of the 1 st respondent; the

2nd and 3rd respondents are the parents and the 4th respondent is the brother of the 1st respondent.

b) Both the petitioner and the 1st respondent are working in CISCO, an American MNC Company.

b) Both the petitioner and the 1st respondent purchased the Flat in question jointly and were paying 50% of EMI each and the 1st respondent did not pay his 50% share of the EMI from February 2019.

c) The petitioner and the 1st respondent had performed the house warming ceremony of the Flat with the customary homas and poojas and the petitioner has been residing with their daughter in the Flat since March 2018.

d) The 3rd respondent is a retired employee and getting pension and the 4th respondent is also employed.

e) The 2nd respondent is a house wife and is a cancer patient.

f) The petitioner and the 1st respondent begotten a daughter and the 1st respondent paid Rs.70,000/- for the school admission of their daughter.

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19. The facts in dispute between the parties are;

a) It is the case of the petitioner that the Flat was purchased for their separate residence due to the harassment of the 2nd respondent and on the other hand, it is the contention of the 1st respondent that the Flat was

purchased as an investment.

b) The 1st respondent apart from making the payment of EMI and the maintenance charges of the Flat has had no other responsibilities as the rest of the respondents are not depending on him. On the other hand, it is the contention of the 1st respondent that he has incurred heavy loss due to payment of EMI and the interest on the loan borrowed without any returns from the Flat since 2012, that apart he has to incur heavy expenses towards the medicine and diet for his mother who is a cancer patient.

c) The allegations and counter allegations of the parties with regard to the alleged harassment and the quantum of income they have had.

20. All the above disputed facts require a full pledged trial.

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21. So far the present appeals, the above noted rival contentions of the parties clearly demonstrate that main grounds urged by the 1st respondent in support of his appeal are;

a) Since the petitioner has deserted him and has been residing separately since December-2015, she cannot maintain the present case under Section 12 of the Act.

b) The present case ought to have filed within one year under Section 468 of Cr.P.C. and thus, it is hit by limitation.

c) The Flat was purchased for the investment purpose and not for self occupation. He has incurred heavy loss for payment of EMI and interest accrued on the loan without returns for 7 years.

d) The petitioner is gainfully employed and has salary of Rs.1,25,000/- apart from the other incentives and bonus.

e) He has no income of Rs.3 lakhs per month as stated by the petitioner. He has to incur heavy medical expenditure for his mother/the 2nd respondent who is a cancer patient.

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22. On the other hand, the ground urged by the petitioner in support of her appeal is that the trial Court has erred in directing the 1st respondent to pay the EMI from the date of petition instead from the date of due.

23. As rightly contended by the 1st respondent that if he succeeds in his appeal, the appeal of the petitioner has to fail. Hence, let this Court to take the grounds urged by the 1st respondent first one after another and thereafter the ground urged by the petitioner in support of her appeal.

24. As noted above, the first and foremost ground urged by the 1st respondent is that the petitioner cannot maintain an application under Section 12 of the Act as she is residing separately from last 3½ years.

25. So before venturing on the merits of this ground,

let this Court to go through the relevant provisions of law in this regard i.e., first Section 12 of the Act which is extracted here below;

"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:

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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 of the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for any 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.

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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.

(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.

26. For the better understanding of the above provision, let this Court to have a look at the definitions of "aggrieved person", "respondent" and "domestic violence" i.e., Sections 2(a), (q) and (g) of the Act which are extracted here below.

"2. Definitions.- In this Act, unless the context otherwise require,-

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

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act;

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(g) "domestic violence" has the same meaning as assigned to it in

section 3:"

27. So, now it is necessary to go through the definition of "domestic relation" i.e., Section 2(f) and the provision of Section 3 of the Act to understand "domestic violence" and it is extracted here below;

"(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;

"3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission of 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 attends 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

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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- 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 of 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

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(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, household necessities for the aggrieved person and her children, if any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household 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 stridhan 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

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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.

28. In the background of the above provisions, in view of the admitted relationship between the 1 st petitioner and the respondents and the admitted fact that after the marriage, the petitioner lived in her matrimonial home with the respondents, there is no dispute with regard to the fact that the 1st petitioner was in domestic relationship with the respondents.

29. So, if the petitioner is successful in establishing that she was subjected to any act of domestic violence stated in Section 3 of the Act noted above, by the

respondents. she is entitled for the reliefs provided under the Act.

30. So far the economic abuse, in her main petition, the petitioner has contended that the 1st respondent pressurized her to sell the Flat and on her refusal, to
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transfer her right in the Flat in his favour, whereby he can sell the Flat. This allegation, prima facie attract the offence under Section 3(iv)(b) of the Act noted above.

31. With regard to the above allegations, though the 1st respondent in the statement of objections to the main petition, admitted the proposal for sale of the Flat, it is his contention that because of the builder problems, he suggested to sell the Flat and to come out of the problems, he has denied the alleged act of pressurizing the petitioner to sell the Flat.

32. Hence, this allegation of the pressurizing the petitioner to sell the Flat or to transfer her right in the Flat in favour of the 1st respondent, whereby he can sell the Flat the defence raised by the 1st respondent in that regard need adjudication.

33. However, so far the present appeals on the impugned orders on IA.No.1, the alleged domestic violence is the economic abuse i.e., non payment of the EMI i.e., 50% share of the 1st respondent from February-2019 and there is no dispute with regard to the said fact i.e., the 1st

respondent has not paid his share of 50% of EMI from February 2019.

34. Of course, the defence raised by the 1st respondent is that the Flat was purchased as an investment and he incurred heavy loss without returns from 2012 due to payment of EMI, the interest on the loan borrowed, but all the above are subject to trial.

35. However, at this pre trial stage, the admitted fact of the 1st respondent remaining in arrears of his 50% share of EMI, prima facie say that it definitely attracts the ingredients of economic abuse under Section 3(iv)(a) of the Act noted above.

