
2018 eGLR_HC 10006037

Before the Hon'ble MR. J B PARDIWALA, JUSTICE

BHARTIBEN BIPINBHAI TAMBOLI Vs. STATE OF GUJARAT AND ORS.

SPECIAL CRIMINAL APPLICATION No: 5672 of 2016 , Decided On: 08/01/2018

(A) [Head Notes Incorporated when Published in GUJARAT LAW REPORTER]

IN SPL. CRIMINAL APPLICATION NO. 5672 of 2016 MR K. S. NANAVATI, SENIOR ADVOCATE FOR NANAVATI ASSOCIATES, for the Applicant(s) No. 1 MR. JAY M THAKKAR, for the Respondent(s) No. 2 - 4 MR D. M. DEVNANI, APP for the Respondent(s) No. 1 IN SPL. CRIMINAL APPLICATION NO. 9799 of 2016 MR SOPARKAR, SENIOR ADVOCATE WITH DIPEN DESAI, for the Applicant(s) No. 1 MR. JAY M THAKKAR, for the Respondent(s) No. 2 - 4 MR D. M. DEVNANI, APP for the Respondent(s) No. 1

J. B. PARDIWALA, J. 1. In the Affairs of this World, Men are saved, not by Faith, but by the Lack of it. Benjamin Frenklin.

2. As the issues raised in both the captioned applications are the same and the prayer is also to quash the selfsame proceedings initiated under the provisions of the Protection of Women from Domestic Violence Act, 2005, those were heard analogously and are being disposed of by this common judgment and order.

3. The Special Criminal Application No.5672 of 2016 has been filed by the motherinlaw of the respondent no.2. The respondents nos.3 and 4 are the grandchildren of the writapplicant. The respondent no.2 is married to one Mehul Bipinbhai Tamboli i.e. the son of the writ applicant. In the wedlock, the respondents nos.3 and 4 were born.

4. The writapplicant herein has prayed for the following reliefs:

26(A) be pleased to quash qua the present petitioners the impugned complaint registered as Criminal Miscellaneous Application No.131 of 2016 and pending before Chief Judicial Magistrates Court, Bhavnagar and the impugned Order dated 05.04.2016 passed thereunder by the Ld. 2nd Additional Senior Civil Judge and Judicial Magistrate First Class, Bhavnagar;

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(B) pending hearing and final disposal of the present petition, be pleased to stay further proceedings under the impugned complaint registered as Criminal Miscellaneous Application no.131 of 2016 and pending before Chief Judicial Magistrates Court, Bhavnagar and the impugned order dated 05.04.2016 passed thereunder by the Ld. 2nd Additional Senior Civil Judge and Judicial Magistrate First Class, Bhavnagar;

(C) An ex parte ad interim relief in terms of prayer (B) above may kindly be granted;

(D) such other and further relief/s as may be deemed just and proper may kindly be granted in the interest of justice.

5. The case of the writ applicant (mother in law) as pleaded in her writ application is as under:

3. The petitioner is a Senior Citizen of this country and her fundamental rights are guaranteed under the Constitution of India. The petitioner is a housewife and belongs to a highly respected family. She is mother in law of Respondent No.1 and is opponent No.2 in the impugned complaint.

4. Respondent no.2 is wife of Mehulbhai Bipinbhai Tamboli, who is Opponent No.1 in the impugned complaint.

5. Respondent No.2 is an educated person herself and her brother, Baijubhai, is a medical practitioner. Uncle of Respondent No.2, Dr. Rajubhai J. Dave is practicing for the last 35 years in Bhavnagar as a Child Specialist.

6. The Petitioner submits that the marriage between Respondent No.2 and Mehulbhai Bipinbhai Tamboli was a love marriage and took place on 16.2.1993 according to Hindu tradition. Out of the wedlock, Respondent No.2 and Mehulbhai Bipinbhai Tamboli have a 20 year old daughter, Anushree and a 15 year old son, who are respectively Respondents Nos.3 and 4 herein.

7. The petitioner has been residing with her husband, Bipinbhai Fulchandbhai Tamboli at a bungalow on Plot No.2294, Hilldrive Road, Bhavnagar for decades and was residing there when the marriage of Respondent No.2 and Mehulbhai Bipinbhai Tamboli took place on 16.02.1993.

8. The Petitioner submits that the family of the Petitioner had very well accepted Respondent No.2 as a daughter-in-law, which is evident from the fact that for about 13 years after the said marriage, Respondent No.2 and Mehulbhai Bipinbhai Tamboli lived in a joint family. The Petitioner submits that the family of the Petitioner including Respondent No.2 celebrated festivals and various family occasions and took vacations including a trip in 1998 to the US where the younger brother of Mehulbhai Bipinbhai Tamboli was studying and even visited Disneyworld in Florida, USA. Younger brother of Mehulbhai Bipinbhai Tamboli got married in 2001 and even after his marriage, there was joint living in the Tamboli family. In other words, Respondent No.2 was comfortably living with the family of the Petitioner herein.

9. The Petitioner submits that as stated by Respondent No. 2 in para 7 of the impugned Complaint, in the year 2002, one lady by the name Rinaben Sultanbhai Ladiwala was giving private tuitions to Respondents No. 3 and 4 herein who were small kids at the time. As per Respondent; No.2 herself, her life turned upside down due to extreme nearness between Mehulbhai Bipinbhai Tamboli and Rinaben Sultanbhai Ladiwala.

10. The Petitioner submits that Mehulbhai Bipinbhai Tamboli with Respondents No.2 to 4 started living separately from the rest of the family shortly after 02.10.2006, the date on which, "Kumbh Ghado" ceremony was performed. The address where they started living was Dilbahar bungalow, Opp. Victoria Park, Kaliabid, Opp. Water Tank, Bhavnagar. The pictures show cordial relationship between Respondent No.2 and the Petitioner who had been happily invited to the ceremony and joyfully participated therein.

11. The Petitioner submits that the said separate living of Respondent No.2 in 2006 took place after joint living for about 13 years with the Petitioner and the rest of the family. It is the say of the Respondent No.2 herself, that her troubles increased very much after the said separate living.

12. The Petitioner submits that as per Respondent No.2, on 21.08.2011, Respondent No.3 herein somehow got hold of mobile phone of Rinaben Sultanbhai Ladiwala and read therein exchange of messages between Mehulbhai Bipinbhai Tamboli and Rinaben Sultanbhai Ladiwala. Thereafter, Respondent No.3 herein spoke to her father, Mehulbhai Bipinbhai Tamboli the night of 21.08.2011 about the said messages and as per Respondent No.2, from that incident, a crack was generated in her married life leading to filing of an FIR No.CRII30/2012 by Respondent No.2 against Mehulbhai Bipinbhai Tamboli under Sections 498A, 323, 504, and 506(2) of the Indian Penal Code, 1860. (Respondent No.2 has herself stated such facts in her Private Complaint dated 13.08.2013 in para 9(f).) Pursuant to the said FIR, Charge Sheet dated 31.05.2012 came to be filed.

Criminal Case No.3096 of 2012 was registered thereafter, before the Ld. Chief Judicial Magistrate, Bhavnagar and is pending.

13. The Petitioner submits that Respondent No.2, through her Advocate issued a Legal Notice dated 04.03.2013 to the husband of the Petitioner herein demanding information of properties of the husband of the Petitioner herein. Reply dated 23.03.2013 was issued on behalf of the husband of the Petitioner herein to the said Legal Notice.

14. The Petitioner submits that Mehulbhai Bipinbhai Tamboli thereafter, in August 2013, filed a Family Suit No.371 of 2013 before the Honble Family Court of the Ld. Principal Judge, Bhavnagar seeking divorce under S.13(1)(ia) of the Hindu Marriage Act, 1955. In the said Family Suit, Respondent No.2 herein filed an Application dated 31.07.2014 at Exh.14 seeking maintenance from Mehulbhai Bipinbhai Tamboli under Section24 of the Hindu Marriage Act, 1955. An Order dated 18.11.2014 was passed partly allowing the said Application at Exh.14 and directing Mehulbhai Bipinbhai Tamboli to provide maintenance to Respondent No.2 herein. In the said Order dated 18.11.2014 in para No.2 on internal page2, it is recorded "All the stridhan, articles, clothes, antic things, original passport of Opponent and her children, bank passbook, cheque book, fixed deposit receipts, educational certificates, original driving licence, election card, PAN card, incometax return file etc. are still lying in the said Dilbahar bungalow". Therefore, the Petitioner submits that there is no question of any Stridhan being in her possession at all as wrongly alleged by Respondent No.2.

15. The Petitioner submits that Respondent No.2 herein thereafter filed a Private Complaint dated 13.09.2013 pursuant to which an Order dated 09.10.2013 under Section202 of CrPC was passed and Inquiry Case No.99 of 2013 was registered on 13.09.2013 before the Honble Court of the Ld. Chief Judicial Magistrate, Bhavnagar. The Petitioner submits that she was arrayed as Accused No.4 in the said Inquiry Case No.99 of 2013 and that she and her husband, Bipinbhai Fulchandbhai Tamboli preferred before this Honble High Court Special Criminal Application No.3220 of 2013 wherein this Honble Court was pleased to pass Order dated 23.10.2013 providing some protection to the Petitioner herein and her husband. In the said Inquiry Case No.99 of 2013, a Report dated 07.01.2014 was filed by Police SubInspector, C Division Police Station, Bhavnagar, stating that after Respondent No.2 and Mehulbhai Bipinbhai Tamboli started living separately from the rest of the family in 2006, a crack was developed in the husband wife relationship and reason for that was frequent visits by Rinaben Sultanbhai Ladiwala. The said Special Criminal Application No.3220 of 2013 is pending before this Honble Court.

