Andhra High Court
A. Ashok Vardhan Reddy And Others vs Smt. P. Savitha And Another on 29 February, 2012

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Criminal Petition Nos.7063 of 2008 and 2539 of 2009

29/02/2012

A. Ashok Vardhan Reddy and others

Smt. P. Savitha and another

COUNSEL FOR THE PETITIONERS: Sri T. Pradyumna Kumar Reddy

COUNSEL FOR 1ST RESPONDENT: Sri P. Krishna Reddy

^COUNSEL FOR 2ND RESPONDENT: --

Crl.P. No.2539 of 2009:

A. Ashok Vardhan Reddy and others ... Petitioners State of A.P. represented by Public Prosecutor, High Court of Andhra Pradesh, Hyderabad and another ...Respondents COUNSEL FOR THE PETITIONERS: Sri Sharad Sanghi COUNSEL FOR 1ST RESPONDENT: --

COUNSEL FOR 2ND RESPONDENT: Sri P. Krishna Reddy ? CITATIONS:

1.1992 (3) ALT 468

2. 2002 (1) ALT (Crl.) 300 (D.B.) (A.P.)

3. 2008 (TLS) 1227198

4. 2008(2) Crimes 235 (M.P.)

5. 2006 (TLS) 43393

6. 2009 (2) ALD (Crl.) 155 (AP)

7. 2011 (2) MLJ (Cri) 429

8. AIR 1991 SC 1406

9. 2010(2) ALD (Crl.) 689 (AP)

10. 2007 Crl.L.J. 3361 = 2007(2) ALD (Crl.) 248

11. AIR 2008 SC 899

12. AIR 1990 SC 1849

13. 2009(1) ALT (Crl.) 285 (A.P.)

14. 2008(2) ALD (Crl.) 1 (AP)

15. 2010 (1) ALD (Cri.) 1 (AP)

16. (2002) 4 SCC 297

17. AIR 1957 SC 540 (1)

18. AIR 1974 SC 1032

19. AIR 1989 SC 509

20. 1997 (1) ALD 73

21. AIR 1954 Madras 1039

22. (1993) 3 Supreme Court Cases 406

23. 2011 (2) ALD (Crl.) 191 (AP)

24. 2010 (2) ALD (Crl.) 391 (AP)

25. 2010 (4) Kerala Law Times 384

26. AIR 2008 Madras 162

27. 2007 Crl.L.J. 4742

28. AIR 1975 SC 105

29. 1998(1) ALD (Crl.) 122 (AP)

30. AIR 1963 SC 1

31. 2008(2) ALT 241

32. 2001 (1) ALT (Crl.) 219 (SC)

33. 2009 (3) ALT (Crl.) 242 (A.P.)

34. AIR 2000 SC 2324

35. 2005 AIR SCW 3569

36. I (2007) DMC 545

37. 1998(5) ALD 426 COMMON ORDER:

The petitioners in Criminal Petition No.7063 of 2008 are accused 1 to 3 in C.C. No.48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District.

2. The Woman Sub-Inspector of Police, Saroornagar women police station filed the charge-sheet in the said case alleging that P. Krishna Reddy and P. Kalavathi are the parents of Saritha, the 1st respondent in Criminal Petition No.7063 of 2008. Saritha was married to the 1st accused on 27-08-2005 and on the same day the 1st accused and Saritha left for the United States of America, as Saritha had to report at West Virginia University on 29-08-2005. Soon after arriving at the United States of America, the 1st accused demanded Saritha for money and took away 35 tulas of gold from her. The parents of Saritha visited the United States of America from 12-10-2005 to 07-11-2005 and still the 1st accused harassed Saritha physically and mentally and threatened her and her parents. Saritha gave a complaint to West Virginia University police and requested her father to give a complaint to the police in India. Accordingly, P. Krishna Reddy gave a complaint on 30-10-2006 stating the above facts and further stating that he met all the expenses demanded by accused 1 to 3 at the time of the marriage and the demand of the 1st accused to Saritha was to give Rs.4,00,000/-. Her gold was sold away by the 1st accused and the sale proceeds were appropriated by him. The 1st accused was using the credit cards of Saritha being unemployed. The complaint was registered as Crime No.1098 of 2006 under Section 498A of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act and was investigated into. The 2nd and 3rd accused surrendered before the Court on 20-12-2007 and were released on bail, while the 1st accused was absconding. Hence, the charge.

3. Accused 1 to 3 claimed in the criminal petition that when the couple left for the United States of America on the date of marriage itself, it was impossible to presume any demand for money and though the 1st accused returned to India on 09-03-2006, Saritha/1st respondent stayed back in the United States of America, filed a petition for divorce before the Family Court of Monongalia County, West Virginia, United States of America and was granted a decree of divorce by an order, dated 12-03-2007, which had become final. The 1st respondent is working in the United States of America after obtaining divorce. The police initially submitted a final report on the complaint of Krishna Reddy, referring the case as lacking in jurisdiction on 18-09-2007 and again at the request of the 1st

respondent on 22-10-2007, the case was reopened and further investigated. The petitioners contended that the 1st petitioner and the 1st respondent never led their marital life in India and they are no longer wife and husband having lived together in the United States of America only for 5 months and 10 days. Hence, they desired quashing of further proceedings in C.C. No.48 of 2008.