36. The impugned order is admittedly, passed on the application under Section 19 read with Section 23 of the Act. For better appreciation of the case, the above provisions are extracted here below;

"19. Residence orders.- (1)
While disposing of an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in any other
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manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable

interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or entering the same;

(e) restraining the respondent from renouncing his right in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level or alternate accommodation or the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so required:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved

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person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VII of the Code of

Criminal Procedure, 1973 (2 of 1974)
and shall dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the Court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession

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of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

23. Power to grant interim and ex parte orders.- (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is 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, or the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent".

37. So, the plain reading of the above provisions clearly demonstrate that the trial Court is empowered to pass the impugned order.

38. As noted above, it is the ground urged by the 1st respondent that since the petitioner residing separately since December-2015, she cannot maintain an application under Section 12 of the Act.

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39. In support of his contention that the petitioner is residing separately since December-2015 and in the Flat since March-2018, he has relied on the contents of her reply dated 17.04.2018. The relevant portions of the said reply notice read;

".....

The notice sent to my client by mail Secondly, the address to which the notice issued is incorrect and your client is very much aware that my client is residing at No.H-103, Mantri Alpyne, Vishnuvardhan Road, BSK V Stage, Bangalore - 560 061.

.....

It is true that my client was confirmed of having conceived in the month of October 2015. Due to the unbearable torture, humiliation, she shifted to her parents' house in December-2015. Your client himself had at that time sent my client taking all these facts into concern. In the month of February, your client requested my client to make arrangement, for her parents to come down to Bangalore and reside nearby

the apartment, that they had booked (which I would state in further para) so as to take care of their child after delivery. It was very clear that, your client's parents were not prepared to take care of the child. Hence my client set up a house near by the apartment and brought her parents and started living there. Please note that your client has never contributed for setting
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up a house although, it was at his instance that the house was set up.

.....

In 2012, your client and my client jointly decided to purchase a flat and accordingly, The apartment was ready by November 2016 and both of them have also done the house warming ceremony by doing the gruha pravesha. After gruha pravesha, they had been visiting to the apartment to setup and make arrangements till the month of March 2017. Whenever he visited or my client visited in laws' house, she observed that Later on when it was time for moving to the apartment, started pressurizing my client to transfer her share of right to himself or to sell the property. My client was totally aghast at the proposal and when she denied to heed to the demands of your client, he started abusing and threatening her of dispossessing her from the property. It is relevant to state here that, my client is residing in the apartment since March-2018.

....."

40. So, the plain reading of the above contents of the reply notice clearly in support of the contention of the 1 st respondent that the petitioner has been residing separately since December-2015 and has been residing in the Flat since March-2018, but whether it is on her own or the

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circumstances warrant her to do so as averred by her are all subject to trial.

41. In support of this ground, the 1 st respondent has relied on the decisions reported in;

a) CrI.M.C.No.3878/2009 between Vijay Verma versus State NCT of Delhi & Anr decided on 13.08.2010 before his Lordship Hon'ble Justice Shiv Narayan Dingra wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Delhi that;

".....

7. This meaning of domestic relation has sense when to definition of domestic violence and purpose of the Act. The purpose of the Act is to give remedy to the aggrieved person against domestic violence. The domestic violence can take place only when one is living in shared household with the respondents. The act of abuses, emotional or economic, physical or sexual, verbal or nonverbal if committed when one is living in the same shared household constitutes domestic violence. However, such acts of violence can be committed even otherwise also when one is living separate. When such acts of violence take place when one is living separate, these may be punishable under different provisions of IPC or other penal laws, but, they cannot be covered under Domestic
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Violence Act. One has to make distinction between violence committed on a person living separate in a separate house and the violence committed on a person

living in a shared household. Only violence committed by a person while living in the shared household can constitute domestic violence. A person may be threatening another person 100 miles away on telephone or by message etc. This may amount to an offence under IPC, but, this cannot amount to domestic violence. Similarly, emotional blackmail, economic abuse and physical abuse can take place even when persons are living miles away. Such abuses are not covered under domestic Violence Act but they are liable to be punished under Penal laws. Domestic Violence is violence which is committed when parties are in domestic relationship, sharing same household and sharing all the household goods with an opportunity to commit violence.

...."

b) S.B.Cr.Revision Petition No.364/2012 between Nishant Hussain Vs. Seema Saddique & Anr. Decided on 21.09.2012 before her Ladyship Honb'le Mrs. Nisha Gupata, J., wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Rajasthan at Jodhpur that;

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".....

It is not in dispute that the only incident of August, 2007 has been alleged which is apparently seems to be designed for this petition. Taken to be true that the incident of August, 2007 has occurred between the parties, still it does not constitute the act of domestic violence.

.....

This clearly suggests that for constituting domestic violence, overall facts and circumstances of the case shall be taken into consideration. Here in the present case, the incident

of August, 2007 cannot be termed as domestic violence as the parties were living separately since 2002.

In view of the above, this revision petition is allowed and the impugned orders of the Courts below are hereby quashed and set aside".

c) Criminal Application No.160 of 2011 between Sejal Dharmesh Ved Vs. The State of Maharashtra & Ors decided on 7th March, 2013 before her Ladyship Mrs.Roshan Dalvi, J., wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Judicature at Bombay that;

".....

6. A wife who has returned from the USA and consequently from the domestic relationship and lived in India for one year cannot file an

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application with regard to the relationship after such time. Such wife cannot be taken to be in any domestic relationship. The order of the learned Judge is, therefore, correct. The writ petition is completely devoid of merits and accordingly, dismissed".

d) Criminal Revision Petition No.1146/2019 between Smt.N.S.Leelavathi and Another Vs. Smt.Dr.R.Shilpa Brunda decided on 11 th December, 2019 before his Lordship Hon'ble Mr.Justice B.A.Patil, wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Karnataka at Bengaluru that;

".....

