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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

QUASHING OF PROCEEDINGS UNDER THE DOMESTIC VIOLENCE ACT; A LEGAL QUANDARY

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Abstract

The domestic violence act was enacted by the parliament in 2005 on the principles of the vienna convention (1995) with the intention to provide civil remedies to victims of domestic violence but as time progressed the act became subject to rampant misuse which made the High Court's power to quash proceedings a vital tool to prevent such misuse. The act itself does not lay down a uniform procedure for quashing and due to the nature of remedies given under the act being civil but the offence of domestic violence being criminal, the procedure to quash has become a source of perplexity for the High Courts. This study seeks to critically analyse quashing of proceeding under the DV act while laying emphasis on the reasoning given by the High Courts

“Key words- quashing, civil, criminal, section 482”

1) Quashing of proceedings and the DV act; an introduction

The domestic violence act, 2005 has substantially contributed towards curbing the evil of domestic violence yet the act has been subjected to blatant misuse. The legislative intent of the act was to provide civil remedies¹ such as maintenance, residence etc to the victims of domestic violence but with time this act has become a tool to reap financial benefits by fabricating false and frivolous cases. Therefore the responsibility vests with the courts to quash proceedings under the act if an abuse of law is made out but quashing of proceedings under the act have become a source of perplexity for the High Courts while the Supreme Court continues to maintain silence on the issue.

¹ Statement of objects & reason of the domestic violence act, 2005 (“a remedy under the civil law which is intended to protect the women from being victims of domestic violence”)

1.1 Quashing of civil and criminal cases

The High Court gets the power to quash proceedings predominantly by two pieces of legislation i.e section 482 of the code of criminal procedure and article 227 of the constitution. Section 482 of the Crpc gives inherent powers to the High Court whereas article 227 of the constitution gives the power of superintendence to the High Courts. The primary difference between the two is that section 482 can be exercised over criminal matters whereas article 227 can be exercised in both civil and criminal matters. Furthermore, the High Court can exercise its inherent powers under section 482 Crpc to prevent abuse of process and quash proceedings² whereas the powers under article 227 are merely supervisory in nature and can be exercised mainly when the inferior courts acts arbitrarily and/or does not exercise proper jurisdiction³. Therefore the power of High Courts under section 482 Crpc is broader and more powerful than that under article 227. Thus the courts are confronted with a legal quandary while exercising their power to quash proceedings in matters pertaining to the DV act. The primary cause of this conflict arises due to the inability of various High Courts to distinguish this act as civil or criminal. The contrasting view among various High Courts has led to the procedure to quash proceedings becoming ambiguous.

1.2 Civil V/s Criminal- Analysing the nature of the DV act

The nature of the DV act is reflected in its legislative intent. Providing civil remedies to victims of domestic violence was the bedrock on which the act was created as domestic violence already constituted a criminal offence under section 498A of the Indian penal code⁴. Even Though the reliefs prescribed under the act are of civil nature, the act in section 28 states that the act shall be governed by the provisions of Crpc⁵. Furthermore domestic violence as an offence is a criminal wrong and when an offence of domestic violence is committed, it perpetrates a civil as well as a criminal wrong on the aggrieved. Thus the question of applicability of section 482 on DV act has divided opinions among the High Courts as to whether the proceedings under the DV act should be treated as civil or criminal.

² The code of criminal procedure, 1973, §482

³ Prashant Kanha, power of High Court under article 227 of the constitution, Nikhil Kumar and associates, August 28, 2021 (<https://nikhilkumaradvocate.in/power-of-high-court-under-article-227-of-the-constitution-of-india/>)

⁴ The indian penal code, 1860, §498-A

⁵ The domestic violence act, 2005, §28

2) Tussle between the courts

While the Supreme Court remains silent on the applicability of section 482 on the DV act, the High Courts have increased the ambiguity over the issue. While the Jammu and Kashmir⁶, Himachal Pradesh⁷ and Madras High Courts have held that a petition under section 482 is not maintainable to quash proceedings under DV act⁸, Bombay⁹ and Calcutta High Court¹⁰ have stated that a petition under section 482 is maintainable.

