(2023) 11 AHC CK 0015

Allahabad High Court

Case No: Criminal Revision No. - 4777 Of 2023

Ram Kumar Mishra		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Nov. 2, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code Of Criminal Procedure, 1973 - Section 6, 7, 9, 125, 127(3)(c), 397, 401
- Protection of Women From Domestic Violence Act, 2005 - Section 2(a), 2(f), 2(s), 3, 5, 12, 18, 19, 20, 21, 22, 23, 29
- Hindu Marriage Act, 1955 - Section 24
- Indian Contract Act, 1872 - Section 18(2), 25
- Hindu Adoptions and Maintenance Act, 1956 - Section 4(b)
- Code Of Criminal Procedure, 1898 - Section 488

Hon'ble Judges: Shiv Shanker Prasad, J

Bench: Single Bench

Advocate: Ashutosh Tiwari

Final Decision: Dismissed

Judgement

Shiv Shanker Prasad, J

1. This criminal revision under Section 397/401 Cr.P.C. has been filed by the revisionist with a prayer to quash the judgment and order dated 8th April, 2022 passed by the Civil Judge (Junior Division)/F.T.C./W.P./Judicial Magistrate, Pilibhit in Complaint Case No. 2256 of 2017 (Smt. Mamta Devi Vs. Raj Kumar Mishra & Others) and the judgment and order passed by the Additional Sessions Judge, Court No.3, Pilibhit dated 27th July, 2023 in Criminal Appeal No. 61 of 2022 (Ram Kumar Mishra Vs. Smt. Mamta & Another), whereby the appeal filed by the revisionist against the judgment and order dated 8th April, 2022 has been dismissed.

2. I have heard Mr. Ashutosh Tiwari, learned counsel for the revisionist, Mr. M. Ashif, learned counsel for opposite party no.2 and Mr. Ratnesh Kumar Singh, learned A.G.A. for the State.

Case of the Revisionist

3. Opposite Party No. 2 was married with the revisionist in year 2001 according to Hindu Rites and Rituals without any fulfilment of dowry. After sometime of the marriage due to misguidance of parents of Opposite Party No. 2, the relationship between the husband and wife became strained and incompatible and opposite party no.2 refused to joins the company of the revisionist and started matrimonial litigation. The Opposite Party No. 2 filed a case under Section 125 Cr.P.C in the Court of Judicial Magistrate, Pilibhit for maintenance which was registered as Maintenance Suit no.650 of 2009 (Smt. Mamta Devi Versus. Ram Kumar Mishra). Thereafter the court below has recorded the statement of P.W.1 Mamta Devi in which she has stated that she has received total maintenance amount in one time as Rs.1,50,000/- and she did not want to proceed this case against the revisionist any further. After that the statement of D.W.1 Ram Kumar has been recorded in which he has stated that he has paid Rs.1,50,000/- to his wife and now he had no concern with her in any manner. The Judicial Magistrate, Pilibhit after consideration of the aforesaid fact had rejected the application of the Opposite Party No. 2 vide impugned judgment and order dated 28.7.2009. Thereafter in the aforesaid case compromise has been arrived at between the both the parties on 28.7.2009 in the presence of some respected person of the society in which the opposite party no.2 has stated that she has received all the maintenance amount from the revisionist and no dues upon the revisionist was left.