4. The 1st respondent in her affidavit in Criminal M.P. No.28 of 2009 claimed that the petition should have been filed against P. Krishna Reddy, her father, who gave the complaint to the police. She was misdescribed as Savitha, while she is Saritha. The criminal proceedings are independent of the civil proceedings and even the air ticket for the 1st accused for the travel on 27-08- 2005 was purchased by Krishna Reddy. The 1st accused was demanding an additional dowry of Rs.30,00,000/- to repay the loans he incurred at Singapore and India. His parents also followed up the demand through telephone calls to her and her father. The 1st accused severely beat her in the presence of her parents in the United States of America. The 1st accused was spending money for alcoholic drinks while residing with her in her hostel room. The 2nd accused met Krishna Reddy at Hyderabad on 30-03-2006 and 8-10-2006 and the 1st accused met him on 27-08-2006 when the demand for Rs.30,00,000/- was reiterated and the 1st respondent was also in India on 27-08-2006. Krishna Reddy was authorized by the 1st respondent through Internet on 09-09-2006 to give a complaint to the police. The divorce case was subsequent. Both the 1st respondent and the 1st accused are Indian citizens and so are their parents. The 1st accused and the 1st respondent resided in both the countries and the divorce was granted on the basis of cruel and inhumane treatment. The 1st accused returned to India in March, 2007 to avoid action by the United States police. The 1st respondent returned to India after completion of her M.S. and is unemployed and unmarried. There was no compromise between the parties and the 1st respondent is suffering from mental agony and shock, while the 1st accused got remarried immediately. Hence, the 1st respondent desired that the interim stay granted be vacated and the criminal petition be dismissed.

5. While so, the petitioners in Criminal Petition No.7063 of 2008 filed Criminal Petition No.2539 of 2009 to quash the proceedings in D.V.C. No.4 of 2009 on the file of XI Metropolitan Magistrate, Cyberabad initiated against them by Saritha who is impleaded as the 2nd respondent in Criminal Petition No.2539 of 2009.

6. In the domestic violence case, Saritha, the 2nd respondent in Criminal Petition No.2539 of 2009, sought for protection orders, return of 'Sthridhana', monetary relief, compensation, damages and other appropriate reliefs under the Protection of Women from Domestic Violence Act, 2005 (for short "the Act") against the petitioners in Criminal Petition No.2539 of 2009. She also desired for cancellation of the passport of the 1st petitioner, and the total amount claimed by her was Rs.48.80 lakhs. She also alleged the petitioners herein to have committed other offences covered by another crime and alleged in her affidavit that her residence with the respondents to the case at Hyderabad and the United States of America was from 28-08-2005 to 12-03-2006. She alleged being threatened with adverse publicity, character assassination and personal vilification. She claimed to have been subjected to beating, abusing, misbehaving, demanding money and mental and bodily injury by all the respondents to the case and she claimed that by the memorandum of understanding dated 11-05-2007, the 2nd petitioner admitted that he and his son took amounts to a tune of Rs.8,00,000/- from Krishna Reddy, which he promised to return. She claimed that the 1st

petitioner herein already got married to somebody else and that she returned to India in September, 2007.

7. The petitioners in Criminal Petition No.2539 of 2009 contended that the 1st petitioner and the 2nd respondent lived together only for two months, while the 2nd respondent lived separately for about four months in the United States of America for pursuing her studies in M.S. There were differences between the couple since the date of marriage and the husband was subjected to mental and physical cruelty leading to separate living. The petitioners claimed that the XI Metropolitan Magistrate, Cyberabad took cognizance of the complaint by the 2nd respondent in D.V.C. No.4 of 2009 concerning the alleged domestic violence prior to the statute coming into force with effect from 26-10-2006. The domestic violence case could not have been pursued against a woman, the 3rd petitioner, in view of Section 2(q) of the Act. The Act is not applicable to a divorced woman, as an aggrieved person under Section 2 (a) has to be a woman who is or has been in a domestic relationship with the respondent. There was no domestic incident report from the protection officer or service provider and a direct complaint is not contemplated by the Act. After C.C. No.48 of 2008, filing of the domestic violence case is invoking parallel jurisdiction of Courts and hence, the petitioners desired the further proceedings in D.V.C. No.4 of 2009 to be quashed.