16. The Petitioner submits that after having filed the aforementioned FIR on 21.02.2012 only against Mehulbhai Bipinbhai Tamboli, Private Complaint on 13.09.2013 and the Application on 31.07.2014 under Section24 of the Hindu Marriage Act, 1955, Respondent No.2 filed on 16.03.2016 the impugned Complaint under Sections18, 19, 20, 21 and 22 of the Act against her husband and the Petitioner. The impugned Complaint was filed in sheer abuse of law more than 23 years after the date of marriage and about 10 years after admittedly living in a household separate from that of the Petitioner.

17. The Petitioner submits that a Report dated 05.04.2016 came to be filed by the Protection

Officer
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18. The Petitioner submits that despite the admitted absence of any shared household with the Petitioner during the 10 years before the filing of the impugned Complaint, vide Order dated 05.04.2016, the Ld. 2nd Additional Senior Civil Judge and Judicial Magistrate First Class upon perusing the Report of the Protection Officer, issued Notice to the Petitioner herein.

19. The Petitioner submits that together With the impugned Complaint, Respondents No.2 to 4 also filed an Application for interim relief a copy of which is part of AnnexureA (Golly) annexed hereto.

20. The Petitioner submits that in the impugned Complaint, the Petitioner herein filed an Application to dismiss the Complaint qua the Petitioner on the ground of the Complaint being barred b limitation under Section 468 of CrPC; however, vide Order dated 19.07.2016, the said Application came to be rejected.

21. In View of the above background, the Petitioner submits that the Petitioner has been wrongly and unnecessarily made an Opponent in the impugned Complaint, as she and Respondents No.2 to 4 were not having any shared household in the 10 years before the date of the impugned Complaint, more particularly, when and the Act itself came into force on 26.10.2006 i.e. in the year, Respondents No.2 to 4 started living separately with the husband of Respondent No.2. Apart from that, the Petitioner who is motherinlaw of Respondent No.2 is not liable or responsible to maintain Respondents No.2 to 4.

6. The Special Criminal Application No.9799 of 2016 has been filed by the husband of respondent no.2. The husband has prayed for the following reliefs:

6(A) be pleased to admit and allow this application.

(B) be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order quashing and setting aside the impugned proceedings initiated under the Domestic Vिलence Act by way of Criminal Misc. Application No.131 of 2016 filed before the learned Judicial Magistrate, Bhavnagar at AnnexureA to the petition.

(C) pending hearing and final disposal of this petition, be pleased to stay the further proceedings of the Criminal Misc. Application No.131 of 2016 filed before the learned Judicial Magistrate, Bhavnagar at AnnexureA to the petition.

(D) such other and further relief or relieves as may be deemed fit, just and proper, in the facts and circumstances of the case.

7. The case put up by the husband as pleaded in his writ application is as under:

2.1 The petitioner submits that the petitioner and the respondent No.2 got married in the year 1993. From their wedlock, they have two children viz. Anushri Mehul Tamboli, aged about 20 years and Divyaraj Mehul Tamboli, aged about 15 years.

2.2 The petitioner submits that the petitioner and the respondent No.2 started having differences in their marriage life from the year 2007. Pursuant to such differences, the petitioner and the respondent No.2 agreed to have mutual divorce under Section 13B of the Act. Therefore, they entered into agreement dated 27.08.2011 for divorce with mutual consent. In the said notarized agreement in which the respondent No.2 categorically accepted one time alimony and carved all her rights for future alimony.

2.3 The petitioner and the respondent No.2 entered into a subsequent settlement dated 24.09.2011, wherein, the respondent No.2 accepted all the conditions of agreement dated 27.08.2011 and also agreed to give custody of both the children to the petitioner.

2.4 The petitioner submits that subsequently the respondent No.2 did not agree for mutual divorce under Section 13B of the Act and therefore, the petitioner was constrained to institute a family suit under the provisions of Section 13(1)(ia) of the Act, which came to be filed.

2.5 The petitioner submits that the respondent No.2 thereafter, filed an application under Section 24 of the Act for interim alimony in the pending proceedings under Section 13 of the Act. The respondent No.2 asked for interim alimony of Rs.2 lacs per month and also asked for return of the Stridhan.

2.6 In the said application, the learned trial Court vide order dated 18.11.2014 directed the petitioner to pay an amount of Rs.35,000/ for the wife and Rs.15,000/ for the daughter and Rs.15,000/ for the son as interim maintenance.

2.7 The said order of the learned Family Court was challenged by the petitioner by way of Special Civil Application No.18158 of 2014 whereas the respondent No.2 wife sought enhancement of the interim maintenance by preferring First Appeal No 4007 of 2014. Both the aforesaid proceedings

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i.e. First Appeal as well as Special Civil Application were heard together and vide order dated 28.09.2015, this Honble Court disposed of both the proceedings by directing the learned Family Court, Bhavnagar to decide the family suit within six months from the receipt of the copy of the order and the interim maintenance granted by Family Court shall continue till the disposal of the suit. Further, the petitioner was granted visitation right to meet the minor son.

2.8 The petitioner submits that thereafter, proceedings of the family suit are going on and have reached at very advanced stage. Evidence is going on and the witnesses are being examined. The petitioners examination is over.

2.9 It is submitted that therefore, when the proceedings of family Court are pending and have reached at a very advanced stage, just to harass the petitioner and just an attempt to abuse the process of law, the respondent No.2 has filed the impugned complaint under the Domestic Violence Act before the learned Chief Judicial Magistrate, Bhavnagar on 16.03.2016.

2.10 The petitioner submits that prayers claimed in the said complaint are common to the prayers claimed in the application below Exh. 25 i.e. with regards to Stridhan so also with regards to the maintenance.

2.11 It is submitted that once this Honble Court has directed that till the disposal of the family Suit, the interim maintenance as directed by the Family Court shall continue to operate, the respondent No.2 could not have filed another application for seeking more maintenance as the parties are governed by the order passed by this Honble Court. The same is nothing but an abuse of the process of law at the hands of the respondent No.2 only with a View to harass the petitioner and arm twist the petitioner, to pressurize the petitioner.

2.12 It is submitted that in the suit before the Family Court, many of the contentions that are raised by the respondent No.2 are being proved to be false and the petitioner is able to bring out various facts which would go long way in proving the case in favour of the petitioner and proving that the allegations made by the respondent No.2 are absolutely false.

2.13 Therefore, only with a View to harass the petitioner and to see that the petitioner does not succeed in the said proceedings of the Family Court, the present proceedings under the Domestic Violence Act are initiated.

2.14 It is submitted that as per her own affidavit sworn by her, the petitioner and the respondent No.2 are living separately at least since 2012. For a period of 4 years, the respondent No.2 has not thought fit to file the impugned complaint and the complaint is filed after a delay of 4 years from

separation. Therefore, on the ground of delay and latches also, the impugned complaint deserves to be quashed and set aside.

2.15 The petitioner submits that the petitioner had filed an application before the learned Chief Judicial Magistrate seeking to dismiss the criminal complaint on the ground of being barred by law of limitation as the same is filing beyond the period of one year. However, the said application came to be rejected by the learned Family Court vide order dated 17.09.2016.

2.16 The petitioner submits that the respondent No.2 has filed all kinds of false proceedings against the petitioner including criminal complaint filed in the year 2012 under Sections, 498A, 323, 504, 506(2) of the IPC being IC.R.No.3096 of 2012. The very fact that the said complaint could be filed in the year 2012 shows that present complaint which also deals with allegations prior to 2012 could have been filed at that time, but the same is filed only as an afterthought and to abuse the process of law. The allegations in the impugned complaint are for the period prior to 2012 for which the complaint is filed in the year 2016. Further, none of the allegations are correct and false allegations are levelled in the impugned complaint.

2.17 The petitioner submits that the accused No.2 mother of the petitioner Bhartiben Bipibhai Tamboli has challenged the aforesaid criminal proceedings before this Honble Court by way of Special Criminal Application No.5672 of 2016 in which this Honble Court has been pleased to issue notice vide order dated 20.09.2016.

8. Thus, it appears that Shri Mehul Bipinbhai Tamboli, his wife viz. Juliben M. Tamboli and their two children viz. Anushree M. Tamboli and Divyaraj M. Tamboli were one happy family until one another lady by name X came in the life of the husband. It appears from the materials on record that X used to come at the residence of the parties for the purpose of giving tuition to the two children. As alleged by the wife, the husband developed intimacy for X and as a result, the marital life of the wife got shattered. The children have also felt very bad and embarrassed. They are thoroughly disappointed. It appears that X as on date is residing alongwith the husband. This fact has not been seriously disputed by the husband nor by the mother in law.

9. As the husband and the inlaws started harassing the wife and the children as alleged, the wife thought fit to lodge an FIR against the husband and her inlaws for the offence punishable under Sections 498A of the IPC.

10. It appears that the husband filed a Family Suit No.371 of 2013 in the Court of the Principal Judge, Family Court, Bhavnagar for divorce under Section 13(1)(iv) of the Hindu Marriage Act. In the said Family Suit, filed by the husband, the wife preferred an application Exh.14 for interim alimony. The application filed by the wife for interim alimony was partly allowed by the Principal
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Judge, of the Family Court at Bhavnagar vide order dated 18/11/2014. The operative part of the order passed by the Family Court reads as under:

ORDER Application is partly allowed.

Applicant is direct to pay Rs.35,000/ per month as an interim alimony to opponentwife Juliben, Rs.15,000/ per month to daughter Anushree and Rs.15,000/ per month to son Divyaraj till the final disposal of this petition from the date of this application i.e. 31.07.2014.

Applicant is further directed to pay Rs.10,000/ as legal expense and Rs.5,000/ for transportation to opponentwife Juliben.

