Smt.C.Kavitha vs Sri.Sivanesan P on 19 March, 2022

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Crl.A.No.936/2019

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Crl.A.No.936/2019

KABC010139092019

IN THE COURT OF THE LII ADDL. CITY CIVIL &
SESSIONS JUDGE, BANGALORE (CCH-53)
Dated this the 19th day of March, 2022
PRESENT
Sri.B.G.Pramoda, B.A.L., LL.B.,
LII Addl. City Civil & Sessions Judge,
Bangalore.

Crl.A.No.936/2019

Appellant : 1. Smt.C.Kavitha
D/o Chandrashekara,
W/o Sivanesan,
Aged about 33 years,
R/at No.27, 1st 'A' Cross,
4th Main, M.D.Block,
Raja Mill Quarters, Malleshwaram,
Bengaluru-560003.
2. Master Yajath S
S/o P.Srivanesan P.,
Aged about 11 years,
Represented by Smt.Kavitha.
(By Sri.P.V.Anantharaman, Advocate)

-V/S-

Respondent : Sri.Sivanesan P.
S/o Late Sri.Panchappan,

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Aged about 48 years,
R/at No.12/8, 8th Cross,
Behind Old ESI, Magadi Road,

Bengaluru -560023.
(By Sri.S.U.P., Advocate)

JUDGMENT

This appeal is filed by the appellants u/Sec.29 of Protection of Women from Domestic Violence Act, 2005 praying to set aside the order dated 20.03.2019 passed by learned Metropolitan Traffic Court-III, Bengaluru in Crl.Misc.No.184/2017.

2. Appellants of this appeal were the petitioner No.1 and 2 before the trial court. The respondent of this appeal was the respondent before the trial court. The rank of the parties to the appeal are hereinafter referred to with the same rank as assigned to them before the trial court to avoid repetition of facts.

3. Brief facts of the case of the case which leads to file this appeals in brief are as follows:-

> The petitioners/appellants have filed Cl.Misc.No.184/2017 before the learned Metropolitan Magistrate Traffic Court-III, Bangalore, u/Sec.12 of Protection of Women from Domestic Violence Act, 2005 Crl.A.No.936/2019 and u/Sec.125 of Cr.P.C. praying for monthly maintenance of Rs.8,000/- for petitioner No.1 and Rs.7,000/- p.m. to petitioner No.2. It is alleged by the petitioners before the trial court that petitioner No.1 is the legally wedded wife of respondent and petitioner No.2 is the son of petitioner No.1 and respondent. The petitioner No.1 has alleged before the trial court that the respondent has subjected her to mentally and physically cruelty and subjected her to domestic violence. It is further alleged by the petitioner No.1 before the trial court that the respondent has deserted them and he has caused mental torture and agony to her by filing G & WC case seeking custody of the petitioner No.2. The petitioner No.1 is facing difficulties in maintaining herself and her minor son. It is further alleged by the petitioner No.1 before the trial court the respondent is working in police department and he is drawing salary of Rs.45,250/- p.m. and he is faving residential house at Magadi Road. Inspite of having sufficient income, the respondent has failed to look after the petitioners and he has not provided any maintenance amount to them. It is further alleged by the petitioner No.1 before the trial court petitioner No.1 is the house wife and she has no income to maintain herself and her minor son. Hence, the petitioners Crl.A.No.936/2019 have prayed before the trial court to allow the appeal as prayed for.

4. The respondent had appeared before the trial court and filed his objection to the petition by contending the fact that the petitioner No.1 is his wife and petitioner No.2 is his son. The respondent has denied all the allegations made against him regarding mental and physical harassment alleged to have been given by him to the petitioner No.1. He has also denied the allegations made against him that he has not made any arrangement for the maintenance of the petitioners. The respondent has contended before the trial court that the petitioner No.1 had voluntarily left her matrimonial house. He has further contended that the petitioner No.1 had filed case before the trial court as a counter to the G & WC case filed by him. The respondent had contended before the trial court that

he had already given money for his son's education and he has never neglected to maintain petitioners. Hence, the respondent has prayed to reject the petition.