8. In the affidavit of the 2nd respondent in Criminal M.P. No.3330 of 2009, the 2nd respondent stated that she and the 1st petitioner resided on the date of the marriage at the residence of the petitioners at Champapet, Hyderabad. The petitioners received Rs.5.25 lakhs at the time of the marriage and a total of Rs.17.25 lakhs was appropriated by the 1st petitioner through gold, credit cards and bank account of the 2nd respondent. The 2nd respondent was even hospitalized in the United States of America due to beating. The 1st petitioner was necked out of the hostel on 12-03-2006 due to his unbearable behaviour. But still he was harassing the 2nd respondent through telephone, e-mail and entering the hostel, etc. The 2nd petitioner approached P. Krishna Reddy and signed a memorandum of understanding on 11-05-2007 with the intervention of some elders agreeing to pay back Rs.8,00,000/- and the same was deposited in a joint account in HDCCB, Vanasthalipuram. Again the entire amount was withdrawn on 18-06-2007 by impersonation resulting in crime No.171 of 2008 of Vanasthalipuram police station. The VII Metropolitan Magistrate, Hayathnagar, Cyberabad ordered on 04-09-2008 reinvestigation by the police, but the petitioners are unlawfully influencing the police. D.V.C. No.4 of 2009 is, hence, in continuation of the earlier proceedings and an application under Section 12 of the Act need not be routed through police or the protection officer. The petitioners are only respondents in the case and not accused, as the case is civil in nature. A criminal petition to quash the proceedings is, hence, not maintainable in view of the very statement of objects and reasons of the Act. As the divorce was only on 12-03-2007 and as the harassment and cruelty were continued by the 1st petitioner and cheating by the 2nd petitioner after the memorandum of understanding on 11-05-2007 was subsequent to 26-10-2006 when the Act came into force, the case is maintainable. The provisions of the Act are retrospective, as Section 2(a) refers to a 'woman' who has been in a domestic relationship and Section 2(f) refers to two persons who have lived together in a shared household at any point of time. The acts of the petitioners amount to domestic violence in a series of events, concerning which no question of limitation arises. The Proviso to Section 2(q) makes the 3rd petitioner also liable and in view of Section 36 of the Act, which makes the Act not in derogation of any other law, the domestic violence

case and the criminal case are independent of each other, more so, in view of Section 26 of the Act. Hence, the 2nd respondent sought for vacating the interim stay granted and desired this criminal petition also to be dismissed.

9. While the interim stay granted in Criminal Petition No.7063 of 2008 was made absolute on 26-12-2008, the interim stay granted in Criminal Petition No.2539 of 2009 did not appear to have any specific order of extension after 14- 07-2009.

10. Heard Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008, Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 and Sri P. Krishna Reddy, learned counsel representing the 1st respondent in Criminal Petition No.7063 of 2008/the 2nd respondent in Criminal Petition No.2539 of 2009.

11. On the material placed on record by both the parties, the following factual background emerges. P. Saritha and A. Ashok Vardhan Reddy, daughter of P. Krishna Reddy and P. Kalavathi and son of A. Jani Reddy and A. Vijayamma respectively, were married at Hyderabad on 27-08-2005 and both are Indian citizens with visas of the United States of America. The couple left for the United States of America on the same day. A decree of divorce was granted by the Family Court of Monongalia County, West Virginia, United States of America on 12-03-2007 on the basis of cruel and inhumane treatment with liberty to distribution of marital estate and alimony. In the meanwhile, P. Krishna Reddy gave a complaint to Saroornagar police on 30-10-2006, which was registered in Crime No.1098 of 2006 and was charge-sheeted against A. Ashok Vardhan Reddy and his parents in C.C. No.48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. While so, Saritha filed an application under Section 12 of the Act against A. Ashok Vardhan Reddy and his parents, taken cognizance by the XI Metropolitan Magistrate, Cyberabad in D.V.C. No.4 of 2009. Both the criminal petitions are with a request to quash the respective proceedings.

12. Apart from the above admitted background, the claims of P. Saritha in her affidavit and the contents of the copies of documents filed by her allege that the moment the couple reached the United States of America, the 1st accused demanded for a sum of Rs.4,00,000/- and then an additional dowry of Rs.30,00,000/-, which demands were also supported by his parents through telephone calls to Saritha and Krishna Reddy. The parents of Saritha were claimed to be in the United States of America from 12-10-2005 to 07-11-2005, even in whose presence there were demands for money and physical and mental violence. The 1st petitioner was claimed to be unemployed and to be an alcoholic, spending gold, money and funds in the bank account of Saritha for such purpose. The demands for money were claimed to have been made by the 2nd petitioner on 30-03-2006 and 08-10-2006 and by both the 1st and 2nd petitioners on 27-08-2006 at Hyderabad, while Saritha was also at Hyderabad on 27-08-2006. The copies of the report of the West Virginia University Health Services, dated 27-03-2006, the statement of Saritha dated 23-03-2006, the case reports of the West Virginia Department of Public Safety, dated 23-03-2006 and 19-05-2006 and the final divorce decree granted by the Family Court of Monongalia County, West Virginia, dated 12-03-2007 indicate Saritha to be complaining of domestic abuse and violence and the Family Court to have granted an ex parte decree on the finding of the parties cohabiting together till 09-03-2006