11. It appears that the parties carried the matter further before this Court. In fact, crossappeals were filed by the wife and the husband respectively challenging the common order dated 18/11/2014 passed by the Family Court, Bhavnagar. The First Appeal was heard by a Division Bench of this Court along with the writapplication. By a common order, the First Appeal and the petition under Article 227 of the Constitution came to be disposed of. The order dated 28/09/2015 passed by a Division Bench of this Court reads as under:

1. These are cross appeals filed by wife and husband respectively challenging the common order dated 18.11.2014 passed by the Family Court, Bhavnagar. The husband has filed Family Suit No.371 of 2013 seeking divorce from the wife on various grounds. Pending such petition, the wife moved an application at Exh.14 and prayed for interim maintenance under section 24 of the Hindu Marriage Act. According to the wife, the husband was earning sizeable income from his involvement in the family businesses. The husband is Director in various companies and receiving regular remunerations. According to the husband, projection of the husbands income by the wife is exaggerated and, under an agreement, he has paid Rs.55 lakhs towards her maintenance.

2. The Family Court, by impugned order dated 18.11.2014, made the following directions for interim maintenance to the wife and two children who are residing with her:

Application is partly allowed.

"Applicant is directed to pay Rs.35,000/ per month as an interim alimony to opponentwife Juliben. Rs.15,000/ per month to daughter Anushree and Rs.15,000/ per month to son Divyaraj til the final disposal of this petition from the date of this application i.e. 31.07.2014

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Applicant is further directed to pay Rs.10,000/ as legal expenses and Rs.5,000/ for transportation to opponentwife Juliben.

Cost of this application should be cost in cause.

Pronounced in Open Court today, i.e. on the 18th day of November, 2014....."

3. The wife has filed the First Appeal seeking enhancement in the interim maintenance. The husband has filed the Writ Petition challenging the quantum of interim maintenance in favour of the wife and the children.

4. After some discussions at the Bar, we proposed a formula, according to which the Family Court would dispose of the entire Family Suit within six months, of course, subject to the cooperation from both sides and, in the meantime, to maintain the present formula of interim maintenance provided by the Family Court. Both sides, under instructions, agreed to this arrangement. Counsel Mr.Soparkar, however, submitted that despite the order of visitation of the children in favour of the husband, the wife has not allowed such meetings. Counsel Mr.Shah submitted that this issue is at large before the Family Court in an application filed by the husband alleging contempt. Without entering into any discussion on this issue, we would provide an adhoc formula to enable the husband to visit his children till the Family Court decides his application for contempt.

5. Under the circumstances, both these proceedings are disposed of in the following terms:

(1) The Family Court, Bhavnagar is requested to decide Family Suit No.371 of 2013 within SIX MONTHS from the date of receipt of this order;

(2) Both sides shall cooperate with such early disposal;

(3) Order for interim maintenance dated 18.11.2014 shall remain intact;

(4) This is without prejudice to the rights and contentions of both sides. We make it clear that we have not examined the maintainability of the First Appeal itself.

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(5) The husband shall continue to pay to the wife and the children the interim maintenance as fixed in the impugned order. If there is any arrears, same shall be cleared without any delay;

(6) By way of interim arrangement, in continuation of the order passed by the Family Court dated 19.03.2014 for visitation of the children, it is provided that:

(i) the husband may communicate to his daughter, who has by now attained the age of majority, if she would be willing to meet the father on any Sunday or holiday at Gandhinagar

where we are informed she is pursuing her higher studies. If the daughter replies either telephonically or through e communication, it would be open for the father to arrange such visit, however, ensuring that such visit does not interfere with her studies;

(ii) With respect to the son, we are informed that he is about 14 years old. The husband would be allowed to visit the current residence of the wife on every Sunday between 10.00 12.00 hours in the morning for the purpose of meeting the son. If the son is willing, the husband would have at least 15 minutes of privacy with the son in absence of the wife. If thereafter the son is willing to go with the father, it would be open for the father to take him out as long as the son desires or the time prescribed by the trial Court, whichever is earlier.

If on any Sunday the son is held up in some extracurricular or personal activity, the wife would communicate to the husband telephonically about the same.

(iii) It is clarified that this is purely an interim arrangement and the Family Court will decide the pending proceedings for the alleged breach of visitation order unmindful of any of these observations.

6. The First Appeal and the Writ Petition are disposed of accordingly. Notice is discharged.

12. It appears that thereafter, the wife and the two children initiated proceedings under the Domestic Violence Act by filing the Criminal Misc. Application No.131 of 2016 in the Court of the learned Chief Judicial Magistrate, Bhavnagar. The proceedings came to be initiated against the husband as well as the mother-in-law. The Second Additional Civil Judge and Judicial Magistrate First Class, Bhavnagar, took cognizance upon the application filed by the wife and the two children

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and called for the report of the Protection Officer vide order dated 05/0/2016. On receipt of the report of the Protection Officer and on perusal of the same, the Court concerned issued notice to the husband and the motherinlaw.

13. Being dissatisfied with the initiation of the proceedings under the Domestic Violence Act and the order of issue of notice to the two writ applicants herein, these two writapplications have been filed praying for quashing of the proceedings.

14. Mr. Nanavati, the learned senior counsel appearing for the motherinlaw i.e. the writapplicant of the Special Criminal Application No.5672 of 2016 vehemently submitted that the proceedings initiated by the wife under the Domestic Violence Act is nothing but an abuse of the process of Court. The principal argument of Mr. Nanavati is that the proceedings against the motherinlaw are not maintainable. According to the learned senior counsel, any right of the wife during the subsistence of her marriage and during the lifetime of her husband is against the husband and she cannot claim any relief against the mother inlaw inasmuch as the obligation to maintain the wife is on the husband.

15. Mr. Nanavati submitted that assuming for the moment without admitting that the wife could claim compensation from her motherin law, such right is barred by the law of limitation as indisputably, there was no domestic relationship or shared household between the respondent no.2 and the writapplicant after 2006. It is submitted that the writapplicant being the motherinlaw could not be said to have committed any violence attracting any provisions of the Act before the Act came into force on 26/10/2016. The argument proceeds on the footing that the respondent no.2 started residing separately from her in laws alongwith her children and husband since 2006.

16. Relying on a decision of the Supreme Court in the case of S.R. Batra & Another Vs. Smt. Taruna Batra reported in AIR 2007 SC 1118, it is submitted that the writapplicant did not have a shared household within the meaning of the Act. In such circumstances referred to above, Mr. Nanavati, the learned senior counsel submitted that there being merit in the writapplication, the same be allowed and the proceedings be quashed so far as the motherinlaw is concerned.

17. Mr. Soparkar, the learned senior counsel appearing for the husband i.e. the writ applicant of the Special Criminal Application No.9799 of 2016 submitted that the proceedings initiated by the wife and the children under the Domestic Violence Act is nothing, but gross abuse of the process of law. Mr. Soparkar submitted that the order passed by a Division Bench of this Court dated 28/09/2015 referred to above speaks for itself. The husband is paying a sum of Rs.65,000/ per month to the wife and the two children for their maintenance and they have also been provided with an accommodation. In such circumstances, according to the learned senior counsel, no further relief can now be granted by the Court concerned under the Domestic Violence Act. Mr. Soparkar, the learned senior counsel prays that there being merit in the writapplication filed by the husband, the same be allowed and the proceedings be quashed.

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18. On the otherhand both the writapplications have been vehemently opposed by Mr. Jay Thakkar, the learned counsel appearing for the wife and the two children. Mr. Thakkar submitted that the proceedings initiated by the wife and the two children are at the threshold. The Court concerned has yet to adjudicate the matter on merits. No evidence has been led so far by either of the parties. In such circumstances, according to the learned counsel, it would not be appropriate to scuttle the proceedings at the initial stage itself. Mr. Thakkar relied upon the following averments made in the application being the Criminal Misc. Application No.131 of 2016 filed by the wife and the two children as contained in paragraphs11, 26 and 27. The true English translation of the paragraphs11, 26 and 27 are as under:

(11) All the Stridhan, dowry furniture, clothes and jewellery, costly gifts and the ornaments, costly articles, valuable documents and academic certificates, bank passbooks, Cheque books, F.Ds. of applicants No.2 and 3 are in the custody of opponents Nos.1 and 2 as described in the schedule. All the gifts, jewellery and precious ornaments of the applicants are, in the custody of opponent No.2, and in the joint locker of Opponent No. 2 and the applicant No.1. Only Opponent No.2 operates this joint locker and its key is also in his custody. Though requested frequently by the applicant No.1, the opponent of this case has not returned our Stridhan and precious ornaments till today and every time he stated that, First, give me divorce, then you will get all these, otherwise nothing shall be given to you.

(26) In the above details, the opponents are highly rich for generations. Even after the marriage with me, the opponent No.1 has made progress in his business. After he came in contact with a woman named Rina and the family members having came to know about the same, as stated above on 21/02/2002, the opponent No.1 deserted, the applicants alongwith two minor children at that time, from the house without any legitimate grounds. We have been deserted in the midnight. Thereafter, they sent an illegal and intimidating notice on 03/03/2012. By this notice, we were prevented to enter into the house. We gave its reply on 19/03/2012. However, till today, they do not allow us to enter into the house and threat us. Thereafter, complaints and legal disputes are continued between the parties. At present, the opponents or his family members have not made arrangements for the accommodations of the applicants. The applicants and minor children are entitled for the same lifestyle as the opponents, and his eldest member Bipinbhai, or his other family member Vaibhavbhai, are living at present. Moreover, the opponent No.2 has forcefully got his name entered in the locker, which contained my personal articles, ornaments, jointure etc,. And at the time of deserting us, he kept the key of this locker in Dilbahar Bungalow, where we were living. Both the opponents have not provided me the said key till today. Moreover, following articles described in the statement are subject matter of our right and interest, and we are deprived of using them.

The Stridhan and dowry articles gifted to the applicant No.1 at the time of marriage, are as follow.