5. The petitioners in order to prove their case have adduced the oral evidence of petitioner No.1 as P.W.1 before the trial court. The petitioners have produced Crl.A.No.936/2019 5 documents on their behalf and got them marked as Ex.P.1 to P.5. The respondent had adduced his oral evidence as R.W.1. He has also examined one witness on his behalf as R.W.2. The respondent has not produced any documents on his behalf.

6. The trial court after perusing the oral and documentary evidence adduced on behalf of both the parties and after perusing the pleadings and other materials on record was pleased to dismiss the petition filed by the petitioners vide order dated 20.03.2019. The petitioners being aggrieved by the said order of the trial court has preferred this appeal.

7. The grounds of appeal as urged by the appellants in the appeal memorandum in nutshell are as follows:

> (a) The trial court has committed grave erred in dismissing the petition filed by the petitioners. The impugned order of the trial court is contrary to law, evidence on record and probability of the case.
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> (b) The trial court has failed to see that the respondent had taken the appellant No.1 to NIMHANS Hospital, Bengaluru and since the respondent initiated for the treatment, the outpatient slip was forcibly taken from Crl.A.No.936/2019 the appellant No.1. The Learned Magistrate has not applied the mind that the appellant No.1 was not subject to complete checkup. The plaintiff No.1 is always normal.
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> (c) The Learned Magistrate has failed to see that the respondent misled the court that he has taken transfer to Bengaluru from his superiors as he was working in Delhi with an intention to take care of appellant No.1 and to give proper treatment to her. The respondent has not consulted petitioner No.1 or her father and he has also not came to see the new born son in the hospital.
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> (d) The Learned Magistrate has failed to see that the false affidavit was filed by the respondent stating that he had paid school fees of petitioner No.2 from 2011-2015.

The respondent had not paid any school fee and there is no documentary evidence or receipt issued from school.

(e) The Learned Magistrate has failed to applied his mind to the fact that the respondent neither denied nor disputed the police complaint dated 22.05.2010. There is definitely a case of domestic violence against the petitioner No.1.

(f) The Learned Magistrate has failed to see that the salary certificate of the respondent submitted by the petitioner No.1. The Learned Magistrate has erred in Crl.A.No.936/2019 observing that the petitioner No.1 and respondent have failed to furnish the salary certificate.

(g) The Learned Magistrate has failed to see that the respondent has deliberately neglected to maintain the petitioners and failed to provide the residential accommodation to them. The impugned order of the trial court has deprived, victimized and caused enormous sufferings both mentally and economically to the petitioner No.1.

(h) The Learned Magistrate has come to wrong conclusion that the petitioner No.1 having some mental illness without having any proof of medical checkup or final authenticated medical report from the qualified doctors.

(i) The Learned Magistrate has failed to see why the petitioner No.1 was silent and not initiated any legal action against respondent. The appellant had went to the matrimonial house in the year 2017 along with family elders, uncles, aunties, relatives and well wishers for discussions and counseling to reunion her family. Since petitioner No.2 was born to the petitioner No.1, the petitioner No.1 has not go ahead with legal remedies under the impression that the respondent may change his attitude. The respondent without taking petitioner No.1 to her matrimonial home issued legal notice for child custody.

Crl.A.No.936/2019 The Learned Magistrate has failed to considered all these facts.

(j) The Learned Magistrate has failed to considered the fact that the petitioner No.1 had filed petition before the learned 1st Addl. Family Judge, Bengaluru for restitution of conjugal rights. But the Learned Magistrate had erroneously stated that petitioner No.1 deserted the respondent.

(k) The Learned Magistrate has erred in holding petitioner No.1 is able to maintain herself on the false deposition given by R.W.2.

(l) The appellant would be put to greater injustice if the impugned order of the trial court is not rectified. The appellant has to face an irreparable damage and injury throughout her life.

On these among other grounds, as stated in the appeal memorandum, the appellant has prayed to allow the appeal.

8. After filing of the petition, it is numbered as Crl.A.No.936/2019 and notice was issued to the respondent. In pursuance of service of notice, the respondent has appeared before the court through his counsel. Then the trial court record was called for. Thereafter the matter was posted for arguments.

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9. Heard the arguments of learned counsel for the appellant and learned counsel for the respondent. Perused the grounds urged in the appeal memorandum, written arguments, trial court record and other materials on record.