4. Thereafter the opposite party no.2 also filed a case under Section 23 of Protection of Women From Domestic Violence Act (for short “D.V.Act) in the year 2017 which was registered as Complaint Case No.3356 of 2017 (Smt. Mamta Devi Versus Ramkumar Mishra and others). The Civil Judge (Junior. Division)/F.T.C./W.P/ Judicial District-Pilibhit without considering the facts and circumstances of the case allowed the complaint case under Section 23 of D.V. Act with the direction upon the revisionist to pay Rs.3,000/- per month as maintenance allowance on every 10 day of the the calender month vide order dated 8.4.2022. Being aggrieved by the order dated 8.4.2022 passed by Civil Judge (Jr. Div.)/F.T.C./W.P/ Judicial Magistrate, District-Pilibhit, revisionist filed Criminal Appeal before the court of Additional District Judge-III Pilibhit which was registered as Criminal Appeal No.61 of 2022 (Ram Kumar Mishra Vs. Smt. Mamta and others). The Additional District Judge- III Pilibhit without considering the proper facts and circumstances of the case rejected the appeal of the revisionist and confirmed the order dated 8.4.2022 passed by Civil Judge Jr. Div.)/F.T.C./W.P/ Judicial Magistrate, District-Pilibhit vide order dated 27.7.2023. Both the orders passed by the courts below dated 8.4.2022 and 27.7.2023 are against the evidence on record. Both the courts below did not apply the judicial

mind and disbelieved the objection of the revisionist and also believed the version of Opposite Party No. 2.

5. Submissions of the learned counsel for the revisionist

(I) The concerned Court below has not applied his judicial mind and wholly on the basis of surmises and conjectures believed the affidavit of Opposite Party No. 2 and his witnesses and have not examined to prove the authenticity of the affidavit and witnesses.

(II) In the proceedings under Section 125 Cr.P.C., the concerned court below has recorded the statement of P.W.1 Mamta Devi in which statement she has stated that she has received total maintenance amount in one time as Rs.1,50,000/-and she does not want to continue with the proceedings under Section 125 Cr.P.C. any further, and opposite party no. 2 is residing separately after taking permanent alimony since 28.07.2009, when on the other hand she has filed complaint seeking relief under D.V. Act in the year 2017 under Section 23 of Women Domestic Violence which was registered as Complaint Case No.3356 of 2017 (Smt. Mamta Devi Versus. Ramkumar Mishra and others) i.e. after long period of 8 years, for which no plausible explanation of said delay has been given in the said complaint despite the fact that a compromise has been entered into between both the parties on 28.7.2009 in the presence of some respected person of the society in which the opposite party no.2 has stated that she has received all the maintenance amount from the revisionist and no dues was left upon the revisionist any further.

(III) The concerned Judicial Magistrate, Pilibhit after consideration of the aforesaid fact has rejected the application of the Opposite Party No. 2 vide impugned judgment and order dated 28.7.2009.

(IV) The Civil Judge (Jr. Div.)/F.T.C./W.P/ Judicial Magistrate, District-Pilibhit without considering the facts and circumstances of the case has allowed the complaint case under Section 23 of Domestic Violence of Women with the direction to the revisionist to pay Rs. 3,000/- per month as Maintenance amount on every 10th day of the calender month vide order dated 8.4.2022. Feeling aggrieved with the order dated 8.4.2022 the revisionist filed Criminal Appeal before the court of Additional District Judge-III Pilibhit which was registered as Crl. Appeal No.61 of 2022 (Ram Kumar Mishra Vs. Smt. Mamta and others) and the said appeal has been dismissed by the concerned Sessions Judge confirming the order of the concerned Magistrate dated 8th April, 2022, which is per se illegal.

(V) Both the courts below i.e. Civil Judge (Jr. Div.)/F.T.C./W.P/ Judicial Magistrate, District-Pilibhit and Addl. Sessions Judge Court No.3, Pilibhit did not apply their judicial mind and disbelieved the objection of the revisionist and also believed the version of the Opposite Party No. 2 while passing the impugned orders. Both the courts below have recorded perverse finding, which is based on no evidence and from the findings recorded by both the courts below it is not clear as on what

circumstances and on what evidence, the affidavits of Opposite Party No. 2 and her witnesses have been taken into consideration and affidavit of Revisionist has been discarded.