19. Keeping in view the As observed by the decision in the case of Vijay Verma quoted supra where the family member leaves the shared household to establish her own household she cannot claim to have a right to move an application under Section 12 of the DV Act.

....."

e) CIVIL APPEAL No.2500 of 2017 between

Manmohan Attavar Versus Neelam Manmohan Attavar

with CIVIL APPEAL No.2502 of 2017 decided on 14th

July, 2017 before their Lordships Rohinton Fali Nariman

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and Sanjay Kishan kaul JJ., wherein he has drawn the attention of this Court to the observations of the Hon'ble Apex Court that;

".....

17. The facts of the present case are that the respondent has never stayed with the appellant in the premises in which she has been directed to be inducted. This is an admitted position even in answer to a Court query by the respondent during the course of hearing. The domestic relationship as defined under Section 2 of the D.V. Act refers to two persons who have lived together in a shared household. A shared household has been defined under Section 2(s) of the D.V. Act. In order for the respondent to succeed, it was necessary that two parties had lived in a domestic relationship on the household. However, the parties have never lived together in the property in question. It is not as if the respondent has been subsequently excluded from the enjoyment of the property or thrown out by the appellant in an alleged relationship which goes back 20

years.
....."

42. Since in the present case also, the petitioner has been residing separately since December 2015 and in the Flat since March 2018, prima facie the dictum laid down in
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the first four decisions noted above are in support of the present ground of the 1st respondent.

43. So for the fifth one i.e., Manmohan Attavar's case supra, the circumstances of the case on hand and in the above case are different as in this case, it is neither the case of the petitioner that she was thrown out of the Flat or they resided together in the Flat, but it is her case that the 1st respondent intentionally, though capable to pay the EMI of his 50% share of the Flat purchased jointly, intentionally not paying the same and on the other hand, instigating the bank authority to initiate necessary action whereby she along with her daughter thrown out on street and thus, the fact involved in this case is not that the Flat is shared house hold. On the other hand, the 1st respondent being the husband and decided to purchase the Flat jointly for their residence, now stepped back by not paying his 50% share of EMI and thus, caused economic abuse on the petitioner.

44. To meet this ground, the counsel for the petitioner has relied on the decision reported in (2016) 2

Supreme Court Cases 705 (between Krishna
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Bhattachargee Versus Sarathi Choudary and Another in Criminal Appeal No.1545 of 2015 arising out of SLP (Crl.)No.10223 of 2014 from the judgment and order dated 26.08.2014 of the High Court of Tripura at Agartala in Crl.Rev.P.No.19 of 2014 decided on November 20, 2015 before their Lordships Dipak Misra and Prafulla C.Pant JJ.) wherein he has drawn the attention of this Court to the observations of the Hon'ble Apex Court that;

".....

C. Crimes Against Women and Children - Protection of Women from Domestic Violence Act, 2005 - Ss. 12, 28 & 32 and S.3(iv) - domestic violence - "economic abuse" - When amounts to "continuing offence" - Applicability of Ss.468 and 472 Cr.PC - Retention of stridhan by husband or his family - Held, regard being had to concept of "continuing offence" and demands made by wife, application made by appellant wife under S.12, 2005 Act after about 2 years of judicial separation, not barred by limitation - Criminal Procedure Code, 1973, Ss.472 and 468

.....

F. Crimes against Women and Children - Protection of Women from Domestic Violence Act, 2005 - S. 12, 28 32, 2(a), (f), & (g) and 3 - Scheme of 2005 Act - Duty and approach of Courts while dealing with issues of Crl.A.No.84/2020 & 205/2020

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maintainability, discussed and clarified.

- Scheme of 2005 Act - 2005 Act is a beneficial and assertive legislation for more effective protection of

constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence - Ambit of definition of "domestic violence" takes within its sweep "economic abuse" under S.3 - Economic abuse has many facets.

- Duty and approach of Courts -
Before nullifying grievance of aggrieved person on ground of maintainability, Court should find out whether allegations and demands are really and legally sound and correct. Court should scrutinize facts from all angles on merits and discuss and deliberate on issues raised - Court should adopt a sensitive approach towards the rights of women under 2005 Act - Constitution of India - Arts. 14, 15 and 21 - Rights of Women under - Effective protection of right of women against domestic violence under DV Act, 2005

G. Criminal Procedure Code, 1973 - S.472 - Expression "continuing offence" does not have a fixed connotation or a static import.

.....

2 Prior to the narration of facts who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a
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detailed Act. The dictionary clause of the 2005 Act, which we shall advert to slightly at the later stage, is in a broader spectrum. The definition of "domestic violence" covers a range of violence which takes within its sweep "economic abuse" and the words "economic abuse", as the provision would show, has many a facet.

.....

10. As in the facts at hand,
"3. Definition of domestic violence.-

.....

(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, household necessities for the aggrieved person and her children, if any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household 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 stridhan

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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.

.....

32. Regard being had to
"Economic abuse" large canvass.
..... 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 2005 Act.

33. In the present case, 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 her application being barred by limitation.

....."

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45. In the present case on hand also, it is an admitted fact that the relationship between the petitioner and the 1st respondent as wife and husband is not severed because of a decree of dissolution of marriage and in view of the dictum laid down in the above decision, the Court is bound to sensitively see all the allegations on the merits of the case and the protection of the right of the women under the Act.

46. As noted above, the aversions of the petitioner with regard to the domestic violence need full pledged trial. Though from her reply notice, it can be safely concluded that the petitioner has been residing separately since December 2015 and in the Flat since March 2018, it is an admitted fact that after marriage, she lived in her

matrimonial home with the respondents and thus, she was lived in the shared house hold with the respondents i.e., she was in the domestic relationship with the respondents as defined under Section 2(f) of the Act.