10. Having done so, the following points will arise for my consideration:

Point No.1 Whether the appellants prove that the trial court is erred in dismissing the petition filed by them u/Sec.12 of Protection of Women from Domestic Violence Act, 2005 and u/Sec.125 of Cr.P.C.?

Point No.2 Whether the appellants prove that the interference of this court is required with the impugned order of the trial court?

Point No.3 Whether the appeal filed by the appellants is deserves to be allowed?

Point No.4 What order?

11. My answer to the aforesaid points are as follows:

Point No.1 .. In the Affirmative Point No.2 .. In the Affirmative Point No.3 .. In the Affirmative Point No.4 .. As per final order for the following:

Crl.A.No.936/2019 REASONS

12. Points No.1 to 3:- These three points are interrelated to each other and as such, they are taken together for discussion to avoid repetition of facts.

13. The Crl.Misc.No.184/2017 was filed by the petitioners before the trial court u/Sec.12 of Protection of Women from Domestic Violence Act, 2005 and u/Sec.125 of Cr.P.C. It is an admitted fact before the trial court that the petitioner No.1 is legally wedded wife of respondent and petitioner No.2 is the son of the petitioner No.1 and respondent. The petitioner No.1 had alleged before the trial court that the respondent and her family members have subjected her mental and physical cruelty and the have also subjected her to domestic violence in various forms as alleged by her in the petition. The petitioners alleged before the trial court that when the petitioner No.1 was living in share hold house with the respondent, the respondent use to abuse her with filthy language and use to give mental and physical harassment. It is also alleged by the petitioner No.1 that the respondent was demanding her to bring money from her parental house. When the petitioner No.1 has refused to give money to the respondent, the respondent got wild and assaulted her and forced her to return to the parental house. It is also Crl.A.No.936/2019 alleged by the petitioner No.1 that the respondent has took her to NIMHANS hospital for medical checkup. The respondent has threw petitioner No.1 out of his house.

Even though the petitioner No.1 is ready and willing to join the respondent, the respondent did not take back her and her son to his house and he has neglected to maintain the petitioners.

14. In order to prove the aforesaid allegations of metal and physical harassment given by the respondent as alleged in the petition, the petitioner No.1 had adduced her oral evidence as P.W.1 before the trial court. P.W.1 in her examination-in-chief has reiterated all the allegations made against the respondent in the petition. As such, entire examination of P.W.1 regarding the said facts are not reproduced her to avoid the repetition of facts. Nothing has been elicited during the course of cross-examination to P.W.1 in order to disbelieve her evidence in the chief- examination. P.W.1 has denied the suggestion put to her that she was mentally unsound person prior to her marriage and their parents have suppressed the said fact and got married her with respondent. She had denied the suggestion put to her that the respondent had took her to NIMHANS hospital to provide treatment for her mental illness. Though the respondent has contended before the Crl.A.No.936/2019 trial court that the petitioner No.1 is mentally ill and she is suffering from mental disorder and he took petitioner No.1 for treatment to NIMHANS hospital, the respondent has not produced any medical documents to show that the petitioner No.1 was mentally unsound mind prior to the date of her marriage with the respondent and her parents have suppressed the said fact before the marriage, the respondent has not produced any medical document to prove that due to said mental disorder she started to behave improperly as alleged by the respondent in the objection statement. The respondent has not produced any certificate issued by the competent doctor to prove that the petitioner is suffering from mental disorder as alleged by him in the petition. Only the oral evidence of R.W.1 and 2 that the petitioner No.1 is suffering from mental illness cannot be considered without any qualified doctors report or opinion. As such, I am of the opinion that the respondent has failed to prove his allegations that the petitioner No.1 is suffering from mental illness and due to the said mental illness she is behaving in improper manner with him as alleged by him in the objection statement as well as in the evidence.