6. On the preliminary objection raised on behalf of opposite party no.2 that the present criminal revision under Section 397/401 Cr.P.C. is not maintainable against the impugned order awarding interim maintenance under the D.V. Act in favour of a wife (opposite party no.2 herein) as the same is an interlocutory order, learned counsel for the revisionist has placed reliance upon the reference answered by a Full Bench of the Lucknow Bench of this Court dated 27th October, 2016 passed in Criminal Revision No. 582 of 2016 (Dinesh Kumar Yadav Vs. State of U.P. & Others), wherein it has been answered as follows:

“23. Under Section 397 of Cr P C "the High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court...". That the Court of Sessions is as an inferior Court to the High Court, cannot be disputed. Thus, the Court of Sessions before which an appeal has been prescribed under Section 29 of the Act, 2005 is a Criminal Court inferior to the High Court and, therefore, a revision against its order passed under Section 29 will lie to the High Court under Section 397 Cr P C. Section 401 Cr P C is supplementary to Section 397 Cr P C.

23.1 Section 4 (2) Cr P C does not have any application to the present case. Since the Act, 2005 does not prescribe any special form of procedure either for the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 or for an appeal under Section 29, therefore, Section 5 is also not attracted.

23.2 In view of the above, as the remedy of an appeal had been provided under Section 29 of the Act, 2005 before a Court of Sessions, which means a Court of Sessions referred under Section 6 read with Sections 7 and 9 of the Cr P C, without saying anything more as regards the procedure to be followed in such appeal, and there being nothing to the contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr P C to such an appeal, the normal remedies available against a judgment and order passed by a Court of Sessions by way of appeals and revisions prescribed under the Cr P C before the High Court, are available against an order passed in appeal under Section 29 of the Act, 2005.

24. The Single Judge Benches of this Court in the case of Nishant Krishan Yadav (supra) and Mrs. Manju Sree Robinson (supra) have erred in holding that such a criminal revision is not maintainable before the High Court. The judgment in Chiranjeev Kumar Arya (supra) against which the Special Leave Petition has been dismissed by the Supreme Court on 12.08.2016 and the judgment in Prabhunath Tiwari (supra) lay down the law correctly.

25. In the result, we answer the first question in the affirmative holding that the decisions in Nishant Krishna Yadav (supra) and Manju Shree Robinson (supra) do not

lay down the law correctly. In other words, we hold that a revision under Section 397/401 of Cr P C against a judgment and order passed by the Court of Sessions under Section 29 of the Act, 2005 is maintainable and that the decisions in Nishant Krishna Yadav (supra) and Manju Shree Robinson (supra) do not lay down the law correctly.

Reference is answered, accordingly."

7. To the submission made by the learned counsel for opposite party no.2 during the course of argument that after final settlement between the husband and wife, the husband is entitled to pay maintenance allowance to wife unless she gets married with some other persons or decree of divorce was passed as per the Apex Court in case of Nagendrappa Natikar Vs. Neelamma reported in 2013 0 Supreme (SC) 253 as well as judgment passed by Hon'ble Panjab & Haryana High Court in Case of Sunil Sachdeva Vs. Rashmi and Another reported in 2023 1 Crimes. (HC) 7, learned counsel for the revisionist submits that both the judgments are related to section 125 Cr. P. C. but present case is related to Domestic Violence Act which is a special act and has been formed to provide effective protection of the rights of the women guaranteed under the Constitution of India who are victims of violence of any kind occurring within the family. In support of the said submission, learned counsel for the revisionist has referred to the definition of Domestic Violence which has been given in Section 3 of the D.V. Act.

8. Learned counsel for the revisionist further submits that the aforesaid provision clarifies that for the purposes of committing offence it is necessary that aggrieved person should reside in shared household while it is admitted fact that opposite party no. 2 is residing separately from the revisionist since 28.07.2009 after making final settlement on the condition to take permanent of alimony of Rs. 1,50,000/- as such, opposite party no. 2 has no right to seek relief under the Act therefore the impugned orders are unreasoned and illegal and the same are liable to be set aside on the sole ground.