and Saritha to be entitled to absolute divorce on the basis of cruel and inhumane treatment. Subsequently, a memorandum of understanding was claimed to have been executed by the 2nd petitioner in favour of Krishna Reddy with the intervention of some elders on 11-05-2007 agreeing to pay Rs.8,00,000/-. The amount was claimed to have been withdrawn by impersonation from the joint account resulting in crime No.171 of 2008 on the file of Vanasthalipuram police station. The documents accompanying Criminal M.P. No.3330 of 2009 in Criminal Petition No.2539 of 2009 further show the break up of Rs.17,70,000/- said to have been spent by Krishna Reddy at the time of marriage, a copy of memorandum of understanding between the 2nd petitioner and Krishna Reddy, dated 11-05-2007, a report by the son of Krishna Reddy to the police about withdrawal of Rs.8,00,000/-, the order of the Magistrate's Court directing investigation in Criminal M.P. No.3155 of 2008, etc. A copy of e-mail message of the 1st petitioner to the family of Saritha about the divorce proceedings and copies of documents relating to C.C. No.1954 of 2000 on the file of the Additional Judicial Magistrate of First Class, Hyderabad East and North, Ranga Reddy District against Krishna Reddy and two others were also filed during hearing. A copy of passport of Saritha was also filed during hearing in corroboration of her alleged movement from and to India. In so far as C.C. No.1954 of 2000 is concerned, any conduct of Krishna Reddy leading to his prosecution by his wife is an irrelevant factor for consideration of these two criminal petitions on merits and the nature or conduct of Krishna Reddy is no probablising factor or proof of the probable conduct of Saritha or the 1st petitioner herein vis--vis their matrimonial relationship.

13. Even regarding the truth or otherwise of the various allegations made by the opposing parties concerning the sequence of events that ultimately led to these two criminal petitions, in a restricted summary enquiry in the petitions under Section 482 of the Code of Criminal Procedure invoking the inherent powers of this Court, the High Court will not convert itself into a fact finding Court and it will not indulge in an elaborate trial and conclusive findings of fact regarding the questions in controversy between the parties. The examination of the issues of fact and law raised and adjudication of the same will be confined to the extent of considering any justification for invocation of the inherent powers of the High Court to interfere with the proceedings before the trial Courts in question.

14. The well settled parameters governing the exercise of the inherent power under Section 482 of the Code of Criminal Procedure should be kept in mind while examining the questions in issue. Illustratively, in Venkateswara Rao v. Venkateswarlu1, it was held that when the very conduct of the petitioner led to criminal proceedings, it will be an abuse of process of Court for him to seek quashing of the proceedings under Section 482 of the Code of Criminal Procedure. In Papa Rao v. State2, a Division Bench of this Court laid down that the power under Section 482 of the Code of Criminal Procedure has to be used very sparingly and in exceptional circumstances very cautiously.

15. With this caveat, the first question that arises is the maintainability of the domestic violence case against a woman/the 3rd petitioner in Criminal Petition No.2539 of 2009.

16. The petitioners relied on Uma Narayanan v. Priya Krishna Prasad3, wherein Ajay Kant v. Alka Sharma4 was relied on for the principle that an application under Section 12 of the Act against persons, who are not adult male persons, is not maintainable. The learned Judge agreed with the

view and held that an application under Section 12 of the Act is not maintainable as against a woman in view of Section 2(q) read with Sections 19, 31 and 33. S.R. Batra v. Taruna Batra5 was also relied, but the Supreme Court was dealing with the question whether the daughter-in-law can claim any right of residence in the house belonging to the mother-in-law and not the husband, and not the question as to whether a domestic violence case is maintainable against a woman as a respondent. However, in Criminal Petition No.4106 of 2008, dated 22-10-2008, a learned Judge of this Court followed Ajay Kant v. Alka Sharma (4 supra) to hold that female members cannot be made as respondents in the proceedings under the Act. Thereafter, a Division Bench of this Court considered in Afzalunnisa Begum v. State of Andhra Pradesh6 the entire issue with reference to Sections 2(f), 2(q), 3, 12, 18, 19, 21 and 31 of the Act and the Statement of objects and reasons for the Bill. The Division Bench opined that giving effect to all the provisions in the Statute, the Act does not exclude 'woman' altogether in a proceeding initiated under the Act and the 'respondent' as defined in Section 2(q) of the Act includes a female relative of the husband depending upon the nature of the reliefs claimed against the respondent in the domestic violence case.