15. The Learned Magistrate in the impugned order has observed that the petitioner No.1 herself has deserted Crl.A.No.936/2019 the respondent only for the silly reasons of her metal illness. It has been conceded prior to the marriage. On what basis the Learned Magistrate has come to the conclusion that the petitioner No.1 was suffering from mental illness prior to her marriage with the respondent is not properly explained by the Learned Magistrate. Further on what basis, the Learned Magistrate has come to the conclusion that the petitioner is suffering from illness is also not explained by Learned Magistrate. It is the respondent who has taken specific contention before the trial court that the petitioner No.1 is suffering from mental illness. As such, the entire burden is upon the respondent to prove the fact that the petitioner No.1 is suffering from mental illness. Any amount of oral evidence adduced on behalf of respondent is not sufficient to come to the specific conclusion that the petitioner is suffering from mental illness and on account of said illness she has voluntarily deserted the respondent. Without any medical documents or without any opinion of the doctor who has treated the petitioner No.1, it cannot be come to the conclusion that the petitioner No.1 is suffering from mental illness. The Learned Magistrate has only relied upon oral evidence of R.W.1 and 2, in order to come to the conclusion that the petitioner No.1 is suffering from mental Crl.A.No.936/2019 illness. The finding of the trial court that the petitioner No.1 is suffering from mental illness and on account of the same she has voluntarily deserted respondent cannot be

acceptable one. The Learned Magistrate is erred in relying only upon oral evidence of R.W.1 and 2 to come to said conclusion. Under these facts and circumstances, I am of the opinion that the respondent has failed to adduce substantial evidence to prove the fact that the petitioner No.1 is suffering from mental illness from beginning i.e., prior to her marriage with him and same was conceded by the family members at the time of marriage. Further the respondent has also failed to prove with medical document or report that on account of the said medical illness she had given all torture and mental harassment to him and on several occasions she suddenly felt anger and she was not able to control her violent acts on account of said mental illness as alleged by him in the objection. The respondent has failed to prove with medical evidence to show that what was the nature of mental illness from which the petitioner No.1 is suffering and what is the consequences of such mental illness. The Learned Magistrate without considering all these facts is erred in coming to the conclusion that the petitioner No.1 is Crl.A.No.936/2019 suffering from mental illness and on account of said mental illness she has deserted the respondent.

16. The very contention of the respondent that the petitioner is suffering from mental illness and failure on the part of the respondent to prove the fact that from what type of mental illness the petitioner No.1 is suffering from and what are the consequences of said mental illness, is sufficient to come to the conclusion that the respondent is making such false allegations against the petitioner without any medical documents. Said false allegations of the respondent against the petitioner No.1 in the objection statement itself is sufficient to show that the respondent is causing mental harassment to petitioner No.1 by alleging that she is suffering from mental illness.

17. Nowhere in the objection statement before the trial court, the respondent has made any averments regarding he making arrangement for the maintenance of the petitioner No.1 and 2. In the objection statement the respondent has only averred that he had already given money to his son for education. Except the said averments, the respondent has not stated anything about arrangement made by him for maintenance of the petitioners. Nothing has been elicited during the course of Crl.A.No.936/2019 cross-examination of P.W.1 to show that he had provided sufficient maintenance amount to the petitioners for their livelihood. The respondent has not produced any documents to show that he had paid the school fee of his son i.e., petitioner No.2. R.W.1 in his cross-examination has stated that he had provided maintenance amount to the petitioner No.1 prior to filing of the petition and after filing of the petition. R.W.1 in his cross-examination has stated that he has not produced any documents before the trial court to show that he had paid the maintenance amount to the petitioners. Without any documentary proof the contention of respondent that he had paid maintenance amount to the petitioners and educational expenses of petitioner No.2 cannot be acceptable one. It is an admitted fact that the petitioners are not residing with respondent. There are no suffering materials on record to show that the petitioner No.1 had voluntarily left her matrimonial home. On the other hand, the petitioner No.1 has filed petition before the learned 1 st Addl. Family Judge, Bengaluru, praying for restitution of conjugal rights. This fact is sufficient to show that petitioner No.1 has no intention to desert the respondent and to live separately. If the respondent had intention of taking the petitioners back and if he had the intention of leading marital life with her, Crl.A.No.936/2019 he would have filed petition for restitution of the conjugal right against the petitioner No.1 or he would have submitted no objection of the petition filed by petitioner No.1. The respondent has not produced any documents to show that the petition for

restitution of conjugal right filed by the petitioner No.1 came to be dismissed. All these facts and circumstances are sufficient to come to the conclusion that the petitioner No.1 has not voluntarily deserted the respondent. The contention of the respondent that the petitioner No.1 is suffering from mental illness and as such she is behaving in indifferent manner with him goes to show that he himself is not ready to live with the petitioner No.1. The trial court is erred in coming to conclusion that the petitioner No.1 had voluntarily deserted the respondent is not proper and judicious.