ScheduleA Details of Stridhan

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Sr. No. Details of the Articles Status of present Custody

1 Diamond Set One Necklace One, Bracelet One, Earrings Two, Ring One : With Opponent (In Bank Locker)

2 Inlaying Gold Set One Necklace One, Bracelet One, Earrings Two : With Opponent (In Bank Locker)

3 Golden Set One Large Big Necklace One, Earrings Two, Wristlet Two : With Opponent (In Bank Locker)

4 Gold Set One Bead One, Lion headed wristlet Two, ear lobs Two : With Opponent (In Bank Locker)

5 Gold Chain One Gold Bangles Four : With Opponent (In Bank Locker)

6 Pearl Champleved Set One Necklace One, Bracelet One, Ear lobs Two : With Opponent (In Bank Locker)

7 Gini Pendant Chain One Bangles Two : With Opponent (In Bank Locker)

8 Silver worship box One, Silver Set Three, Silver cluster One, Small Silver box for keeping Kumkum One, Saree One, Punjabi Dress Two, Chaniya Choli One, Earrings, purse, Cosmetic Set box, packets, Bangle Box, Rs. 41/ cash : With Opponent (In Dilbahar Bungalow)

9 Golden set from 3 brothers : With the opponents (in bank locker)

10 Mod worn on wedding occasions : With the opponents (in bank locker)

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11 Necklace set of guinea pendant from Nishithbhai - Binaben : With the opponents (in bank locker)

12 Golden set of 10 tola in betrothal, pendant, earring, 2 bangles : With the opponents (in bank locker)

13 Guinea of 10 gram gold later it was turned pendant : With the opponents (in bank locker)

14 Set of guinea : With the opponents (in bank locker)

15 Bali of diamond : With the opponents (in bank locker)

16 A square bangle of diamond from the applicant and Anushri : With the opponents (in bank locker)

17 Golden necklace and set of suraj earrings : With the opponents (in bank locker)

18 Golden earrings - 2 : With the opponents (in bank locker)

19 Golden chain of 5 tola : With the opponents (in bank locker)

20 Golden idol of Ganpati : With the opponents (in bank locker)

21 Mangalsutra of orange pearls (given by mother of Bhartiben on wedding) : With the opponents (in bank locker)

22 Golden bracelet having blue glass : With the opponents (in bank locker)

23 Golden pendant and set of earrings given in the period between betrothal and wedding : With the opponents (in bank locker)

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Schedule B - Details of dowry (from parental side)

Sr. No. Description of item Details of present possession

1 Golden set - 1, long chain - 1, bangles - 2 with potaliya, pair of earrings - 1 with set, ring 1 : With the opponents (in bank locker)

2 Golden set - 1, necklace - 1, bangles - 4, pair of earrings - 1, ring - 1 : With the opponents (in bank locker)

3 Set of real diamonds - 1, necklace - 1 with pendant, pair of earring - 1 : With the opponents (in Dilbahar bungalow)

4 Bracelet - 1 with real diamonds : With the opponents (in Dilbahar bungalow)

5 Golden set - 1 (AD) necklace of red pearls - 1, pair of earrings - 1 : With the opponents (in bank locker)

6 Nose ring of real diamonds (having seven pieces) : With the opponents (in bank locker)

7 Golden wristlet - 2 : With the opponents (in bank locker)

8 Golden bunch of keys - 1 : With the opponents (in bank locker)

9 Golden tiko : With the opponents (in bank locker)

10 Golden peacock set - 1, necklace - 1, bracelet - 1, pair of earrings - 1 : With the opponents (in bank locker)

11 Golden set of red choki - 1, cahin - 1, pair of earrings - 1 : With the opponents (in bank locker)

12 Golden garnet (AD) necklace - 1, pair of earrings 1 : With the opponents (in bank locker)

13 Golden tops set - 1, necklace - 1 with pendant, pair of earrings - 1 : With the opponents (in bank locker)

14 Golden red bangle - 1 pair : With the opponents (in bank locker)

15 Set of pearls - 1, necklace of 2 strings - 1 with pendant, zummur of ear - 1pair, bangles 2 : With the opponents (in bank locker)

16 Mangalsutra : With the opponents (in bank locker)

17 One silver set (having bunch) necklace - 1, pair of earrings - 1 : With the opponents (in bank locker)

18 Set (AD) of diamond pearls - 1, necklace - 1, pair of earrings - 1 : With the opponents (in bank locker)

19 Silver set - 1 (AD), pendant - 1, pair of earrings - 1, ring - 1 : With the opponents (in bank locker)

20 Silver (ruby) set - 1, hansdi - 1, bracelet - 1, pair of earrings - 1, ring - 1, nose ring - 1 : With the opponents (in bank locker)

21 White set of choki - 1 (AD) necklace - 1, ring - 1, pair of earrings - 1 : With the opponents (in bank locker)

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22 Set of culture pearls - 1, necklace - 1 with 3 strings, pair of earrings - 1, loose piece - 1 : With the opponents (in bank locker)

23 Set of culture pearls - 1, necklace - 1 with 2 strings, pair of earrings - 1, loose piece - 1 : With the opponents (in bank locker)

24 Silver hansdi set - 1, necklace - 1, earrings set - 1, bracelet - 1 : With the opponents (in bank locker)

25 Necklace set - 1, necklace - 1, pair of earrings - 1 with 1 string : With the opponents (in bank locker)

26 Long silver bunch of keys (oxidized) : With the opponents (in bank locker)

27 Silver dish - 1 : With the opponents (in Dilbahar bungalow)

28 Two silver bowls - 2 : With the opponents (in Dilbahar bungalow)

29 Silver jug - 1 : With the opponents (in Dilbahar bungalow)

30 Silver spoon - 2 : With the opponents (in Dilbahar bungalow)

31 Kankavati - of one katak (silver) : With the opponents (in Dilbahar bungalow)

32 Silver anklet pair - 1 : With the opponents (in Dilbahar bungalow)

33 Pair of silver anklet 1 : With the opponents (in Dilbahar bungalow)

34 Pair of silver pigeons - 2 : With the opponents (in Dilbahar bungalow)

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Schedule - C

List of items given by inlaws side at the time of birth of Anushri

1 Golden bracelet, bangle and earring : With the opponents (in bank locker)

Schedule - D

List of items given by in laws side at the time of birth of Divyvaraj

1 Golden chain - 1 made of 5 grams : With the opponents (in bank locker)

2 Silver dish, bowl, spoon, glass : With the opponents (in Dilbahar bungalow)

Schedule - E - List of items given by parental side at the time of birth of Anushri

Sr. No. Description of item Details of present possession

1 Golden earrings - 15 to 20 : With the opponents (in bank locker)

2 Suraj wristlet - 2 : With the opponents (in bank locker)

3 Wristlet - 2 : With the opponents (in bank locker)

4 Chain - 1 : With the opponents (in bank locker)

5 Diamond earring : With the opponents (in bank locker)

6 Aumkar : With the opponents (in bank locker)

7 5 set of 20 grams given to the applicant : With the opponents (in bank locker)

Schedule - F - List of items given by parental side at the time of birth of Divyaraj

Sr. No. Description of item Details of present possession

1 Golden nail of tiger : With the opponents (in bank locker)

2 Golden thread (kandoro) - 1 : With the opponents (in bank locker)

3 Suraj wristlet - 2 : With the opponents (in bank locker)

4 Golden wristlet - 2 : With the opponents (in bank locker)

5 5 set of 20 grams gold, one of them is made of real diamond : With the opponents (in bank locker)

Moreover, gifts given to the applicant and children on occasions are as following. Schedule - G

Sr. No. Description of item Details of present possession

1 Golden chain bearing name of Anushri : With the opponents (in bank locker)

2 Diamond bracelet - given on birthday of Anushri by mother : With the opponents (in bank locker)

3 Diamond pendant of bell : With the opponents (in bank locker)

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4 Real diamond pendant of Shrinathji : With the opponents (in bank locker)

5 Pendant of plane : With the opponents (in bank locker)

6 Chain given to Divyaraj on Janoi of Meghraj : With the opponents (in Dilbahar bungalow)

7 Set of pendant earring by parental side of the applicant on Janoi of Meghraj : With the opponents (in Dilbahar bungalow)

8 Golden chain - 7, as gifts in wedding : With the opponents (in bank locker)

9 Golden guinea - 1 gram, 2 gram, 5 gram, 8 pieces : With the opponents (in bank locker)

10 Diamond solitaire set, necklace : With the opponents (in Dilbahar bungalow)

11 Silver glass - bowl spoon, boxes for mouth freshener gifted by friends on wedding and occasions of births of children : With the opponents (in Dilbahar bungalow)

12 Golden idol of Ganpati : With the opponents (in bank locker)

13 3 set of pearls : With the opponents (in bank locker)

14 Set of black pearls : With the opponents (in bank locker)

15 Set of pink pearls : With the opponents (in bank locker)

~~16 2 set of bunch of pears with earrings : With the opponents (in bank locker)~~

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17 Chain of pink pearls : With the opponents (in bank locker)

18 Golden mangalsutra having white pearls and bowl : With the opponents (in bank locker)

19 Pendant of vinlandi having square jadtar : With the opponents (in bank locker)

20 Ball pendant with blue meena - set of earring : With the opponents (in bank locker)

21 Pendant of single pearl - set of earring : With the opponents (in bank locker)

22 3 golden rings to Divyaraj, out of them 2 are wristlets : With the opponents (in bank locker)

23 Golden set of coral : With the opponents (in bank locker)

24 Silver glass - 4 on first anniversary, silver jug - 1 : With the opponents (in Dilbahar bungalow)

25 Golden necklace on Uttarayan : With the opponents (in bank locker)

26 Golden necklace : With the opponents (in bank locker)

27 Diamond Mangalsutra - 1, Pearl Mangalsutra - 1, Golden Mangalsutra - 1 : With the opponents (in bank locker)

28 3 golden bracelets of 7 tola on wedding of Baijubhai : With the opponents (in bank locker)