17. The matter is set at rest beyond controversy by the decision of the Apex Court in Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade7, wherein the Court of Session and the High Court held females to be not included in the definition of 'respondent' in Section 2(q) of the Act. The Supreme Court held that the Proviso to Section 2(q) widens the scope of the definition of a 'respondent' by including a relative of the husband or male partner and as no restrictive meaning has been given to the expression 'relative' nor has the said expression been specifically defined in the Act, it is clear that the Legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Act. A.N. Sehgal v. Raje Ram Sheoram8 relied on by the petitioners for guiding the interpretation of Proviso to Section 2 (q) needs no further reference in view of the binding precedent from the Apex Court on Section 2 (q) Proviso itself. As the female relatives of the husband or male partner are, thus, not excluded from the applicability of the Act, if it is otherwise applicable, the domestic violence case against the 3rd petitioner cannot, therefore, fail on the ground of her sex.

18. The decision in Chandra Rekha v. State of Andhra Pradesh9 is to the effect that mere impleadment of petitioners in domestic violence case does not give rise to criminal offence to quash the proceedings at the initial stage. The decision incidentally, thus, casts doubts on the maintainability of a petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings at the initial stage before any respondent can be punished for any offence under the Act or has been facing proceedings calling for such punishment.

19. The decision in Mohammad Maqueenuddin Ahmed v. State of A.P.10 may not be of any assistance, as the question of liability of any of the petitioners 2 and 3 to the reliefs claimed in the domestic violence case cannot be considered to have crystallized even at the initial stage when the reliefs sought for were directed against all the three petitioners and Saritha cannot be considered, ex facie, to be disentitled to such reliefs, if she is able to prove her allegations during the enquiry. The sufficiency or otherwise of the allegations made is for the trial Court to determine and not for this Court to go into.

20. The next question raised is about the events leading to the domestic violence case happening much prior to 26-10-2006 when the Act came into force and the Act having no retrospective effect.

21. The petitioners relied on Anil Kumar Goel v. Kishan Chand Kaura11, wherein the Apex Court held that all laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. It was, hence, pointed out that the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. Similar is the principle laid down in State of M.P. v. Rameshwar Rathod12, wherein the normal rule of construction is stated to be that a provision in a statute is prospective but not retrospective. In that case, not only there are no specific words to indicate the provisions of retrospective effect, but the positive provisions are to the effect that the amendment must be deemed to have come into effect on a particular date.

22. General principles apart, a learned Judge of this Court held in U.U. Thimmanna v. U.U. Sandhya13 that it is a fundamental principle of law that any penal provision has no retrospective operation, only prospective and as there was no allegation in that case either in the report or in the statement or in the complaint of the 1st respondent therein with regard to the acts of domestic violence that took place on or after 26-10-2006 when the Act came into force, the continuation of the proceedings in the domestic violence case was held to be an abuse of process of Court.

23. The above decision was cited before the Court in K. Ramaraju v. K. Lakshmi Pratima14, wherein it was consequently noted that it is true that Section 1(3) of the Act made the statute come into force from the appointed date as per Gazette Notification, which notification brought the Act into force from 26-10- 2006. It was also noted that neither Section 1 nor any other provision directly or indirectly indicates any retrospective effect to the provisions of the statute. However, without going into the question whether the provisions of the Act can be retroactive in relation to any continuing events amounting to domestic violence as defined under Section 3 of the Act, it was opined that irrespective of any retrospective or retroactive effect to the provisions of the Act, the continuing state of affairs since the date of the Act coming into force, ex facie, make the petitioner have the required cause of action for pursuing a remedy under Section 12 of the Act for obtaining necessary orders or reliefs. The reliefs claimed were opined to be in present time and not past.

24. Hon'ble Sri Justice K.C. Bhanu, who decided U.U. Thimmanna v. U.U. Sandhya (13 supra), was again considering the question in Mohit Yadam v. State of Andhra Pradesh15 and made it clear that the object of the Act is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. His Lordship after an exhaustive reference to the principles of statutory interpretation, had also noted that no specific finding was given in K. Ramaraju v. K. Lakshmi Pratima (14 supra) as to whether the Act is retrospective or prospective in operation. The learned Judge noted that none of the provisions of the Act has direct penal consequences and as seen from the provisions of the Act, some new remedies are provided to the women with regard to existing rights. The remedies did not alter the contract or right nor had it taken away any vested right. The learned Judge also pointed out that the words 'at any point of time' and 'lived together' cannot be understood in narrow sense so as to mean

that such living together is only after the Act came into force. The learned Judge concluded that in its sweep, shared household between two persons by relationship as defined in Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family. Making it clear that in deciding the question of applicability of particular remedial statute to past events, the language used is no doubt most important factor to be taken into account, the learned Judge stated the same to be not positively stated as an inflexible rule but use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. Referring to the words 'who is' or 'has been' in Clause (a), 'who live or have' in Clause (f), 'who is, or has been' in Clause (q) of Section 2 of the Act, the learned Judge opined that they may denote the events happened before or after the Act came into force. The learned Judge also noted that there cannot be any dispute that present perfect tense is used to denote the action beginning at some time in the past and continue up to the present moment. Holding that the definition clause must be read in the context of the subject matter and the scene of the Act and consistent with the objects and other provisions of the Act, it was noted that Section 26 of the Act refers to legal proceedings before other Courts before or after the commencement of the Act, which will not be so, if the Act is prospective in nature. Unambiguously noting that if the remedies provided under Sections 18 to 22 of the Act are applicable prospectively to acts or omissions of domestic violence that occurred prior to 26-10-2006, then the aggrieved person who suffered violence prior to that date would be deprived of claiming any relief under the Act, the learned Judge found no justification or reason to deny certain remedies available to women who suffered domestic violence prior to 26-10-2006 as such a narrow interpretation will defeat the object and purpose of enacting the Act. As the Act is no criminal law with any direct penal consequences, the learned Judge concluded that acts of violence that occurred prior to 25-10-2006 would come within the meaning of domestic violence as defined under the Act and hence, the Act is retrospective in operation.