18. The respondent being the husband of petitioner No.1 and father of petitioner No.2 is legally bound to maintain them and he is bound to provide sufficient amount for their livelihood. Not providing the basic necessities to petitioner No.1 and her son by the respondent without any reasonable cause would amount to economic abuse as provided u/Sec.3 explanation 4 of Protection of Women from Domestic Violence Act, 2005.

Crl.A.No.936/2019 Further P.W.1 in her examination-in-chief has also clearly deposed about the physical abuse and verbal and emotional abuse caused by the respondent on her. The respondent has also filed G&WC No.207/2017 against the petitioner No.1 praying for custody of petitioner No.2. The respondent without accepting petitioner No.1 has filed the petition only for custody of his son. This fact is also sufficient to infer the fact that the respondent is causing mental and emotional abuse to the petitioner No.1.

19. Under Sec.12 of Protection of Women from Domestic Violence Act, 2005, the aggrieved person is entitled to file an application for obtaining any relief provided under the said act. The definition of aggrieved person is provided Sec.2(a) of the said act. According to said section, "Aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The term domestic relationship is defined u/Sec.2(f) of the said act. According to the said Sec, "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 Crl.A.No.936/2019 marriage, adoption or are family members living together as a joint family. The petitioner No.1 had lived with the respondent in the share hold house and she is related the respondent by marriage. As such, it is clear that the petitioner No.1 is in domestic relationship with the respondent within the meaning of Sec.2(f) of the Act.

20. The petitioner has alleged that the respondent has subjected her to domestic violence. The term of domestic violence is defined u/Sec.3 of the act, Sec.3 of the Domestic Violence Act provides for the definition of Domestic Violence. The said Section reads as follows:

> "Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case, it-
>
> (a) harms or injuries or endangers the health, safety, life, limb or well-being, whether mental or physical of the aggrieved person or tends to do so and includes causing

physical abuse, sexual abuse, verbal and emotional abuse and economic abuse, or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security, or Crl.A.No.936/2019

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

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

21. The definition of domestic violence is wide enough to cover many instances as domestic violence. The explanation No.2 to Sec.3 of the said act provides that for the purpose of determining whether any act, omission, commission or conduct of the respondent constitute domestic violence under the section, the over all facts and circumstances of the case shall be taken into consideration. The over all facts and circumstances of the case before the trial court as discussed above clearly goes to show that the petitioner No.1 was subjected to mental, verbal and emotional and economic abuse by the respondent which amounts to domestic violence u/Sec.3 of the PWDV Act. In case of the allegation of domestic violence, the corroboration of any witnesses cannot be expected since domestic violence would take place within the four corners of the wall, when the aggrieved person lived with the respondent in domestic relationship. As such, the evidence of the victim or the aggrieved person has to be believed except in rare cases and in cases Crl.A.No.936/2019 where the respondent has made out specific case that the aggrieved person is deposing falsely. In this case there are no sufficient grounds to believe that the petitioner No.1 is deposing falsely against the respondent. Under these facts and circumstances, I am of the opinion that the trial court is erred in holding that the petitioner No.1 has failed to prove that the respondent has subjected her to domestic violence.

22. The learned trial court is also erred in holding that the petitioner No.1 has failed to prove that she has been in domestic relationship with the respondent. The Learned Magistrate has not properly understood the definition of domestic relationship u/Sec.2(f) of the said act. As it is stated earlier, "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. As per the definition of domestic relationship, it is sufficient for the aggrieved person to prove that she was lived with the respondent in a share household. The said section is not restricted only to the cases where the aggrieved party and respondent are living in share household as on the date of Crl.A.No.936/2019 institution of the suit. The petitioner No.1 has adduced sufficient evidence to show that she had resided with respondent as his legally wedded wife in a share household. The respondent has also not disputed the said fact. She has also alleged that in the said share household the respondent had subjected her to domestic violence. As such, I am of the opinion that the trial court is erred in answering to Points No.1 and 2 framed by it in Negative. I am of the opinion that Points No.1 and 2 framed trial court are required to be answered in Affirmative.