29 White set of Dubai make on vastu of house : With the opponents (in bank locker)

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30 Silver dinner set having 12 bowls, 12 spoons, 6 dishes, 6 glasses, bowl with cover, 1 rice plate, 4 ladles : With the opponents (in Dilbahar bungalow)

31 Set of 6 bangles from Dubai (On Janoi of Meghraj) : With the opponents (in Dilbahar bungalow)

32 2 silver glasses given durin Jaya - Parvati Vrat : With the opponents (in Dilbahar bungalow)

33 23 silver coconuts : With the opponents (in Dilbahar bungalow)

34 Diamond pendant and set of earring having swastik : With the opponents (in Dilbahar bungalow)

35 Wristlet of real diamond (on anniversary) : With the opponents (in Dilbahar bungalow)

36 Diamond pendant and set of earring - 4 : With the opponents (in Dilbahar bungalow)

37 Golden biscuits - 2 : With the opponents (one in Dilbahar bungalow, the other in bank locker)

38 8 set of diamond earrings : With the opponents (in bank locker)

39 Set of golden rings for all fingers : With the opponents (in bank locker)

40 Set of coral : With the opponents (in bank locker)

41 Set of gold and diamond : With the opponents (in bank locker)

42 Five small sets of diamond : With the opponents (in Dilbahar bungalow)

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43 2 golden chain of Dubai make : With the opponents (in bank locker)

44 Golden pendant having heart shape - 3 (Dubai make) : With the opponents (in bank locker)

45 Golden bangles - 2 (Dubai make) : With the opponents (in bank locker)

46 Golden necklace - without earring : With the opponents (in bank locker)

47 Wristlet having golden ring : With the opponents (in bank locker)

48 Golden choker of pearls and swastik : With the opponents (in bank locker)

49 Goldne mangalsutra of white pearls and bowl and earring : With the opponents (in bank locker)

50 Pendant of vilandi having square jadtar : With the opponents (in bank locker)

51 Set of earrings having blue meena ball : With the opponents (in bank locker)

52 Pendant set of single pearl and set of earring : With the opponents (in bank locker)

53 Golden joint kardo having 7 karda : With the opponents (in bank locker)

54 Diamond pendant having polki : With the opponents (in Dilbahar bungalow)

55 Golden set - 2 pieces - on simant : With the opponents (in bank locker)

56 Golden chain having V shape : With the opponents (in bank locker)

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57 Golden buckle for braid : With the opponents (in bank locker)

58 Golden wristlet embossed M, goldne wristlet embossed J : With the opponents (in bank locker)

59 Golden Jummar having long chain and pendant set having pearl string : With the opponents (in bank locker)

60 Earring of pearl having white valandi : With the opponents (in bank locker)

61 Necklace having black beads and golden chain : With the opponents (in bank locker)

62 Pearl bangle with suraj swastik : With the opponents (in bank locker)

63 Golden earring of khakho pearls : With the opponents (in bank locker)

64 Pendant of diamond pearls : With the opponents (in bank locker)

65 Pendant of vilandi jadtar - 1 : With the opponents (in bank locker)

Details of items purchased by the applicant from her stri dhan amount Schedule - H

Sr. No. Description of item Details of present possession

1 Set of vilandi jadtar having red ruby : With the opponents (in bank locker)

2 Set of golden peacocks : With the opponents (in bank locker)

3 Set of vilandi white jadtar : With the opponents (in bank locker)

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4 2 bangles of real diamond : With the opponents (in bank locker)

5 Set of white and green vilandi jadtar : With the opponents (in bank locker)

Schedule - I

Sr. No. Description of item Details of present possession

1 Clothes, precious gifts, government documents like election ID card, driving license, pan card, club membership card, educational certificates of applicant in the dressing room, all the items in cupboard of drawing room where the applicant used to live earlier at Dilbahar bungalow. : With the opponents

(27) As per the above details, both the opponents and Bipinbhai and other family members have harassed the applicants. Domestic violence was meted out to me after the marriage till date. They have kept the above mentioned immovable property in their custody forcibly. Moreover, my stridhan and gift of my children and other immovable property have been kept in the custody of the opponents and their family members and thereby they have mentally tortured me and created such condition that I would not be able to use my articles and property and they have committed offences as per the provisions of the Domestic Violence Act. Therefore, I am forced to file before you the present complaint against the opponents.

19. Mr. Thakkar submitted that having regard to the nature of the Legislation, a more sensitive approach is expected from the Courts. He submitted that the Act came to be enacted to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. He submitted that the definition of "Domestic Violence" covers a range of violence, which takes within its sweep "economic abuse" and the words "economic abuse", as the provisions would show, has many facets. Relying on a recent pronouncement of the Supreme Court in the case of Krishna Bhattacharjee Vs. Sarathi Choudhury and Another, reported in 2016 (2) SCC 705. Mr. Thakkar submitted that the retention of stridhan by husband or his family is a form of a domestic violence i.e. "economic abuse" and amounts to a "continuing offence". Relying on a decision of this Court in the case of Jaydipsinh Prabhatsinh Jhala and Others Vs. State of Gujarat and Others reported in 2010 (1) GLR 635. Mr. Thakkar submitted that when the aggrieved person is a wife, she can file an application against any relatives of the husband. In such circumstances, the proceedings initiated against the motherinlaw are maintainable in law. In such circumstances referred to above, Mr. Thakkar submitted that there being no merit in both the writapplications, those be rejected.

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20. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the proceedings initiated by the wife under the Domestic Violence Act against the husband and the mother-in-law should be quashed.

21. The domestic violence in this Country is rampant and several women encounter violence in some form or the other or almost everyday. However, it is the least reported form of cruel behaviour. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This nonretaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the males relatives.

22. Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under section 498A of the Indian Penal Code. In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion. Having regard to all these facts, the Parliament thought fit to enact the Protection of Women from Domestic Violence Act, 2005. The main object of the Act is protection of women from violence inflicted by a man and/or a woman. It is a progressive Act, whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it takes within its purview even women who are living with their Partners in a live-in relationship.

23. However, just as every piece of legislation has its advantages, many women have unfortunately misused the provisions of this Act to drag, torture and harass their husbands, in-laws and relatives in an unnecessary legal battle to vent their personal vendetta and stake a claim in the properties belonging to the husband and the in-laws. It is one of the most lethal weapons which women can use against men to extort money, and harass a man. The recent judgments passed by the different High Courts, including the Apex Court have sagaciously abrogated the misuse of the provisions of the law by several women whilst passing some remarkable judgments on the same. It is indeed a welcome change to witness that in the 21st century when most women are educated, well qualified and independent financially, the Courts have circumspectly fully lifted the veil to separate the vulnerable women from those of dubious characters who toy and misuse the law.

24. Constitutional Perspectives:

Domestic violence was recognized as a specific criminal offence in 1983 by the amendments in the Indian Penal Code, but was not very effective in controlling the violence committed against the woman within the family or inside the household, therefore, the legislature enacted the Protection of Women from Domestic Violence Act, 2005 to protect the women from domestic terrorism.

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of the international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee (CEDAW). The act encompasses all the provisions of the specific Recommendations which form a part of the General Recommendation No.19, 1992. The Protection of Women from Domestic Violence Act, 2005 received the assent of the President on 13/9/2005 and was published in the Gazette of India, Ext., II, S.1, dated 14/9/2005.

25. Overview of the Domestic Violence Act:

The Act not only covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption but even the relationships with family members living together as a joint family. Even those women who are sisters, widows, mothers, single women, or living in any other relationship with the abuser are entitled to legal protection under the said Act.

The Domestic Violence Act entitles the aggrieved person to file an Application under the Domestic Violence Act even for the acts, which have been committed, prior to the commencement of the Domestic Violence Act. Thus the Act applies retrospectively. This has been clarified by the Supreme Court in the case of V.D. Bhanot Vs. Savita Bhanot Supreme Court (2012) 3 SCC 183, which upholds the Delhi High Court view that

"even a wife who had shared a household before the Act came into force would be entitled to the protection of the Act. While looking into a complaint under S.12, the conduct of the parties even prior to the coming into force of the Act can be taken into consideration."

26. At the stage, it is necessary for me to reproduce relevant sections of the Act, which reads as under:

Section 2(a) "Aggrieved Person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the

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Under this Act, any aggrieved person or any other person who has a reason to believe that an act of domestic violence has been, or is being, or is likely to be committed can approach a police officer, protection officer or a service provider. The concerned authority will take the complaint from the victim or will write for her. The Complaint can be written in the prescribed formate or can use her own words and language. Complaint can be made orally or in a written form. The authority will also make a DIR (Domestic Incident Report) and will forward the copies to the Magistrate, Police and the Service Providers. One can also directly file a complaint with the Magistrate.

27. In the case of Chanmuniya Vs. Chanmuniya Virendra Kumar Singh Kushwaha and Anr. (2010) the Supreme Court has held that where a man, who lived with a woman for a long time and even though they may not have undergone the legal necessities of a valid marriage, should be made liable to pay maintenance if he deserts her - Man should not be allowed to benefit from the legal loopholes by enjoying the advantages of a defactor marriage without undertaking the duties and obligations - Expansive interpretation should be given to the term wife so as to include even those cases where a man and woman had been living together as husband and wife for a reasonably long period of time - Strict proof of marriage should not be a precondition for maintenance under Section 125 of Cr.P.C., so as to fulfill the true spirit and essence of beneficial provision of maintenance under Section 125.

However, in the below mentioned case, the Supreme Court has defined two kinds of relationships as live in relationships. 1) Live in relationship in the nature of marriage and 2) Live in relationship of any other kind. Live in like a wife, and not a mistress, would enable a woman to get the benefits under the said Act.