9. On the cumulative strength of the aforesaid, learned counsel for the revisionist submits that both the Courts below have committed manifest error of law and facts and committed procedural illegality, as without examining the entire facts and circumstances, have passed the impugned order dated 8.4.2022 and order dated 27.7.2023, which have no legs to stand in the eye of law. Both the impugned orders dated 8.4.2022 and order dated 27.7.2023 are highly, unjust, improper as well as against the correct provisions of law and such orders are liable to be quashed by this Court while exercising revisional jurisdiction under Section 397/401 Cr.P.C. It is further prayed that in case no suitable order or direction is by this Court, the Revisionist will suffer loss and injury, which cannot be compensated in any terms of way.

Submissions advanced on behalf of the State and the opposite party no. 2

10. At the time of final hearing, learned counsel for opposite party no.2 and the learned A.G.A. for the State have fairly conceded that in view of the Full Bench Judgment of the Lucknow Bench of this Court in the case of Dinesh Kumar Yadav (Supra), against the orders impugned the present criminal revision is maintainable., therefore, no question arise for the maintainability of the present criminal revision as this Court also agrees with the answer given by the Full Bench referred to above.

12. However, on merits, in reply to the submissions made by the learned counsel for the revisionist, learned counsel for opposite party no.2 and the learned A.G.A. for the State submit that there is no illegality or infirmity in the impugned orders passed by both the courts below so as to warrant any interference by this Revisional Court in exercise of its powers under Sections 397/401 Cr.P.C. As such the present criminal revision is liable to be dismissed.

13. Apart from the above, learned counsel for opposite party no.2 submits that neither any divorce petition has been filed by both the parties nor any decree of divorce has been passed by Family Court, meaning thereby that till now opposite party no.2 is legally wedded wife of the revisionist. It is further submitted that it is no doubt true that opposite party no.2 had obtained earlier Rs. 1,50,000/- from her husband i.e. the revisionist herein but in the earlier proceedings initiated under the provisions of Section 125 Cr.P.C., which is a different Code. When opposite party no.2 was unable to maintain herself because her father was expired, she has filed an application under Section 23 of D.V. Act before the concerned Magistrate and in the said proceedings the impugned order of maintenance has been passed in favour of opposite party no.2.

14. Learned counsel for opposite party no.2 further submits that there is no bar to file maintenance case in different provisions of law after the compromise. In support of such submissions, learned counsel for the opposite party no.2 has placed reliance upon paragraph nos. 10 and 11 of the judgment of the Apex Court in the case of Nagendra Natikar Vs. Neelamma reported in 2013 0 Supreme (SC) 253. Learned counsel for opposite party no.2 has further relied upon the Division Bench Judgement of the Chhattishgarh High Court dated 11th November, 2021 passed in FAM No. 03 of 2017 (Chandrabhushan Vs. Smt. Savita Bai), wherein in paragraph nos. 55 and 56 it has been held that any maintenance awarded to a woman under the provisions of D.V. Act would not be bar to seek further maintenance under Section 125 Cr.P.C. or under Section 24 of the Hindu Marriage Act. He has also referred to the judgment of the Punjab and Haryana High Court in the case of Sunil Sachdeva Vs. Rashmi & Another reported in 2023 1 Crimes (HC) 7, wherein it has been observed that compromise cannot forfeit the right of a wife to claim maintenance from husband.

15. Learned counsel for opposite party no.2 then submits that the father of opposite party no.2 has expired and she is dependent upon her brother and she cannot maintain herself and since the revisionist is her husband, he is liable to pay

maintenance allowance to opposite party no.2 as opposite party no.2 has legal right to obtain maintenance allowance for maintaining herself from the revisionist and there is no bar to file an application for maintenance allowance under the D.V. Act after compromise in any other proceedings initiated earlier.

16. Learned counsel for opposite party no.2 again submits that since opposite party no.2 is living with her brother and old age mother and she is legally wedded wife of the revisionist, he is duty bound to maintain his wife i.e. revisionist herein.

17. On the cumulative strength of the aforesaid, learned counsel for opposite party no.2 submits that since the courts below have passed just and legal orders while directing the revisionist to pay the interim maintenance of Rs. 3,000/- to his wife i.e. opposite party no.2, the present criminal revision filed by the revisionist has no legal ground and is liable to be dismissed.