23. The Protection of Women from Domestic Violence Act, provides for various remedies to the aggrieved persons. Those remedies ae provided u/Sec.17 to Sec.22 of the act. The aggrieved person can seek the relief of right to reside in a share household, protection order, residence order, monetary reliefs, custody orders and compensation orders. The petitioners before the trial court have sought for only the monetary relief as provided u/Sec.20 of the Protection of Women from Domestic Violence Act.

24. The petitioners have sought for maintenance amount for them from the respondent. The trial court has Crl.A.No.936/2019 refused to grant the monetary relief as sought for by the petitioners. The trial court in its order has held that the petitioner No.1 is working in cloth center and she is capable of maintaining herself and as such she is not entitled for any monetary relief under Protection of Women from Domestic Violence Act. Further trial court is held that the petitioner No.1 has voluntarily deserted the respondent and as such she is not entitled for the any relief under the act. The Learned Magistrate is also observed that the petitioner No.1 has not initiated any action against the respondent from 2010 onwards, after she has deserted him and she has not explained what prevented her to take legal action against the respondent. The Learned counsel for the respondent has mainly contended that the petition filed by the petitioners before the trial court is barred by limitation and since the petitioner No.1 was not residing with respondent as on the date of petition, she is not entitled for any relief under Protection of Women from Domestic Violence Act. In support of his arguments, the Learned counsel for the respondent has relied upon the judgment of Hon'ble High Court of Karnataka reported in 2021 (3) AKR 862, AIR online 2021 Karnataka 1052 (Shahida V/s Abubakkar and another). He has also relied upon the decision reported in Hon'ble Madras High Crl.A.No.936/2019 Court reported in 2019 Cr.L.J.3027 (V.Nagarajan and others V/s. B.P.Thangaveni).

25. The bar of limitation under 468 of Cr.P.C. is applicable to the offence which are punishable under Protection of Women from Domestic Violence Act. The offences which are punishable under Protection of Women from Domestic Violence Act is provided u/Sec.31 of the said act. A breach of protection order or an interim protection order by the respondent shall be an offence under the act and the said offence is punishable with imprisonment for one year u/Sec.31 of Protection of Women from Domestic Violence Act. But in the case before the trial court, the petitioner No.1 has not alleged that the respondent has violated interim protection order or and he has committed breach of protection order. The petitioners have not alleged that the respondent has committed the offence u/Sec.31 of Protection of Women from Domestic Violence Act. Further the petition is not filed by the petitioners before the trial court u/Sec.31 of Protection of Women from Domestic Violence Act.

26. The Hon'ble High Court of Karnataka in the recent decision dated 01.04.2021 passed in Crl.A.No.936/2019 Crl.R.P.No.730/2019 (Puttaraju V/s Shivakumari) has held that the application under Sec.12 of the D.V. Act is not covered under the term 'offence'. Hence, section 468 of Cr.P.C. is inapplicable. It is held that Sec.12 of the Act is only an enabling provision to initiate an enquiry to find out whether such an act or omission is committed. It is further held in the said judgment that Sec.20 and 21 of the Domestic Violence Act do not treat the domestic violence as offence. It is further held that the proceedings under the Domestic Violated Act is neither purely criminal or civil proceedings.

27. The Hon'ble Supreme Court of India in Krishna Bhattacharjee V/s Sarathi Choudari (2016) (2) SCC 705 has held that the observation regarding domestic relationship in Inderjit Singh Grewal's case were based on the facts and circumstances of the said case and they are not of general application.

28. Further the Hon'ble Supreme Court of India in Para No.32 of the judgment has held that the definition of the aggrieved person and domestic relationship remains and the act of domestic violence attracts the term 'continuing offence,' therefore does not get time barred. The Hon'ble Supreme Court of India in Krishna Crl.A.No.936/2019 Bhattacharjee's case has held that "judicial separation"

> does not change the status of the wife as an 'aggrieved person' under Sec.2(a) r/w Sec.12 of Protection of Women from Domestic Violence Act and does not end the 'domestic relationship'.

29. The Hon'ble Delhi High Court in Anthony Jose V/s State (NCT of Delhi) has held that non-providing of maintenance is a continuous cause of action and even if for three years the aggrieved person did not claim the maintenance for herself and for her child, the same would not debar her from seeking maintenance under Sec.12 of the Protection of Women from Domestic Violence Act and the complaint thereon cannot be dismissed being barred by limitation.