25. Grasim Industries Ltd. v. Collector of Customs, Bombay16 laid down that in matters of interpretation, every provision and every word must be looked at generally and in the context in which it is used and not in isolation whenever the language is clear, the intention of the Legislature is to be gathered from the language used. In Garikapati Veeraya v. N. Subbaiah Choudhry17, a five Judge Bench of the Supreme Court laid down the golden rule of construction that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be construed also to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. Herein it has to be noted that the Act itself showed from the various provisions the retrospectivity or retroactivity of its operation to the consequences of acts or omissions that took place prior to the Act coming into force, which amount to an act of domestic violence as governed by the Act. Similarly in Banwari Dass v. Summer Chand18, the words 'have been' have been interpreted as immediately prior to a specific time. The justifiable period which can be considered to be immediately prior to the specific time under the Act, will be essentially one depending on the facts and circumstances of each case and the same cannot be defined with mathematical precision for universal application without any elasticity in matters governing basic human relations, more particularly matrimonial and family relations. It is true that in Secretary, Regional Transport Authority v. D.P. Sharma19, the words 'has been' were interpreted stating that whether the expression 'has been' occurring in a provision of a statute denotes a transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will

depend upon the intention of the Legislature to be gathered from the provision, in which the said expression occurs or from the other provisions of the statute. In P. Jeevan v. Chief Secretary to Government of A.P.20, the phrase 'has been' received consideration, but the question was not probed fully on the facts and circumstances of the case. In Mohit Yadam v. State of Andhra Pradesh (15 supra) every relevant provision of the Act was analysed to understand the import of the words 'has been' used in relation to living in domestic relationship.

26. Mohit Yadam v. State of Andhra Pradesh (15 supra) continues to hold the field and if the Act is retrospective in operation, the domestic violence case cannot fail on the ground of the sequence of events involved herein being prior to the Act coming into force, while the question whether such events amounted to domestic violence and were probablised to have so happened is a question to be gone into on merits and decided by the trial Court and not herein.

27. Then comes the question as to the need for the aggrieved person being a wife by the time of initiating and prosecuting the domestic violence case. The petitioners referred to the passage on Domestic Violence from Halsbury's laws stating the provisions relating to matrimonial injunctions in a County Court to be applicable to a man and a woman who are living with each other in the same household as husband and wife. Sivakami Ammal v. Bangaruswami Reddi21 interpreting the word 'wife' with reference to the Madras Hindu Bigamy Prevention and Divorce Act, 1949 was also referred to, wherein the word 'wife' was held to mean a person who would have been a wife but for the decree of divorce or dissolution passed in the trial Court. The decision of the Apex Court in Chand Dhawan v. Jawaharlal Dhawan22 was also relied on, wherein after an exhaustive reference to the case law, the Apex Court was primarily looking at the words 'at the time of passing any decree' or 'at any time subsequent thereto' used in Section 25 of the Hindu Marriage Act, 1956 vis--vis the request for permanent alimony or maintenance. S.R. Batra v. Taruna Batra (5 supra) was also again referred to about 'living at any stage in a domestic relationship'.

28. The decision by a learned Single Judge of this Court in A. Sreenivasa Rao v. State of Andhra Pradesh23 also needs to be referred to, in which it was opined that when there was no jural relationship of man and wife between the 1st petitioner and 2nd respondent therein by the date of filing of D.V.A. No.18 of 2007, the case in D.V.A. No.18 of 2007, prima facie, is not maintainable. It was also noted that the dates when the alleged violations under the Act have occurred, were also not stated, due to which the 2nd respondent therein was not entitled to proceed against the petitioners therein under the provisions of the Act.