47. So, the above noted decision i.e., Krishna Bhattacharjee's case supra is in support of the petitioner in
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respect of her right to move an application under Section 12 of the Act and it prevails over the decisions of Vijay Verma's case, Nishanth Hussain's case and Sejal Dharmesh Ved's case supra on which the 1 st respondent has relied on, as they are all the old decisions of Single Bench of the Hon'ble High Courts of Delhi, Rajasthan and Bombay respectively.

48. Though Leelavathi's case supra of the Hon'ble High Court of Karnataka on which the 1st respondent has relied on is recent one, it is of Single Bench relied on the decision of Vijay Verma's case supra. On the other hand, Krishna Bhattacharjee's case supra on which the petitioner relied on is the decision of the Division Bench of the Hon'ble Apex Court and therefore, it prevails over not only Leelavathi's case supra, but also all the above decisions on which the 1st respondent has relied on.

49. Relying on the following observations of the Hon'ble Apex Court in Krishna Bhattacharjee's case supra that;

".....

31. It has been held in Inderjit Singh Gerewal (supra) that Section
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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 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."

it is the arguments of the 1st respondent that Krishna Bhattacharjee's case supra is on Stridan and thus, the above decision is not applicable to the case on hand.

50. But as noted above, Krishna Bhattacharjee's case supra is with regard to economic abuse and the duties of the Court to see the allegations as whole on merits before nullifying the reliefs sought by the aggrieved person under the Act. Hence, the arguments of the 1st respondent that
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Krishna Bhattacharjee's case supra is not applicable to the

case on hand is not sustainable. Thus, the 1st respondent has failed to establish this ground in support of his appeal.

51. The next ground of the 1st respondent in support of his appeal is that the present case ought to have been filed within one year under Section 468 of Cr.P.C. and thus, it is hit by limitation. In support of his arguments on this ground, the 1st respondent has relied on the decisions reported in;

a) CRL.O.P.No.29476 of 2017 and Crl.MP.Nos.16653 & 16654 of 2017 between N.Prasad Vs. Harithalakshmi decided on 20.07.2020 before his Lordship Hon'ble Mr.Justice G.K.Ilanthiraiyan, wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Judicature at Madras that;

".....

6. In this regard, follows:-

"6. In this regard of the same"

The Hon'ble Supreme Court of India held that under Sections 28 and 32 of the Act 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of the Code of Criminal Procedure applicable. Accordingly, the respondent ought to have been lodged
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complaint within a period of one year from the date of incident.

7. In the light of the above discussions, this Court is of the considered opinion that the complaint lodged by the respondent under the Domestic Violence Act cannot be sustained as against the petitioner. Accordingly, this Criminal Original

Petition allowed and the entire proceeding in DV.C.No.186 of 2017 on the file of the Mahila Court (Magisterial Level), Allikulam, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed".

b) Criminal appeal No.1635 of 2011 arising out of SLP (Crl.)No.7787 of 2010 between Inderjit Sing Grewal versus State of Punjab & Anr. August 23, 2011 before their Lordships P.Sathasivam and Dr.B.S.Chauhan JJ., wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court of India that;

".....

24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 of Cr.P.C., 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 Act 2005 read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which
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make the provisions of Cr.P.C. applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Monhanty, AIR
....."

c) Criminal Petition No.2419 of 2009 between J.Srinivas Vs. G.Dhanalakshmi decided on 5 th April, 2013 before his Lordship Hon'ble Mr.Justice Anand Byrareddy, wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Karnataka, Bengaluru that;

".....

Though the allegations are spread over a period of time, it does appear that the complaint was not filed within one year from the date of alleged cause of action. Therefore, the proceedings could not have been entertained by the Court below.

Consequently, the petition is allowed and the proceedings CrI.Mis.No.139/2009 on the file of Metropolitan Magistrate (Traffic Court - I) Bengaluru, are quashed.

d) He has also relied on the following observations of the Hon'ble High Court of Judicature at Bombay in Sejal

Dharmesh Ved's case supra that;

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".....

5. A wife who lived in a domestic relationship earlier , but which ceases only because of any domestic violence can certainly file an application for such domestic violence that took place whilst she lived in that relationship such application is required to be filed within a reasonable time to show that relationship would give her the cause of action to sue under the DV Act for the reliefs under the Act.

....."

52. So the sum and substance of the above decisions are in support of the arguments of the 1 st respondent that the limitation to file the complaint is one year from the date of alleged incident.

53. So for the applicability of the dictum laid down in the above decisions to the case on hand with regard to the impugned order, admittedly, it is the allegation of the

petitioner that the 1st respondent is in due of his 50% share of EMI from February 2019 and the trial Court record reveals that the petitioner has come up with the application under Section 12 of the Act on 05.08.2019 i.e., within 7 months from the date of alleged due of EMI by the 1st respondent.

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54. Moreover, the allegations of the petitioner is the violation by the 1st respondent in payment of the EMI regularly. Thus, prima facie, the principles rendered in the above decisions on which the 1st respondent has relied on are not applicable to the case on hand.

55. To meet this ground, the counsel for the petitioner has relied on the decisions reported in;

a) CRIMINAL REVISION PETITION No.730/2019

between Sri.Puttaraju Vs. Smt.Shivakumari decided on 1st April, 2021 before his Ladyship Hon'ble Mrs.Justice K.S.Mudagal wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Karnataka that;

".....

5. Ultimately on hearing the parties, the First Appellate Court by the impugned order dismissed the appeal and confirmed the order of the trial Court.

.....

7. Sri.L.Rajanna, learned Counsel for the petitioner opposes the application on the ground that the petition was filed 10 years from the date of the alleged domestic incident,

therefore, the petition itself was not maintainable.