30. In view of judgment of Hon'ble Supreme Court of India in Krishna Bhattacharjee's case and the judgment of Hon'ble Delhi Court and Karnataka High Court referred about it is clear that concept of continuing offence and concept of continuing cause of action is applicable to acts domestic violence as provided under Protection of Women from Domestic Violence Act. The Hon'ble Delhi High court is the decision referred above has also clearly held that non-payment of maintenance amount is a continuous Crl.A.No.936/2019 cause of action. In view of the decision of Hon'ble Supreme Court of India in Krishna Bhattacharjee, it is clear that application filed under Sec.12 of the Protection of Women from Domestic Violence Act cannot be dismissed only on the ground that aggrieved party was not resided with the respondent in shared household as on the date of filing of petition. Hence, I am of the humble view that the decisions relied upon by the Learned counsel for the respondent cannot be made applicable to the fact and circumstances of the case before the trial court. It is already discussed and held above that the petitioner No.1 has proved that the respondent had subjected her to domestic violence and he has not paid any maintenance amount to her and her children. The petitioners have only sought for monetary relief provided under Protection of Women from Domestic Violence Act. As it is discussed earlier, the respondent has failed to adduce sufficient evidence to prove that he has made sufficient arrangement of the maintenance of the petitioners. The respondent being the husband of petitioner No.1 and father of petitioner No.2 is duty bound to maintain them and to make proper arrangement for their food, clothing, shelter, medical care, educational expenses of petitioner No.2 etc. Under these facts and circumstances, I am of the opinion Crl.A.No.936/2019 that petitioners are entitle for the monetary relief as prayed for. I am of the view that trial court is erred in dismissing the petition filed by the petitioners under Sec.12 of the Protection of Women from Domestic Violence Act. As such, the interference of this court is warranted with impugned judgment of the trial court. The appellant have proved Points No.1 and 2

and as such, I answer Points No.1 and 2 in Affirmative.

31. Now let us examine for what monetary relief the petitioners are entitle to get. The petitioners in the petition before the trial court have sought for monthly allowance of Rs.8,000/- to petitioner No.1 and Rs.7,000/- to petitioner No.2. According to petitioners, the respondent is working in Delhi Police and deputed in CBI, Bengaluru and drawing salary of Rs.45,000/- to Rs.50,000/- per month and he is having house in Magadi Road and agricultural land in Tamil Nadu. R.W.1 in cross-examination has admitted that house in Magadi Road is standing in the name of mother of respondent. The petitioner has not produced any documents pertaining to agricultural lands situated in Tamil Nadu in the name of respondent. But P.W.1 in the cross-examination admitted that Tamil Nadu property is ancestral property and case is pending between the respondent and his brothers for Crl.A.No.936/2019 partition of the said land. The petitioners have failed to adduce any evidence to prove the income of the respondent from the aforesaid properties. The respondent has not disputed the fact that he is working in police department and drawing monthly salary. The salary certificate of the respondent is not marked as exhibit by the petitioners on their behalf. But from the trial court record, it could be seen that on 09.07.2018, the petitioners have filed memo with salary particular slip of respondent issued by Head of Branch of CBI, ACB, Bengaluru. From the said document, it is clear that the respondent was drawing net salary of Rs.51,824/- during June 2018.

32. The trial court in its judgment has held that the petitioner No.1 is working in the cloth centre and she is able to maintain herself. There are no sufficient materials on record before the trial court to show that petitioner No.1 is working and she has got sufficient source of income to maintain herself and her son. P.W.1 in her cross-examination has denied the suggestion put to her that she is working. The respondent has failed to produce any sufficient evidence to prove the fact that where the petitioner No.1 is working and what income she has got. The trial court without appreciating this fact has came to the conclusion that the petitioner No.1 is working and she Crl.A.No.936/2019 is capable of maintaining her. The trial court has not appreciated the fact about what was the income of petitioner No.1 and whether said income is sufficient to maintain herself and petitioner No.2. The respondent has contended that the salary which he is receiving is not sufficient for him to meet out his expenses of payment of rent, medical expenses of his mother and his family expenses. The trial court has not appreciated the fact that when the respondent himself is contending that income of Rs.51,824/- is not sufficient to meet out his expenses, how the petitioner No.1 could maintain and her child without any source of income. The petitioner No.1 needs money for food, clothing, shelter and medicine for herself and her son. Petitioner also need money for the educational expenses of her son. It is duty of respondent to provide all basic necessities of the petitioners. But the respondent has failed to prove that he has made all arrangement to full-fill all the basic necessities of the petitioners.