29. With great respect, the principle laid down in Mohit Yadam v. State of Andhra Pradesh (15 supra) did not appear to have been placed before His Lordship and the elaborate reasoning given in Mohit Yadam v. State of Andhra Pradesh clearly showed the existence of any jural relationship of a man and wife between the aggrieved person and the respondent by the date of filing of the domestic violence case, is not a sine qua non for the maintainability of the domestic violence case nor is it necessary that the acts of domestic violence need to happen only after the Act came into force. The decision in A. Sreenivasa Rao v. State of Andhra Pradesh (23 supra) appeared to have mainly revolved round the facts in issue therein and no principle of law appears to have been laid down to be considered as a precedent. Hence, following Mohit Yadam v. State of Andhra Pradesh (15 supra),

in which the question was discussed from every conceivable angle with which reasoning I am in total respectful agreement, the fact that divorce was granted by a foreign Court between Saritha and the 1st petitioner, will have no effect on the maintainability of the domestic violence case, if the allegations made therein otherwise bring the dispute within the province of the Act, the entitlement to the reliefs claimed being, of course, dependent on the ultimate proof of such allegations.

30. That such an understanding and interpretation is to be adopted, is also clear from the view taken by another learned Judge of this Court in Sikakollu Chandra Mohan v. Sikakollu Saraswathi Devi24, wherein separation between the parties was prior to the Act, but it was seen whether the cause of action arose or cause of action continued to exist even after the Act coming into force. The learned Judge observed that even though separation between the parties was prior to the Act coming into force, still economic abuse by way of deprivation of the aggrieved person of right to residence and right to maintenance etc., would continue both before and after the Act coming into force and hence, it cannot be said that the mother has no cause of action to maintain the domestic violence case after the Act coming into force.

31. In fact in D. Velusamy v. D. Patchaiammal25, the Supreme Court examined the provisions of the Act and noted that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage' to be akin to common law marriage and directed the Family Court to decide whether the man and woman had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The Supreme Court specifically noted the term 'wife' to be including, under Section 125 of the Code of Criminal Procedure, a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. A woman not having the legal status of a wife was noted to have been, thus, brought within the inclusive definition of the term 'wife' consistent with the objective. The principles laid down by the Apex Court also may be in tune with the understanding of the word 'wife' as inclusive of a woman who has been a wife.

32. The manner in which the application under Section 12 of the Act had been presented direct by Saritha to the Magistrate was also attempted to be interpreted as fatal to the maintainability of the domestic violence case and the decision in M. Palani v. Meenakshi26 was relied on. The learned Judge incidentally also held that Section 2(q) does not say that the aggrieved person and the respondent should have lived together for a particular period and referred to the definition of 'domestic relationship' between two persons as one who live or have at any point of time lived together. That apart, the learned Judge held that before passing an order by the Magistrate, he shall take into consideration the domestic incident report received from the protection officer. The learned Judge observed that a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the protection officer. However, it has to be noted that the issue before His Lordship was more about the necessity for a family Court or a civil Court to have and consider a report from the protection officer before passing an order. It is seen from Milan Kumar Singh v. State of U.P.27 that a plain reading of section 10 was held to show that the aggrieved person can file a complaint directly to the Magistrate concerned. The learned Judge pointed out that the word 'or' used in Section 12 of the Act is very material, which provides choice to the aggrieved person to approach and there is no illegality in directly approaching

the Magistrate for taking cognizance in the matter. It is for the Magistrate concerned to take the help of the protection officer or service provider after receiving the complaint, provided he feels it necessary for final disposal of the dispute between the parties. Only if the parties concerned or the Magistrate take the help of the protection officer, he will submit a domestic incident report to the Magistrate concerned. This view is in perfect tune with the language of the statute and object and purpose of the Legislation. Therefore, the domestic violence case cannot fail merely on the ground of the 2nd respondent directly approaching the Magistrate with her application.

33. Satya v. Teja Singh28, Ramesh Venkat Perumal v. State of A.P.29, the decision of Madras High Court, dated 02-04-2008 in Criminal O.P. No.7156 of 2007 and a hard copy relating to the Act from internet relied on by Sri Krishna Reddy, hence, need no further reference being more about the legal consequences on the status of the parties due to a foreign judgment and the applicability of the Act to past events with present consequences.

34. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid30 is also about the conclusiveness or effect of a foreign judgment.

35. Concerning prosecution of parallel proceedings simultaneously on the same cause of action, in M. Nirmala v. Dr. Gandla Balakotaiah31, the question was the entitlement to interim relief in a suit pending before a family Court with reference to Section 19 of the Act and the learned Judge pointed out that the law provided different fora for different remedies. Likewise in Lalmuni Devi v. State of Bihar32, the Apex Court held that mere maintainability of a civil claim does not mean that a criminal complaint cannot be maintained and has to be quashed.

36. The question of multiplicity of proceedings arising out of the same set of facts was considered in depth in Kothamasu Nagavenkata Suresh Babu v. Kothamasu Suneetha33 and it was held that "The very nature of such rights, liabilities and proceedings arising out of relationships in matrimony, blood and adoption as illuminated by the legislative scheme, policy, purpose and object, obligates the Court to adopt an interpretation permitting the pursuit of various alternative remedies simultaneously or successively with the only duty for the respective Courts being to note the scope, content and nature of the other proceedings and to mould the grant of respective reliefs with reference to the reliefs granted in such other proceedings or the change of circumstances brought about on the reliefs granted or the subsequent grant of reliefs in the other proceedings. Hence, in respect of such rights and liabilities, the filing, pendency and pursuit of the proceedings under a different provision under a different law are not per se a disabling factor against the prosecution of the proceedings under another provision under another law simultaneously or successively."