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8. Sri.G.S.Pateel, learned Counsel for the respondent refutes the contention regarding limitation on the ground that Section 468 of Cr.P.C. is applicable only to the petition under Section 31 of the DV Act and not to the application under Section 12 of the DV Act filed for the reliefs under Sections 20 and 21 of the DV Act.

.....

12. Reading of Section 468(1) and 468(2)(b) of Cr.P.C. itself shows that the bar or limitation for taking cognizance is intertwined with an offence. Section 468 of Cr.P.C. comes into picture only if there is an offence. If there is no offence, no limitation.

.....

14. Section 12(1) & 12(2) of the DV Act which are relevant for our purpose read as follows:

.....

Thus in Section 12 of the DV Act if domestic violence is not called or treated as an offence, it speaks of Court granting relief and not of conviction and sentence.

15. So far this petition, Sections 20(d) and 21 of the DV Act are relevant. They read as follows:

"20. Monetary reliefs.- (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and

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such relief may include but is not limited to-

.....

Therefore, even Sections 20 and 21 of the DV Act do not treat the domestic violence as offence.

.....

20. When the application under Section 12 of the DV Act is not covered under the term 'offence', Section 468 of Cr.P.C. is inapplicable. Therefore, the application of Section 468 of Cr.P.C. to an application under Section 12 of the DV Act is clearly a misconception.

21. One has to bear in mind that the proceedings under the DV Act are neither purely criminal nor civil proceedings. The very object of the DV Act as could be seen from the preamble is to protect the women against violence of any kind occurring within the family. If at all the Act intended to make each and every act of domestic violence offences, then Parliament would not have legislated separate law i.e., IPC dealing with offence against Women like 498A, 306, 304B or offence against body in Chapter VI of IPC. The purpose of the DV Act is to protect and save the family.

.....

25. Further in para 32 of the judgment in Krishna Bhattacharjee's case referred to supra, the Hon'ble Supreme Court held that the definition of the aggrieved person and domestic relationship remains and the act of domestic violence attracts the term

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'continuing offence', therefore, does not time barred.

26. In the judgments of the Hon'ble Supreme Court referred to above, the interplay of Section 3(38) of the General Clause Act, Section 31 of the DV Act and Section 468 of Cr.P.C. had not fallen for consideration. In view of the later judgment of the

Hon'ble Supreme Court in Krishna
Bhattacharjee's case referred to
supra the judgments of this Court in
Srinvas's case and Gurudev's case
cannot be followed. Therefore, this
Court does not find any merit in the
contention of the petitioner was time
barred.
....."

i) In view of the dictum laid down in the above
decision which is recent one than to the decisions relied on
by the 1st respondent that the limitation is applicable only
to Section 31 of the Act and not to Section 12 of the Act,
the principles rendered in the above decision are aptly
applicable to the case on hand and in support of the
arguments of the counsel for petitioner that the present
petition is not hit by limitation as in this case also, the
impugned order is not for breach of the order under
Section 31 of the Act, instead it is an order under Section
19 read with Section 23 of the Act.

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b) CRM-M-37116 of 2012 (O & M) between Geeta
Kapoor and anr. Versus State of Haryana and anr. decided
on 09.10.2013 before his Lordship Hon'ble Mr. Justice
Jitendra Chauhan, wherein he has drawn the attention of
this Court to the observations of the Hon'ble High Court of
Punjab and Haryana at Chandigarh that;

"Head Note:

Protection of Women from
Domestic violence Act, 2005; -
Whether limitation in filing the
complaint under the DV Act, 2005 is

one year - Held: In case of subsisting relationship of husband and wife, there is no limitation. Meaning thereby the complaint under the DV Act can be filed at any time as the physical and mental harassment within the family is continuing offence. LU (Apr 38) 2018 P & H.

.....

Point No(i)

The case law The correct view is that in case of decree of divorce, the limitation to file proceedings is only a year. But in this case still the relationship of husband and wife is alive. The object of the DV Act, is to provide effective protection of the right of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. So, it is held that in case of subsisting relationship of husband and wife, Crl.A.No.84/2020 & 205/2020

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there is no limitation. Meaning thereby that the complaint and the DV Act can be filed at any time as the physical and mental harassment within the family is a continuing offence.

....."

i) In the present case on hand also, admittedly the relationship of husband and wife subsists till date between the 1st respondent and the petitioner and thus, the dictum laid down in the above decision is applicable to the case on hand.

c) Criminal Revision Application No.611 of 2015 between Yogesh Anantrai Bhatt & 4 ... Applicants Versus State of Gujarat & 1 ... respondents decided on 29.07.2016 before his Lordship Hon'ble Mr.Justice S.G.Sha, wherein he has drawn the attention of this Court to the

observations of the Hon'ble High Court of Gurajat at
Ahmedabad that;

".....

3. In view of above discussion,
..... sub-section (1) is to be filed in a
prescribed form. So practically Section
12 is enabling provision to file an
application whereas Sections 18 to 22
are providing for rights of the
aggrieved persons to seek different
reliefs like protection, residence,
monetary relief, custody of minor and
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compensation. For all such reliefs,
when provisions of the Code are to
be followed, then practically there
is no limitation prescribed under
the code for any of such reliefs viz.
protection, residence, monetary
reliefs, custody of minor and
compensation. However, when section
28 says that procedure is to be
followed as per the provisions of the
Criminal Procedure Code, then it
amount to dealing with an application
under Section 12 as an application for
all such orders and nothing more than
that, therefore, limitation would
be applicable only after breach of
an order in an application under
Section 12 and, therefore such
limitation cannot be applicable at
the stage of an application under
Section 12 for reliefs under
Sections 18 to 22. Thereby, it is
certain that if there is a breach of an
order in an application under Section
12 or any of the reliefs under Sections
18 to 22, then and then only the
application under Section 31 is to be
filed within one year from the date of
such breach and not thereafter, and
thereby it cannot be said that an
application under Section 12 for the
reliefs under Section 18 to 22 are
also required to be filed within a
period of 12 months because on

that case, when there is no penal provision, there is no reason to consider limitation at all.