33. Under Sec.12 of the Protection of Women from Domestic Violence Act, the aggrieved party can seek monetary relief for herself and for her children from the respondent. Under Sec.20 of the Protection of Women from Domestic Violence Act, the Learned Magistrate while disposing of an application under Sec.12(1), may direct the Crl.A.No.936/2019 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 such expense may include but is not

limited to loss of earning, medical expenses, maintenance for the aggrieved person as well as her children including an order under or in addition to an order of maintenance under Sec.125 of the Cr.P.C. or any other law for time being in force. Sec.20(2) of the act provides that the monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which aggrieved person is accustomed. Thus Sec.20 of the Protection of Women from Domestic Violence Act does not bar granting of the maintenance amount to the aggrieved party and to her children. Admittedly, the respondent has filed G&WC case seeking custody of petitioner No.2. The said case s still pending. Now the petitioner No.2 is living with the petitioner No.1. Hence, till passing of order on custody of petitioner No.2 to respondent, the respondent is under legal obligation to provide maintenance amount to petitioner No.2 also. The petitioners have sought for monthly maintenance of Rs.15,000/- to both. The amount of maintenance claimed by the petitioners seems to be Crl.A.No.936/2019 reasonable, adequate and fair and consistent with the standard of living to which the petitioner is accustomed when they were living with respondent. Since the respondent was drawing salary of Rs.51,824/- during 2018, I am of the view that respondent would be capable of paying the said maintenance amount to the petitioners. If the respondent is held liable to pay maintenance of Rs.15,000/- per month to petitioners, the respondent would left with more than Rs.30,000/- with him. The said amount would be sufficient to maintain himself and his mother. The salary of the respondent might have also increased now. As such, I am of the view that respondent is capable of paying the maintenance amount as prayed for by the petitioners. Hence, I am of the view that the petition filed by the petitioners before trial court is deserved to be allowed. Similarly the present appeal filed by the appellants is also deserved to be allowed in terms of the prayer sought for by the petitioners before trial court. Accordingly I answer Point No.3 in Affirmative.

34. Point No.4:- In view of my findings on point No.1 to 3, I proceed to pass the following:

ORDER The Criminal Appeal filed by the petitioner u/Sec.29 of Protection of Women Crl.A.No.936/2019 from Domestic Violence Act, 2005 is hereby allowed.

The impugned judgment dated 20.03.2019 passed by learned Metropolitan Traffic Court-III, Bengaluru in Crl.Misc.No.184/2017 is hereby set aside.

Crl.Misc.No.184/2017 filed by the petitioners is hereby allowed.

The respondent is hereby directed to pay monthly maintenance of Rs.8,000/- to petitioner No.1 and Rs.7,000/- to petitioner No.2 from the date of the petition.

Send back the record to the trial court along with copy of the judgment of the appeal.

(Dictated to the Stenographer directly on computer, typed by her, corrected and then pronounced by me in the open court on this the 19th day of March, 2022).

(B.G.Pramoda) LII Addl. City Civil & Sessions Judge, Bangalore.

Crl.A.No.936/2019 Judgment pronounced in the open court (vide separate order) ORDER The Criminal Appeal filed by the petitioner u/Sec.29 of Protection of Women from Domestic Violence Act, 2005 is hereby allowed.

The impugned judgment dated 20.03.2019 passed by learned Metropolitan Traffic Court-III, Bengaluru in Crl.Misc.No.184/2017 is hereby set aside.

Crl.Misc.No.184/2017 filed by the petitioners is hereby allowed.

Crl.A.No.936/2019

The respondent is hereby directed to pay monthly maintenance of Rs.8,000/- to petitioner No.1 and Rs.7,000/- to petitioner No.2 from the date of the petition.

Send back the record to the trial court along with copy of the judgment of the appeal.

LII Addl. City Civil & Sessions Judge, Bangalore.

36 Crl.A.No.936/2019