2.1 Who says What?

For the purpose of this study, we will be analysing the judgments of the chartered high courts i.e Madras, Calcutta and Bombay.

I. Madras High Court

The Madras HC's judgement in the case of *Arun Daniel & ors. V/s Suganya* emphasised on the nature of proceeding under the DV act. The court held that the magistrate does not perform his conventional role of trying any offence and is merely considering an application for the grant of civil reliefs. Furthermore to strengthen their conclusion they went on to state that a magistrate exercising jurisdiction under the DV act does not come within the definition of a criminal court. The court placed reliance on Black's Law dictionary (9th edition) in which a criminal court is defined as a "*court with jurisdiction over criminal matters*" and also on an earlier edition of the dictionary (3rd edition) in which it is defined as "*One where criminal cases are tried and determined, not one where civil cases are tried, or persons charged with criminal offenses are held for action by proper authority.*". Further the court placed reliance on the supreme court's judgement in the case of *Kishan Fauji V/s state of Haryana* which defines what constitutes a criminal court and states that "*As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if*

⁶ Basin Amin Makhdoomi, Orders Passed U/S 12 Domestic Violence Act Can't Be Assailed Directly U/S 482 CrPC Unless Remedy Of Appeal Is Availed: J&K High Court, live law, 8 Nov 2023 (<https://www.livelaw.in/high-court/jammu-kashmir/jammu-kashmir-high-court-section-12-domestic-violence-act-appeal-section-482-crpc-241909>)

⁷ Basit Amin Makhdoomi, Petitions U/S 482 CrPC Not Maintainable For Challenging Proceedings U/S 12 Domestic Violence Act: Himachal Pradesh High Court, live law, 3 July 2023 (<https://www.livelaw.in/high-court/himachal-pradesh-high-court/himachal-pradesh-high-court-domestic-violence-act-challenge-section-482-crpc-231764>)

⁸ *Arun Daniel v. Suganya*, 2022 SCC OnLine Mad 5435 ('Arun Daniel')

⁹ *Dhananjay Mohan Zombade v. Prachi*, 2023 SCC OnLine Bom 1607 ('Dhananjay Mohan Zombade')

¹⁰ *Chaitanya singhania v. Khushboo Singhania*, 2021 SCC OnLine Cal 2602 ('chaitanya Singhania')

carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order.”.As it was already established that the proceedings under the DV act are civil in nature and hence cannot come under the purview of a criminal court the court held that section 482 is only maintainable against proceedings of a criminal court and thus section 482 cannot be applicable on proceedings under the DV act.¹¹

II. Calcutta High Court

The Calcutta HC in its judgement in the case of *Chaitanya Singhania V/s Khushboo Singhania* emphasised on the nature of domestic violence as an offence rather than the DV act and stated that domestic violence as a whole is a civil and a criminal wrong. The court further states that the victim is referred to as an aggrieved person under the act and it is certain that the aggrieved party has been a ‘victim of violence’, a term which indicates the incidents of physical harm and injuries the aggrieved would have been subjected to pursuant to which the court relied on black’s law dictionary which defines violence as ‘Unjust or unwarranted exercise of force, usually with the accompaniment of vehemence, outrage or fury’ to further strengthen their reasoning. Therefore on the basis of the aforesaid reasoning, the court held that even though the reliefs given in the DV act are civil in nature, domestic violence as an offence infringes several penal provisions and constitutes civil wrongs, therefore an enabling provision has been provided during the enactment of this legislation in the form of section 28 which unequivocally states that the act shall be governed by the provisions of the Crpc and thus held that section 482 Crpc is applicable on the DV act. The court also touched upon the applicability of article 227 and stated that “*petition under Article 227 of the Constitution is maintainable if it is found that the proceedings before the magistrate suffered from patent lack of jurisdiction. The Jurisdiction under art. 227 is one of superintendence and is visitorial in nature and will not be exercised unless there exist jurisdictional error and that substantial injustice would be caused if the power is not exercised in favour of the petitioner. In normal circumstances, the power under article 227 will not be exercised as a measure of self-imposed restriction in view of the corrective mechanism available to the aggrieved parties before the magistrate, and then by way of*