28. In D. Veluswamy Vs. Patchaimmal (2010) 10 SCC 469 - The Supreme Court had the occasion to consider the provisions of Section 2(f) of the DV Act to come to the conclusion that a "relationship in the nature of marriage" is akin to a common law marriage which requires, in addition to proof of the fact that the parties had lived together in a shared household as defined in Section 2(s) of the DV Act, the following conditions to be satisfied:

- a. The couple must hold themselves out to the society as being akin to spouses.
- b. They must be of legal age to marry.
- c. They must be otherwise qualified to enter into a legal marriage, including being unmarried.

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

The Supreme Court observed,

"In our opinion not all liveinrelationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a keep whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not, in our opinion, be a relationship in the nature of marriage".

It was in this judgment that the word "palimony" was first used, which was an expression first used in the USA. It means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him. The first decision on palimony was the well known decision of the California Superior Court in Marvin Vs. Marvin (1976) 18 C3d660. This case related to the famous film actor Late Lee Marvin, with whom a lady viz. Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony.

29. The Bombay High Court in the famous case of Anita Advani by its Order dated 9th April 2015 has observed and applied the above mentioned principles in the Veluswamy Case herein and held that Anita Advani was unable to show that she had a relationship in the nature of marriage with Rajesh Khanna (deceased). Furthermore, the Court held that since the complainant never resided with the Respondents in a shared household, there was no domestic relationship existing amongst them. The Court has further clarified, that had the deceased been alive and such a complaint was filed against him and his relatives (Respondents therein), then there could have been a cause for the complainant to file a Complaint under Section 12 of the Act. Accordingly, the proceedings initiated by Ms. Advani were quashed.

30. Section2(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;

Domestic relationship between same sex partners (Gay and Lesbians): The said Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. The Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), The Domestic Violence Act, 1998 (South Africa), The Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the

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relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

31. However, section 2(f) of the said Act, though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "woman", hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act. Section 2(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:

Provided that an aggrieved wife or female living in a relationship in a nature of a marriage may also file a complaint against a relative of the husband or the male partner;

The definition of the term Respondent saw a spate of litigations where it was contended that since the definition of Respondent included an adult male person, therefore any complaint filed against a woman is not maintainable. In several cases, proceedings were dropped against Respondents who were female relatives of the male. However, the definition of Respondent was read with the Proviso to give a logical meaning to the definition of Respondent by the Supreme Court in the case of Sandhya Wankhede Vs. Manoj Bhimrao Wankhede (2011) 3 SCC 650. The Supreme Court has held that the proviso to Section 2(q) does not exclude female relatives of the husband or make partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act. Therefore, complaints are not just maintainable against the adult male person, but also, the female relatives of such adult male.

32. Similarly, the High Court of Bombay has held in Archana Hemant Naik Vs. Urmilaben I. Naik and Anr. Reported in 2009 (3) Bom. C.r. (Cri.) 851 that:

"Aggrieved wife or female to whom the proviso to section 2(q) is applicable, can file complaint against relative of husband or relative of her male partner. Proviso refers to relative and not to male relative. Legislature contemplated, residence order under section 19(1) could be passed even against any female who is relative of husband or relative of male partner."

33. The Supreme Court in its judgment of Ashish Dixit vs. State of UP & Anr in 2013 has held that a wife cannot implicate one and all in a Domestic Violence case. Apart from arraying the husband and in-laws in the complaint, the complainant had included all and sundry as parties to the case, of which the complainant did not even know names of. The Court had accordingly quashed the proceedings against such parties.

Section 2(s) "Shared Household" where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest of equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or aggrieved person has any right, title or interest in the shared household.

34. In its first judgment (S.P. Batra and Anr. vs. T. Batra) on the Protection of Women from Domestic Violence Act, 2005, the Supreme Court has said, section 2(s) of the Act which gives right of residence to a married woman in a shared household is not properly worded and appears to be the result of clumsy drafting, but "we have to give it an interpretation which is sensible and which does not lead to chaos in society." A Bench, comprising Justice S.B. Sinha and Markandey Katju, ruled that "as regards section 17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household, or the house which belongs to the joint family of which the husband is a member." The Supreme Court further said, "the property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which he is a member. It is the exclusive property of appellant number two, mother of Amit Batra. Hence, it cannot be called a shared household."

Justice Katju further added, "We are of the opinion that the house in question cannot be said to be a shared household within the meaning of section 2(s) of the Act. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past, that property becomes a shared household. Such a view would lead to chaos and would be absurd." Therefore, the daughter-in-law can seek no reliefs for a shared household where the house exclusively belongs to the mother-in-law or the father-in-law.

The above judgment was relied upon recently by the Delhi High Court in the case of Sudha Mishra Vs. Surya Mishra in July 2014. In fact the Court has further held that even a son or a daughter cannot insist to reside in the self acquired property belonging to their parents, against their consent and wishes. The Court has held:

"Daughter-in-law cannot assert her rights, if any, in the property of her parents-in-law wherein her husband has no right, title or interest. She cannot continue to live in such a house of her parents-in-law against their consent and wishes. In my view, even an adult son or daughter has no legal right to occupy the self acquired property of the parents; against their consent and wishes. A son or daughter if permitted to live in the house occupies the same as a gratuitous licensee and if such licence is revoked, he has to vacate the said property."

35. In *Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel and Ors.* 2008 (4) SCC 649, it was held that when it comes to maintenance of wife under the Domestic Violence Act read with the [Reproduction from GLRONline] © Copyright with Gujarat Law Reporter Office, Ahmedabad

Hindu Adoptions and Maintenance Act, 1956, it is the personal obligation of the husband to maintain his wife. Property of mother-in-law can neither be subject matter of attachment nor during life time of husband his personal liability to maintain his wife can be directed to be enforced against such property. Decree if any must be against her husband or his properties but not of her mother-in-law. Therefore, property in the name of the mother-in-law can neither be a subject matter of attachment nor during the life time of the husband.

36. Definition of Domestic Violence and Types of Domestic Violence:

Section 3 of the Act says, any act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered domestic violence.

Under this, the law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of the same.

Therefore even a single act of commission or omission may constitute domestic violence - in other words women do not have to suffer a prolonged period of abuse before taking recourse to the law. The broad definition of Domestic violence encompasses all types of violence within its ambit.

Types of Domestic Violence:

Physical Abuse:

Physical abuse is the use of physical force against a woman in a way that causes her bodily injury or hurt. Physical assault, criminal intimidation and criminal force are also forms of physical abuse like beating, kicking and punching, throwing objects, damaging property, punched walls, kicked doors, abandoning her in a dangerous or unfamiliar place, using a weapon to threaten or hurt her, forcing her to leave the matrimonial home, hurting her children, using physical force in sexual situations.

Sexual Abuse:

Sexual abuse is also a form of physical abuse. Any situation in which a woman is forced to ~~participate in unwanted, safe or degrading sexual activity, calling her sexual names, hurting a~~
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woman with objects and weapons during sex, is sexual abuse. Forced sex, even by spouse or intimate partner with whom she has consensual sex, is an act of aggression and violence.

Emotional Abuse:

Not all abusive relationships involve violence. Many women suffer from emotional abuse, which is no less destructive. Unfortunately, emotional abuse is often minimized or overlooked - even by the woman being abused. Emotional abuse includes verbal abuse such as yelling, namecalling, blaming and shaming. Isolation, intimidation and controlling behaviour also fall under emotional abuse. Calls her names, insults her or continually criticises her.

Economic Abuse:

Economic abuse is not a very recognized form of abuse among the women but it is very detrimental. Economic abuse mainly includes a woman not been provided with enough money by her partner to maintain herself and her children, which may comprise money for food, clothing, medicines, etc. and not allowing a woman to take up an employment. Forcing her out of the house where she lives and not providing her rent, in case of a rented share hold also amounts to abuse. Depriving her of all or any economic or financial resources to which the person is entitled under the law or custom, restricting the womans access to the shared household. Disposing or alienating the assets of the women whether movable or immovable, valuables, shares, securities, bonds and the like other property in which she may have an interest. However seeking maintenance to unjustly enrich ones self and that too without providing the alleged act of domestic violence is a gross abuse of the process of law.

Most significantly as stated in the aforementioned paras, the Act gives a very wide interpretation to the term domestic relationship as to take it outside the confines of a marital relationship, and even includes liveinrelationships in the nature of marriage within the definition of domestic relationship under Section2(f) of the Act.

Maintenance of mother:

In the case of Ganesh S/o. Rajendra Kapratwar, Abhijeet, S/o. Ganeshrao Kapratwar and Parijeet, S/o. Ganeshrao Kapratwar Vs. The State of Maharashtra and Sow. Shantabai, W/o. Rajendra Kapratwar 2010 (112) BOMLR 1082 the Bombay High Court in an application preferred by the mother for maintenance and medical expenses under the Domestic Violence Act and the Hindu Adoptions and Maintenance Act, 1956 against her son and grandsons has held that:

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"Grandsons would have been liable to pay maintenance to grandmother under Sections 22(1) of the Hindu Adoptions and Maintenance Act, 1956, provided their father had not been alive and not capable of paying maintenance."