It was also held that the impact of finality of an earlier adjudication of the same issues on the legality and sustainability of such subsequent proceedings may make them amount to an abuse of the process of the Court and interference with such proceedings to secure ends of justice will be on an altogether different legal premise, but not on the mere inconvenience of multiplicity of proceedings with the same factual background, if they are otherwise permissible in law. Such situation did not arise in this case and the maintainability of both the domestic violence case and the criminal case simultaneously, therefore, cannot be in question. In fact, the learned Judge in A. Sreenivasa Rao v.

State of Andhra Pradesh (23 supra) was dealing with a domestic violence case and a criminal case simultaneously being pursued and held that the domestic violence case cannot be considered to be a criminal proceeding and the mischief of Article 20 Clause (2) of the Constitution of India or Section 300 of the Code of Criminal Procedure is not applicable in such an event.

37. Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008 relied on Kans Raj v. State of Punjab34. The Apex Court noted therein that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. The Apex Court noted that a tendency has developed for roping in all relations of the in-laws of the wives, which will ultimately weaken the case of the prosecution even against the real accused. In Sushil Kumar Sharma35 also, the Apex Court administered a note of caution about the complaints, which are not bona fide and have been filed with oblique motives and directed the Courts to take care of the situation within the existing framework to avoid a new legal terrorism. The Supreme Court cautioned against following any strait jacket formula or casual dealing with such allegations and the ultimate objective of the legal system should not be lost sight of. Similarly in Neera Singh v. State36 also, it was noted that exorbitant claims are being made about the amounts spent on marriage, other ceremonies, dowry and gifts due to which the Court should insist on disclosing the source of such funds. It was also stated that vague allegations against every member of the family of the husband cannot be accepted at face value and the allegations have to be scrutinized carefully by the Court before framing the charge. The principles laid down in the three decisions relied on by Sri T. Pradyumna Kumar Reddy should put the trial Court on guard to appreciate the allegations made against the petitioners with reference to such factors, but no deep probe into the acceptability and reliability of the allegations can be indulged herein, more so, in the absence of any clinching proof either way on the material placed before the Court herein. Refraining from expressing any opinion on merits of the rival contentions, the matter has to be, therefore, left to be decided by the trial Court.

38. Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 also referred to T. Venkateshwarlu v. State of A.P.37 with reference to the question of jurisdiction. In that case, a decree of divorce was granted in Sweden and the offence of bigamy was alleged to have been committed at Nellore in Andhra Pradesh. The cruelty under Section 498A of the Indian Penal Code was also not alleged to be at Hyderabad, but was alleged to be at Nellore and Sweden. Consequently, it was held that the Courts or police at Hyderabad have no jurisdiction to investigate or enquire into the alleged offences. While the question whether the acts alleged against the petitioners amounted to cruelty within the meaning of Section 498A of the Indian Penal Code is one of fact to be probed into by the trial Court, the complaint by Krishna Reddy, the father of the alleged victim set the criminal law in motion and even if the alleged offence was mostly committed outside India within the meaning of Section 188 of the Code of Criminal Procedure, on the allegations made, certain events were claimed to have taken place at Hyderabad through telephonic conversations between the petitioners and Krishna Reddy, through personal meetings between Krishna Reddy and the 1st and 2nd petitioners, through a memorandum of understanding, dated 11-05-2007 at Hyderabad, e-mails received at Hyderabad and withdrawal of Rs.8,00,000/- within the jurisdiction of the Courts at Hyderabad. Whether a part of the cause of action for prosecuting the petitioners for the offences or domestic violence alleged arose at Hyderabad or not will be a matter of conclusion at the

trial and not before hand and hence, the application of Section 179 or Section 188 of the Code of Criminal Procedure, 1973 and any consequential requirement of complying with any procedural safeguards will depend upon the factual conclusions that will be arrived at during trial.

39. Thus, neither the domestic violence case nor the criminal case appear to be susceptible to being quashed in exercise of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, which is a rarely exceptional remedy and without expressing any opinion on the merits of the rival contentions, the criminal petitions have to be negatived.

40. In the light of the above discussion, the question of non- maintainability of the criminal petition for quashing the criminal case due to non-impleadment of Sri P. Krishna Reddy, the father of the victim, who gave complaint to the police, needs no further probe.

41. It should also be made clear that none of the observations made herein shall influence the consideration of the domestic violence case or the criminal case on their own merits by the trial Court and the entire discussion herein is purely with reference to examining the sustainability of the request for quashing the proceedings in both the cases.

42. Accordingly, both the criminal petitions are dismissed.

_____ G. BHAVANI PRASAD, J Date: 29-02-2012