¹¹ Arun daniel *supra* note 8, ¶¶ 6,12,13,14,40

an appeal under section 29 of the Act.”¹²

III. Bombay High Court

The judgement of the Bombay HC in the case of *Dhananjay Mohan Zombrade V/s Prachi* states that the legislative intent of the act was that it will be governed by the Crpc. The court states that perusal of the DV act does not show the application of any provision contrary to the Crpc and there is nothing to indicate that the provisions of the Crpc won't apply. Furthermore the court, while placing reliance on the forest act, stated that the forest act has laid down the procedure for quashing of proceedings and in the absence of any such provision in the DV act, section 482 can be exercised otherwise there will be abuse of the process of court. Furthermore the court also held that section 28 of the act prescribes for the usage of Crpc. The court further placed reliance on the Supreme Court's judgement in the case of *Kahkashan Kausar alias Sonam v. State of Bihar* in which the apex court observes the misuse of section 498A of the IPC and held that similar trends of misuse of law can be seen with regards to the DV act as well and thus the observations of the SC can be applied in cases of DV act as well and thus section 482 can be exercised to prevent abuse of the process of courts.¹³

Therefore it is evident from the aforesaid judgements that there is no procedure prescribed in the act for quashing of proceedings and the nature of the act subjects it to multiple interpretations due to which the high courts have failed to lay down a consensual procedure for quashing proceedings under the act.

3. The role of the Apex court; way forward

The aforesaid judgements clearly showcase the different reasonings and interpretations given by the courts due to which there is an absence of a uniform procedure. The only thing which can conclusively be derived from the judgements is that the reliefs are civil in nature but section 28 prescribes the Crpc to be followed procedurally. This ambiguity makes the DV act susceptible to misuse. False and fabricated cases of domestic violence have become a tool to gain financial benefits and therefore laying down a clear framework for quashing proceedings under the DV act is the need of the hour. In such a case of ambiguity and perplexity among the High Courts, the responsibility to undo the

¹² Chaitanya Singhania *supra* note 10, ¶¶ 2,7,17,18

¹³ Dhananjay Mohan Zombade, *supra* note 9, ¶¶ 8,12,14,24

perplexity rests on the shoulders of the Supreme Court by providing guidelines for the quashing of proceedings under DV act. Judgements like the Hiral P. Harsora judgements, where the SC struck down the word 'Adult Male' from the definition of respondent under the DV act¹⁴ shows that the apex court has taken progressive measures towards curbing the misuse of law as well as increasing the efficiency of the DV act. Even Though active measures have been taken, the SC overlooking the aforestated procedural issue is a roadblock to curb abuse of law. The SC through judgements such as *Kunapareddy V/s Kunapareddy swarna kumari & Anr.* has established that the DV act is civil in nature as the legislative intent is to provide civil remedies to the aggrieved party¹⁵ but the procedural question remains unanswered. The landmark judgement of the apex court in the case of *state of Haryana V/s Bhajan Lal* states that the court can use inherent powers under section 482 to prevent abuse of process or to secure ends of justice¹⁶ and furthermore section 28 of the act explicitly states that proceedings shall be governed by the provisions of the Crpc. Even after the existence of such comprehensible rules and guidelines, the Hon'ble High Courts of the country causing perplexity is not reasonable and shouldn't be welcome as it acts as a roadblock to curb the abuse and misuse of law. The supreme court should act swiftly and clear this point of law and/or prescribe procedural guidelines and the criminal law overhaul presents the SC with an opportunity as the new laws demand re-interpretation by the court.

¹⁴ Hiral.P.Harsora v. Kusum Narottamdas Harsora,(2016)10 SCC 165, ¶26

¹⁵ Kunapareddy V/s Kunapareddy swarna kumari & Anr., (2016) 11 SCC 774, ¶¶ 12,14

¹⁶ State of Haryana v. Bhajan Lal, 1992 supp(1) SCC 335, ¶102