.....

6. However, the Hon'ble Supreme Court has not decided the issue of limitation for proceedings

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under Section 12 of the DV Act. With due respect, it is to be considered that practically the words "complaint under Section 12" are unwarranted because the DV Act itself is confirming that it should be application under Section 12, which for practical purpose is to be registered as Criminal Misc. Application and not as a criminal complaint or irrespective of nomenclature of such litigation, it is mainly an application to a Magistrate by aggrieved person seeking relief for protection and/or residence and/or monetary reliefs and/or custody of minor and/or compensation for domestic violence and not for awarding sentence of imprisonment to the respondent, which would be applicable only after non-compliance or breach of an order of any nature referred herein above and, therefore,

.....

10. The appellate Court has

(1) In VD Bhanot the ultimate decision of the Hon'ble Supreme Court makes it clear that practically there is no question of limitation while claiming reliefs under Sections 18 to 22 by filing an application under Section 12 of the DV Act.

(2) In Krishna Bhattacharjee the Hon'ble Supreme Court has considered that bar of limitation would not be applicable to the application filed under Section 12 of the DV Act because the concept of continuation

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offence gets attracted in such cases if at all an application for maintenance is to be treated as an offence because of criminal proceedings.

(3) In Shalini while dealing with the issue of limitation for the proceedings against domestic violence, held that the complaint even made after 15 years from the date of separate living by the couple, is not liable to be dismissed if cause of action survives.

.....

12. Therefore, any other decision, even if it is dealing with the issue of limitation with reference to DV Act, it is to be clarified that it may be applicable only in case of proceedings under Section 31 of the DV Act since sub-section (1) of Section 31 contemplates punishment in the event of breach of the order under such Act. Therefore, provision of Section 31 of the DV Act does not come into play till an order in an application under Section 12 is passed and till the same is breached. Therefore, when the respondent is simply seeking various reliefs contemplated by the DV Act, unless those reliefs are granted and only if such order is violated the respondent may not have to invoke provision of Section 31 of the DV Act and at that stage only question of limitation would arise and thereby respondent may not be entitled to invoke provision of Section 31 of the DV Act seeking punishment by way of sentencing the other side for breach of any such order after a period of one

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year from the date of violation of any such order. Practically the provision of Section 31 (1) of the DV Act is similar to the provision of Section 125(3) of the Code and, therefore, like

application for maintenance under Section 125 of the Code, it cannot be barred by limitation and an application under Section 12 of the DV Act is not subject to limitation as contemplated by the petitioners.

....."

d) CRM-M No.29008 of 2014 between Alok Vs.

Sunita decided on 17.01.2020 before her Ladyship Hon'ble Ms.Justice Jaishree Thakur, wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Punjab and Haryana at Chandigarh that;

".....

6. I have heard the factum of marriage between the parties is not in dispute, which is stated to have taken place on 18.05.2008. Counsel for the petitioner herein also relies upon Section 28 of the DV Act to contend that the complaint ought to have been filed within a period of one year from the date of occurrence of cause of action. However, this Court is not inclined to agree with the argument as raised by him. this Court came to the conclusion that there was no limitation prescribed to institute a claim seeking relief under Section 12 to 22 of the DV Act. The relevant portion of the same is reproduced as under:-

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"15. As already stated, this Court has to answer the question, whether the complaint is barred by limitation based upon the provisions of the Domestic Violence Act and the law, as cited. Section 28 of the Domestic Violence Act mandates all proceedings under Section 12, 18, 19, 20, 21, 22 and offence under Section 31 shall be governed by the Code of Criminal Procedure. Whereas Section 31

provides for penalty of breach of protection order against the 'respondent' and Rule 15 of the Rules of 2006 provides for procedure under Section 31 of the Domestic Violence Act.

16. An aggrieved person is permitted to Section 12 of the Domestic Violence Act is enabling provision to file an application, whereas Sections 18 to 22 of the Domestic Violence Act provide for rights of the aggrieved person to seek different reliefs like protection, residence, monetary relief, custody of minor and compensation. No limitation has been prescribed for seeking any such relief. Penal provisions under Section 31 of the Domestic Violence Act would get attracted on a breach of a protection order. It is only in a situation when there is a breach of any protection order on an application under 4 or 5 Section 12 or on any of the reliefs under Section 18 to 22 of the Domestic Violence Act, then and then only, an application under Section 31 of the

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Domestic Violence Act, is to be filed within one year from the date of such breach and not thereafter. Therefore, the Court is of the opinion that there is no limitation prescribed to institute a claim seeking relief under Sections 17 to 22 of the Domestic Violence Act.

....."

i) In the present case on hand also, though in view of the reply notice of the petitioner, it can be safely concluded that she has been residing separately from December 2015 and in the Flat from March 2018, in view of the relationship subsists between the petitioner and the 1 st

respondent till date and the impugned order is not the order under Section 31 of the Act for violation of any order passed under the Act for which only, the limitation applies, the above decisions are also in support of the petitioner that her application under Section 12 of the Act is not hit by the limitation as urged by the 1st respondent. Thus the 1st respondent has failed to establish this ground as well.

56. The next ground urged by the 1st respondent is that the Flat was purchased for the investment purpose and not for self occupation. He has incurred heavy loss for
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payment of EMI and interest accrued on the loan without returns for 7 years.

57. As noted above, these rival contentions are subject to trial and at this pre trial stage, these contentions cannot be concluded in favour of any of the parties.