37. Having read the relevant definitions, it would now be fruitful to understand the nature of reliefs that can be granted under various Sections of the Act on application under section 12, which are detailed in Sections 18-23 of the Act. Section 18 of the Act enumerates the orders which the Magistrate can pass in favour of the aggrieved person. These orders include order prohibiting the respondent from (a) committing any act of domestic violence; (b) aiding or abetting in the commission of acts of domestic violence; (c) entering the place of employment, or school in the case of the child, of the aggrieved person; (d) attempting to communicate with the aggrieved person, (e) alienating any assets or operating bank accounts and bank lockers used or enjoyed by both the parties, or singly by the respondent and (f) causing violence to the dependants or other relatives of the aggrieved person. Section 19 of the Act confers power on the Magistrate to pass a Residence Order on being satisfied that domestic violence had taken place. Such order may restrain the respondent dispossessing the aggrieved person or disturbing her possession from the shared household, restrain him or any of his relatives from entering any portion of the shared household where the aggrieved person resides, restrain him from alienating or disposing of the shared household or creating encumbrances on it, restrain him from renouncing his rights in the shared household, and may also direct the respondent to remove himself from the shared household or to secure same level of alternate accommodation for the aggrieved person as was enjoyed by her in the shared household or to pay rent for the same. Under Section 20, the Magistrate while disposing of an application under Section 12 of the Act can direct the respondent to pay monetary relief to the aggrieved person in respect of loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property from her control and maintenance of the aggrieved person as well as her children. He can also order a lump sum payment or monthly payment of the maintenance. Under Section 21 of the Act, the Magistrate may grant temporary custody of the children to the aggrieved person and may deny visit of the respondent to the children of the aggrieved person. Under Section 22, the Magistrate can direct the respondent to make payment of compensation and damages for the injuries, including mental torture and emotional distress. Under Section 23, the Magistrate is competent to pass against the respondent such interim order as he deems fit in the facts and circumstances of the case.

38. As in the present case, the wife has specifically pleaded in the application and as alleged that her stridhan property has been illegally retained by the husband and mother-in-law, I must look into a recent pronouncement of the Supreme Court in the case of Krishna Bhattacharjee (Supra). I may quote the relevant observations made by the Supreme Court as regards the Stridhan.

24. The next issue that arises for consideration is the issue of limitation. In the application preferred by the wife, she was claiming to get back her stridhan. Stridhan has been described as *saudayika* by Sir Gooroodas Banerjee in "Hindu Law of Marriage and Stridhan" which is as follows:

"First, take the case of property obtained by gift. Gifts of affectionate kindred, which are known by the name of saudayika stridhan, constitute a womans absolute property, which she has at all times independent power to alienate, and over which her husband has only a qualified right, namely, the right of use in times of distress."

25. The said passage, be it noted, has been quoted Pratibha Rani v. Suraj Kumar and Another[10]. In the said case, the majority referred to the stridhan as described in "Hindu Law" by N.R. Raghavachariar and Maines "Treatise on Hindu Law". The Court after analyzing the classical texts opined that:

"It is, therefore, manifest that the position of stridhan of a Hindu married womans property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes - she may spend the whole of it or give it away at her own pleasure by gift or will without any reference to her husband. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilise it but he is morally bound to restore it or its value when he is able to do so. It may be further noted that this right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt."

26. In the said case, the Court ruled:

"... a pure and simple entrustment of stridhan without creating any rights in the husband excepting putting the articles in his possession does not entitle him to use the same to the detriment of his wife without her consent. The husband has no justification for not returning the said articles as and when demanded by the wife nor can he burden her with losses of business by using the said property which was never intended by her while entrusting possession of stridhan. On the allegations in the complaint, the husband is no more and no less than a pure and simple custodian acting on behalf of his wife and if he diverts the entrusted property elsewhere or for different purposes he takes a clear risk of prosecution under Section 406 of the IPC. On a parity of reasoning, it is manifest that the husband, being only a custodian of the stridhan of his wife, cannot be said to be in joint possession thereof and thus acquire a joint interest in the property."

27. The decision rendered in the said case was referred for a fresh look by a threeJudge Bench. The threeJudge Bench Rashmi Kumar (Smt) v. Mahesh Kumar Bhada[11] while considering the issue in the said case, ruled that :

"9. A womans power of disposal, independent of her husbands control, is not confined to saudayika but extends to other properties as well. Devala says: "A womans maintenance (vritti), ornaments, perquisites (sulka), gains (labha), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no right to use it except in distress." In N.R. Raghavachariars Hindu Law -

Principles and Precedents, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with "Definition of Stridhana". In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at page 426, it is stated that ornaments presented to the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that *saudayika* meaning the gift of affectionate kindred, includes both *Yautaka* or gifts received at the time of marriage as well as its negative *Ayautaka*. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

10. It is thus clear that the properties gifted to her before the marriage, at the time of marriage or at the time of giving farewell or thereafter are her stridhana properties. It is her absolute property with all rights to dispose at her own pleasure. He has no control over her stridhana property. Husband may use it during the time of his distress but nonetheless he has a moral obligation to restore the same or its value to his wife. Therefore, stridhana property does not become a joint property of the wife and the husband and the husband has no title or independent dominion over the property as owner thereof."

28. After so stating the Court proceeded to rule that stridhana property is the exclusive property of the wife on proof that she entrusted the property or dominion over the stridhana property to her husband or any other member of the family, there is no need to establish any further special agreement to establish that the property was given to the husband or other member of the family. Further, the Court observed that it is always a question of fact in each case as to how the property came to be entrusted to the husband or any other member of the family by the wife when she left the matrimonial home or was driven out therefrom. Thereafter, the Court adverted to the concept of entrustment and eventually concurred with the view in the case of *Pratibha Rani* (supra). It is necessary to note here that the question had arisen whether it is a continuing offence and limitation could begin to run everyday lost its relevance in the said case, for the Court on scrutiny came to hold that the complaint preferred by the complainant for the commission of the criminal breach of trust under Section 406 of the Indian Penal Code was within limitation.

39. In Paragraph 29 of the decision referred to above, the Supreme Court explained the meaning of "continuing cause of action". I may quote the paragraphs 29, 30, 31 and 32 as under:

29. Having appreciated the concept of Stridhan, we shall now proceed to deal with the meaning of "continuing cause of action". In *Raja Bhadur Singh v. Provident Fund Inspector and Others*[12] the Court while dealing with the continuous offence opined that the expression "continuing offence" is not defined in the Code but that is because the expressions which do not have a fixed connotation or

a static import are difficult to define. The Court referred to the earlier decision in *State of Bihar v. Deokaran Nenshi*[13] and reproduced a passage from the same which is to the following effect:

"A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or noncompliance occurs and reoccurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

30. The Court further observed :

"This passage shows that apart from saying that a continuing offence is one which continues and a noncontinuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence. Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a noncontinuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar."

31. Thereafter, the Court referred to the authorities and adverted to *Deokaran Nenshi* (supra) and eventually held:

"The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence..."

32. Regard being had to the aforesaid statement of law, we have to see whether retention of stridhan by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the stridhan but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in *Inderjit Singh Grewal* (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as

envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on 22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for stridhan. Regard being had to the said concept of "continuing offence" and the demands made, we are disposed to think that the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by limitation.

40. Analysis:

As noted in the earlier part of the judgment, the husband, his wife and their two children were one happy family. The husband and his parents appear to be very affluent. Unfortunately, all the dreams of the two innocent children got shattered as the father developed intimacy for a tuition teacher as alleged. The dreams of the wife also got shattered on account of the extramarital affair of the husband. For any wife, it would be the end of the life, the day, she comes to know that her husband has an extramarital affair. Even if the husband showers all the riches of the world upon the wife while maintaining illicit relationship with another lady, the same would hardly be of any consequence.

41. The proceedings have just been initiated. The parties have yet to lead appropriate evidence. In such circumstances, I see no good reason at this point of time to quash the proceedings. It is true that since 2006, the husband started residing separately in a bungalow along with his wife and two children and the parents and husband are residing in another bungalow. The matter is not just of a shared household. If that would have been the case, probably, I could have quashed the proceedings so far as the mother-in-law concerned. However, there are allegations against the mother-in-law, as contained in paragraphs - 11, 26 and 27 referred to above. I should not embark upon an inquiry at this point of time whether the allegations are true or false. Whether they are probable or not. There are allegations against the mother-in-law of pressurizing the daughter-in-law to consent for giving divorce to her husband, so that the husband can get married with the lady with whom he has an extramarital affair. There are allegations that the stridhan property is in possession of the mother-in-law and the same has been kept in a locker jointly operated by the husband and his mother. There are many other allegations, which probably may constitute a domestic violence, if ultimately, found to be true.

42. I am not impressed by the submission canvassed by the learned senior counsel appearing for the husband that as the husband has provided an accommodation to his wife and two children and is paying interim maintenance of Rs.65,000/ per month, that should be sufficient and be good enough to put an end to the entire controversy.

43. I am of the view that the wife should be permitted to lead appropriate evidence before the Court concerned to seek appropriate relief as provided in the Act.

44. In *Dhanalakshmi v. R. Prasanna Kumar*, 1990 Supp SCC 686, a three Judge Bench of this Court held :

"3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. It appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court."

45. In *Chand Dhawan v. Jawahar Lal*, (1992) 3 SCC 317 : 1992 SCC (Cri.) 636, the Supreme Court, while considering the power of the High Court under Section 482 CrPC and quashing the criminal proceedings, observed that when the High Court is called upon to exercise its jurisdiction to quash a proceedings at the stage of the Magistrate taking cognizance of the offence, the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not.

46. In *Radhey Shyam Khemka v. State of Bihar*, (1993) 3 SCC 54: 1993 SCC (Cri.) 59, the Supreme Court again held : (SCC pp.5960, para 8)

"8. The complaint made by the Deputy Secretary to the Government of India to CBI mentions different circumstances to show that the appellants did not intend to carry on any business. In spite of the rejection of the application by the Stock Exchange, Calcutta, they retained the share moneys of the applicants with dishonest intention. Those allegations were investigated by CBI and primarily charge sheet has been submitted. On basis of that charge sheet, cognizance has been taken.