58. The other connected grounds of the 1st respondents are that;

a) The petitioner is gainfully employed and has salary of Rs.1,25,000/- apart from the other incentives and bonus.

b) He has no income of Rs.3 lakhs per month as stated by the petitioner. He has to incur heavy medical expenditure for his mother/the 2nd respondent who is a cancer patient.

59. The salary slips of the petitioner demonstrate that

her gross salary for the month of June and July 2019 was Rs.1,39,431/- and the net pay was Rs.76,886/- and Rs.58,753/- respectively. The 1 st respondent though produced the medical records of his mother/the 2 nd respondent, he has not furnished the treatment expenses documents and his salary slip. However, admittedly, the

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income and expenses/the responsibilities the parties have in fact are subject to trial.

60. In the course of arguments, the 1 st respondent has also relied on the decisions reported in;

a) C.R.R.No.3104 of 2014 with CRAN 559 of 2015 between Sri.Abhijit Saha and Ors. Vs. Smt.Sangita Saha decided on 17.09.2015 before his Lordship Sankar Acharyya, J., wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court that;

".....

Unless it is satisfactorily established that domestic violence has taken place neither any protection order under Section 18 nor any residence order under Section 19 nor any order for monetary relief under Section 20 nor any compensation order under Section 22 of the Protection of Women from Domestic Violence Act, 2005 should be passed.

....."

b) M.Cr.C.No.19979/2019 between Ramesh Chandra Sharma and Others Vs. Smt.Meena decided on 7 th January, 2020 before his Lordship Sunil Kumar Awasthi J,

wherein he has drawn the attention of this Court to the
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observations of the Hon'ble High Court of Madhya Pradesh
that;

".....

It is not disputed that the Pooja
daughter of applicant No.1 and 2 was
married to the son of respondent on
07.12.2015.

.....

7. A perusal of this provision
as under:

"5. Filing of a petition under
Protection of Women by the petitioner
taking shelter of domestic relationship
and domestic violence needs to be
considered so that this Act is not
misused to settle property disputes.
Domestic relations is defined under
the Act in Section 2(f) as under:
....."

i) In the present case on hand, as noted above, the
allegations in the application under Section 12 of the Act
attract the ingredients of domestic violence including
economic abuse and they could be concluded only after full
pledged trail.

ii) The dispute is with regard to the admitted non
payment of 50% share of EMI of the 1 st respondent and
thus, it cannot be said that it is a property dispute that too
at this pre trial stage.

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iii) Hence, as at this pre-trial stage, it cannot be
concluded that the petitioner has not satisfactorily

established the alleged domestic violence and the dispute between the parties is a property dispute, these decisions are not helpful to the 1st respondent to meet the impugned order.

c) Special Leave Petition (Criminal) Dairy
No(s).34053/2019 arising out of impugned final judgment
and order dated 16.09.2016 in CRLR No.609/2015
between Kamalesh Devi V/s Jaipal & Ors. passed by the
Hon'ble High Court of Punjab & Haryana at Chandigarh
decided on 4 October, 2019 before her Ladyship Honble
Ms.Justice Indira Banerjee and his Lordship Hon'ble
Mr.Justice M.R.Shah, wherein he has drawn the attention
of this Court to the observations of the Hon'ble Supreme
Court that;

".....
The High Court has rightly found
in effect that the ingredients of
domestic violence are wholly absent in
this case. The petitioner and the
respondents are not person living
together in a shared household. There
is a vague allegations that the
respondents are family members.

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There is not a whisper of the
respondents with the petitioner they
appear to be neighbours
....."

i) In the present case on hand, admittedly, the Flat is
not the shared household, but the petitioner, after the
marriage was admittedly, residing in her matrimonial

house with respondents in a shared household. Hence, the above decision is also not helpful to the 1 st respondent.

d) CRL.MC.No.3325/2010 between Kaveri Versus

Neel Sagar & Anr decided on 25.10.2010 before his Lordship Justice Shiv Narayan Dhingra, wherein he has drawn the attention of this Court to the observations of the Hon'ble High Court of Delhi at New Delhi that;

".....

The relevant facts show that the petitioner had filed an application under Section 23 of the Protection of Women from Domestic Violence Act seeking The respondents in this case were mother and brothers of the petitioner. The petitioner is an employed woman, has been working with Indian Airlines in store department and living separately from her brother and mother admittedly since 2002; although the respondents alleged that she was living separately since 1999. since it was not the claim of the petitioner that she

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was not able to maintain herself rather she had claimed that she had spent Rs.1 lac in construction of first floor of the house where respondent No.1 & 2 were residing. The facts that the petitioner is employed and has been living separate and leading an independent life are undisputed facts. I find no ground to interfere with the orders of the Courts below in petition under Article 227 of the Constitution of India."

e) Civil Appeal No.4666 of 2008 arising out of Special Leave Petition (Civil) No.17260 of 2007 between Shil Kumar Devi & Anr. Versus Krishan Bhagwan Pathak @

Kishun B. Pathak decided on July 28, 2008 before their Lordships C.K.Thakker and D.K.Jain, wherein he has drawn the attention of this Court to the observations of the Hon'ble Supreme Court that;

".....31. The High Court,
"On as consideration of
In the aforesaid

As laid down in the decision of this Court such an order may be necessitated if the party shows the dire need of money for the purpose of maintaining herself, for which she had to raise debts, during the period when the application had been pending. There is no such material on record, rather the opposite party was getting interim maintenance from

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November, 1998 itself by order dated

32. The above observations manifestly show that according to the High Court, there must be justification on the part of the Court in making the order of maintenance from the date of the application rather than from the date of the order. As there was no such reasons granting maintenance from the date of the application, the Family Court was not justified in doing so. To that extent, therefore, the order passed by the Family Court was vulnerable and accordingly, it was set aside by granting maintenance from the date of the order passed by the Family Court."

i) In the present case on hand, by IA.No.1, the petitioner has not sought for maintenance either to her or to the child, instead, she sought for direction to the 1 st respondent to pay the admitted 50% share of his EMI.