In such a situation the quashing of the prosecution pending against the appellants only on the ground that it was open to the applicants for shares to take recourse to the provisions of the Companies Act, cannot be accepted. It is a futile attempt on the part of the appellants, to close the chapter before it has unfolded itself. It will be for the trial court to examine whether on the materials produced on behalf of the prosecution it is established that the appellants had issued the prospectus inviting applications in respect of shares of the Company aforesaid with a dishonest intention, or having received the moneys from the applicants they had dishonestly retained or misappropriated the same. That exercise cannot be performed either by the High Court or by this Court. If accepting the allegations made and charges leveled on their face value, the Court had come to conclusion that no offence under the Penal Code was disclosed the matter would have been different. This court has repeatedly pointed out that the High Court should not, while exercising power under section 482 of the Code usurp the jurisdiction of the trial court. The power under section 482 of the Code has been vested in the High Court to quash a prosecution which amounts to abuse of the process of the court. But that power cannot be exercised by the High Court to hold a parallel trial, only on basis of the statements and documents collected during investigation or enquiry, for purpose of expressing an opinion whether the accused concerned is likely to be punished if the trial is allowed to proceed."

47. In *Mushtaq Ahmad v. Mohd. Habibur Rehman Faizi*, (1996) 7 SCC 440 : 1996 SCC (Cri) 443, the Supreme Court observed : (SCC pp.44041, para 3)

"3. Having perused the impugned judgment in the light of the complaint and its accompaniments we are constrained to say, that the High Court exceeded its jurisdiction under Section 482 Cr.P.C. in passing the impugned judgment and order. It is rather unfortunate that though the High Court referred to the decision in *State of Haryana Vs. Bhajan Lal* (1992 Supp. (1) SCC 335) wherein this Court has enumerated by way of illustration the categories of cases in which power to quash complaint or FIR can be exercised, it did not keep in mind much less adhered to the following note of caution given therein :

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

48. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court under Section 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real

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and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice.

49. In one of the earlier cases, in R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866 : 1960 CriLJ 1239, the Supreme Court had summarized some of the categories of cases where inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are:

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

50. In Dinesh Dutt Joshi Vs. State of Rajasthan, (2001) 8 SCC 570 : 2002 SCC (Cri) 24, while dealing with the inherent powers of the High Court, the Supreme Court has observed thus: (SCC p.573. Para 6).

"6....The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

51. The purport of the expression "rarest of rare cases", has been explained in Som Mittal (2) Vs. Government of Karnataka. Speaking for a bench of three Judges, Honble the Chief Justice said: (SCC pp.580 81, para 9)

"9. When the words rarest of rare cases are used after the words sparingly and with circumspection while describing the scope of Section 482, those words merely emphasize and reiterate what is intended to be conveyed by the words sparingly and with circumspection. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasize that the power under Section 482 Cr.P.C. to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

52. The case law referred to above, is with regard to the inherent powers of the High Court under Section 482 of the Cr.P.C. The two petitions at hand are under Article 226 of the Constitution of India. The writ applicants have invoked the extraordinary jurisdiction of this Court. But, the same amount of caution, as is observed in the exercise of the powers under Section 482 of the Cr.P.C., is observed under Articles 226 and 227 also. The Supreme Court in the case of M/S. Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors, 1998 (5) SCC 749, observed thus:

"It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others vs. Bhajan Lal and others 1992 Supp (1) SCC 335, this court examined the extraordinary power under Article 226 of the Constitution and also, the inherent powers under Section 482 of the CrPC, which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice."

53. In the course of my present determination, I have come across many cases like the one at hand. The extramarital affairs are increasing in number. This is one of the highest reasons for divorce. The extramarital affair has devastating results.

54. The reasons for cheating could be innumerable. In almost all cases, the cheating partner does not pay attention to what can easily leave the relationship in a mayhem. Certainly, the effects of extramarital affairs are devastating and victims may take long to get over the misery. Infidelity can occur even in the strongest of the marital relationship. An extramarital challenges the sanctity and strength of a relationship, causing turmoil in personal and social world of the people.

55. Extramarital affair seems like a very common phenomenon these days. However, even when an affair seems to be working, it will eventually cause severe damage.

56. The worst thing with the extramarital affairs is that they usually ruin the life of a person who did nothing wrong, like the children in the present case. I take notice of the fact that the respondent no.3 viz. Anushree Tamboli has attained majority. The family will have to search for a good match for her. With such problems in the family, the daughter may not easily get a good match. This is one

very peculiar problem. Unfortunately, in the Indian Society, the good virtues of the girl would not be seen if the father or the mother has a problem.

57. Adultery undermines a relationships foundation and is one of the main reasons of a relationship crisis around the world. An extramarital affair wreaks havoc bringing in several negative effects, causing unbearable emotional pain and mental trauma for the faithful partner who never even thought of going through such a phase.

58. Dr. Scott Haltzman, a longtime therapist and expert on infidelity and marriage, in one of his interviews, stated that, "Social media and e communication has dramatically increased infidelity, not only because of the increased risk of meeting someone for the first time through the Web, or reconnecting with someone from the past through social networking sites, but also as a means, to perpetuate a potential affair. If 15 years ago you meet a friend from hundreds of miles away, the relationship is likely to die out because you cant very well keep calling and writing to each other without being discovered. Now, between Facebook, emails, and texting, people can maintain and intensify what, in the past, would have been "near misses".

59. According to the HUFFINGTON POST, a liberal American News and Opinion Website, there are 12 possible reasons as to why people indulge in extramarital affairs:

(A) Early marriage: People who marry in their early 20s would most likely have achieved some level of stability and social standing by their mid30s. At that point, they feel that they did not really enjoy life in their 20s, and find it exciting to indulge in an extramarital affair. It is their way of experiencing the thrill and excitement of dating.

(B) Married for the wrong reasons: Many people enter into marriage for the wrong reasons. Pressures from family and society top the list in the country. After a point, many people agree to marriage without even getting to know their life partner. Once the deed is done, they realise the mistake they have made in terms of the choice of their life partner. If they meet someone who is in any way a better match than their current spouse, they are immediately attracted to him/her. And what starts as a simple friendship usually ends up in an affair.

(C) Inability to deal with the changes: Life throws changes at us almost every day. Most of us are able to deal with the small changes. But the bigger ones are tougher to deal with - a serious illness in the family, death, loss of employment, financial loss, etc. Many turn to people, apart from their spouses to deal with such changes. They find more comfort in the arms of someone new, perhaps someone not connected to their tough circumstances in any way.

(D) Becoming parents: Becoming a parent changes everything about a husbandwife relationship. Priorities change, the time you can give each other reduces and your immediate living environment alters drastically. While most women give their 200% to being mothers, I know of several men who suddenly feel lost and unimportant at home, and indulge in extramarital affairs. And since most women are usually so busy being mothers, they probably dont even realise this for a long time.

(E) Physical dissatisfaction: This is probably one of the most common reasons for people to get involved in an extramarital affair.

(F) Emotional disconnect: Sometimes a couple emotionally disconnected from each other, the top reasons being lack of time and lack of communication with each other. To be emotionally connected, you need to share, you need to talk, you need to express, you need to listen, you need to laugh, you need to care and show that your care. If you dont do this, over a period of time, chances are you will get emotionally disconnected from each other as a couple and start getting emotionally connected with someone else. What starts out as an emotional bond with someone can eventually lead to an extramarital affair.

(G) Disagreements on core values: Sometimes when you experience a tough situation in life, your core values are tested. And you have to make decisions which may not be palatable to your family - especially your spouse. Sometimes this could be the cause for irreconcilable differences, which triggers an extramarital affair.

(H) Differing life priorities: When a couple gets married, often they dont speak about life priorities - simply because it is not so important or people are not so clear. With time, the priorities start getting clearer and more pronounced, and increasingly divergent. Over time, these become so different that it becomes tough to live together and agree on even basic things on a daily basis. This can be a catalyst for an extramarital affair. Some people get into a relationship simply because they believe it can advance their career.

(I) No common interests: If you have nothing in common with each other, youll eventually get absorbed in pursuing your own divergent interests. You will end up not spending enough time together. As you spend time away from each other, you get opportunities to interact with others. And gradually start building a bond with those who share your interests. Many times this leads to an extramarital affair.

(J) Need for excitement: Sometimes it is sheer boredom or a need to break the monotony and drudgery of everyday life that is the reason for an extramarital affair. Just for fun, for a change or for some excitement.

(K) Personal finances: Difficulties in personal finances (excess debts and liabilities), or lack of agreement on personal financial management can sometimes be the trigger for constant bickering within the four walls. And at such a vulnerable time, anyone who gives a hearing to your woes or some financial support is welcome. And this can lead to an extramarital affair.

(L) Career advancement: Sad but true. Some people get into a relationship simply because they believe it can advance their career. While these are the broad reasons, usually it is a combination of many of these which drives people into an extramarital affair. All said and done, it is tough to see a couple go through the stress of an extramarital affair. Relationships are broken, children are affected. There could be lifelong issues with guilt and trust. Its not an easy situation for anyone.

60. In the overall view of the matter, I have reached to the conclusion that no case is made out for terminating the proceedings initiated by wife under the Domestic Violence Act at this stage. I must give an opportunity to the wife and the two children to lead appropriate evidence for the purpose of seeking appropriate relief in accordance with law. Having regard to the materials on record, I find it difficult to take view that the proceedings initiated by the wife and the two children under the Domestic Violence Act amounts to abuse of the process of the Court.

61. In the result, both the applications fail and are hereby rejected. The interim order earlier granted stands vacated.

(J.B.PARDIWALA, J.)

Now, after the judgment is pronounced, Mr. Rohan Shah, the learned counsel appearing for Mr. Dipen Desai, the leaned counsel for the applicants made a request that the interim order earlier granted may be extended or continued for some time to enable the applicants to approach the higher forum. For the reasons assigned in this judgment, the request is declined.

Appeal rejected