Hence, the dictum laid down in the above decision is not applicable to the facts of the case in particular with regard to the impugned order.

f) FA0 (OS)341/2007 between Shumita Didi Sandhu Versus Sanjay Sing Sandu & Others decided on 26.10.2010 before his Lordship Badar Durrez Ahmed J and her Ladyship Veena Birabal, J., wherein he has drawn the
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attention of this Court to the observations of the Hon'ble High Court of Delhi that;

".....

49. We must emphasize once again that the right of residence which a wife undoubtedly has does not mean the right to reside in a particular property. It may, of course, mean the right to reside in a commensurate property. But it can certainly not translate into a right to reside in a particular property.....

....."

i) In the present case on hand, as noted above, there is no dispute with regard to the decision by the parties to purchase the Flat jointly, but the dispute is that it is for the self occupation as per the case of the petitioner and the defence is that it is for the investment purpose, which needs full pledged trial. Hence, the dictum laid down in the above decision is not applicable to the case on hand.

g) FAM.No.97 of 2014 between Prabir Kumar Das Versus Smt.Papiya Das decided on 29.01.2018 before their Lordships Hon'ble Shri Justice Prashant Kumar Mishra and Hon'ble Shri Justice Arvind Singh Chandel, wherein

he has drawn the attention of this Court to the
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observations of the Hon'ble High Court of Chhattisgarh,
Bilaspur that;

".....

13. Complete analysis of the
Insisting upon the husband to live
separate from his mother, who is aged
about 68 years and is suffering from
cardiac problem is by itself a cruelty,
as held by the Supreme Court in
Narendra (Supra), therefore, the
Appeal deserves to be allowed.

...."

i) The counter allegation of the 1st respondent with
regard to the harassment of the petitioner is also subject to
trial. Hence, this decision is on merits of the case and
thus, not helpful to the 1st respondent to meet the
impugned order on IA.No.1.

61. So far the ground of the petitioner in support of
her appeal in Crl.A.No.205/2020 that the trial Court has
erred in directing the 1st respondent to pay the EMI from
the date of petition instead from the date of due prima facie
appears correct in the facts and circumstances of the case
as it is not disputed by the 1st respondent that he has not
paid his share of 50% of the EMI since February 2019 and
as noted above this application/petition under Section 12
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of the Act was filed on 05.08.2019 i.e., after around 7
months from the date of due.

62. From the above discussions, as the 1st respondent has failed to establish the grounds in support of his appeal, point Nos.1 and 2 are answered in negative with regard to his appeal i.e., Crl.A.No.84/2020 and in affirmative with regard to the appeal of the petitioner in Crl.No.205/2020.

63. POINT No.3:- In the result, this Court proceeds to pass the following order.

ORDER

The Criminal Appeal filed by the the 1st respondent/appellant in Crl.A.No.84/2020 under Section 29 of the Protection of Women from Domestic Violence Act 2005 is hereby dismissed.

The Criminal Appeal filed by the the petitioner/appellant in of the Protection of Women from Domestic Violence Act 2005 is hereby allowed.

Consequently, the impugned judgment passed in

Crl.Misc.104/2019 on I.A.No.I dated 20.12.2020 by the learned MMTC-III, Crl.A.No.84/2020 & 205/2020 Bengaluru is hereby confirmed with the following modification.

"The respondent No.1 is directed to pay EMI regularly towards housing loan availed for purchase of Flat No.H- 103, Mantri Alpyne, Uttarahalli Main Road, Banashankari 5th Stage, Bengaluru as he was paying earlier from the date of due till the disposal of the petition".

Send back the TCR along with the copy of this judgment forthwith to the trial Court.

Keep the original of this judgment in Crl.A.No.84/2020 and the copy thereof in Crl.A.No.205/2020.

(Dictated to the Judgment Writer directly on computer, corrected by me and then pronounced in the open Court on this the 17th day of July, 2020).

(K. KATHYAYANI), LXVI Addl.CC & SJ, Bengaluru. Crl.A.No.84/2020 & 205/2020 77 Both the parties and their respective counsels are absent.

As per the notification dated 21.5.2021 the entry of the litigants as well as Advocates to the court premises is strictly prohibited.

The appellant
representing the case in

person is intimated about delivering the judgment over phone No.9986965929.

Counsel for respondent is intimated about delivering the judgment over phone No.9986204286.

The Order is pronounced in the open Court (vide separate Order).

ORDER The Criminal Appeal filed by the the 1st respondent/appellant in Crl.A.No.84/2020 under Crl.A.No.84/2020 & 205/2020 78 Section 29 of the Protection of Women from Domestic Violence Act 2005 is hereby dismissed.

The Criminal Appeal filed by the the petitioner/appellant in Crl.A.No.205/2020 under Section 29 of the Protection of Women from Domestic Violence Act 2005 is hereby allowed.

Consequently, the impugned judgment passed in Crl.Misc.104/2019 on I.A.No.I dated 20.12.2020 by the learned MMTC-III, Bengaluru is hereby confirmed with the following modification.

"The respondent No.1 is directed to pay EMI regularly towards housing loan availed for purchase of Flat No.H-103, Mantri Alpyne, Uttarahalli Main Road, Banashankari 5th Stage, Bengaluru as he was paying earlier from the date of due till the disposal of the petition".

Send back the TCR along with the copy of this judgment forthwith to the trial Court.

Keep the original of this judgment in Crl.A.No.84/2020 and the copy thereof in Crl.A.No.205/2020.

LXVI Addl.CC & SJ, Bengaluru Crl.A.No.84/2020 & 205/2020 79