18.I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present criminal revision especially the impugned orders passed by the courts below.

19. It is important for this Court to first come to the findings recorded by the Civil Judge (Junior Division) F.T.C./D.P./J.M., Pilibhit dated 8th April, 2022 under the provisions of D.V. Act directing the revisionist to pay Rs. 3,000/- to opposite party no.2 per month towards interim maintenance. For ready reference, the findings are being quoted herein below:

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20. Now this Court comes to the findings recorded by the appellate court while dismissing the appeal filed by the revisionist against the order dated 8th April, 2022 by the judgement and order dated 27th July, 2023. For ready reference, the findings are extracted herein below:

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21. It is also required for this Court to refer to the relevant paragraphs of the judgments of the Apex Court in the case of Nagendra Natikar, (Supra) which has heavily been relied upon by the learned counsel for opposite party no.2

22. Paragraph nos. 10 and 11 of the case of Nagendra Natikar (Supra) read as follows:

“10. Section 125 Cr.P.C. is a piece of social legislation which provides for a summary and speedy relief by way of maintenance to a wife who is unable to maintain herself and her children. Section 125 is not intended to provide for a full and final determination of the status and personal rights of parties, which is in the nature of a civil proceeding, though are governed by the provisions of the Cr.P.C. and the order made under Section 125 Cr.P.C. is tentative and is subject to final determination of the rights in a civil court.

11. Section 25 of the Contract Act provides that any agreement which is opposed to public policy is not enforceable in a Court of Law and such an agreement is void, since the object is unlawful. Proceeding under Section 125 Cr.P.C. is summary in nature and intended to provide a speedy remedy to the wife and any order passed under Section 125 Cr.P.C. by compromise or otherwise cannot foreclose the remedy available to a wife under Section 18 (2) of the Act.”

23. In the case of Rajnesh Vs. Neha & Another reported in (2021) 2 SCC 324, the Apex Court has opined that there is no inconsistency between Cr.P.C. and the Hindu Adoptions and Maintenance Act, 1956 (HAMA) and both can stand together. Though there are different enhancements providing for maintenance, each enactment provides an independent and distinct remedy framed with a specific object and purpose. It has been further opined that the provisions of maintenance in secular laws like the Special Marriage Act, 1954 (SMA), Section 125 Cr.P.C. and the Protection of Women from Domestic Violence Act, 2005 (the DV Act) are irrespective of religious community to which they belong and apart from other remedies provided in personal laws like dissolution of marriage or restitution of conjugal rights etc. The relevant portion whereof reads as follows:

"....In Nanak Chand v Chandra Kishore Aggarwal & Ors., the Supreme Court held that there was no inconsistency between the Cr.P.C. and HAMA. Section 4(b) of HAMA would not repeal or affect the provisions of Section 488 of the old Cr.P.C. It was held that :

"4. Both can stand together. The Maintenance Act is an act to amend and codify the law relating to adoptions and maintenance among Hindus. The law was substantially similar before and nobody ever suggested that Hindu Law, as in force immediately before the commencement of this Act, insofar as it dealt with the maintenance of children, was in any way inconsistent with Section 488, CrP.C. The scope of the two laws is different. Section 488 provides a summary remedy and is applicable to all persons belonging to all religions and has no relationship with the personal law of the parties. ..."

24. In the case of Ramchandra Laxman Kamble vs Shobha Ramchandra Kamble And Another reported in 2018 SCC OnLine Bom 7039, the Bombay High Court has observed as follows:

"13. There are several rulings, which take the view that an agreement, in which the wife gives up or relinquishes her right to claim maintenance at any time in the future, is opposed to public policy and, therefore, such an agreement, even if voluntarily entered, is not enforceable. The two courts in the present case have basically relied upon such rulings and held that even if it is assumed that the parties had voluntarily agreed to give up their time to claim maintenance from each other, such agreement is opposed to public policy and, therefore, the same is not enforceable, or the same does not bar the maintainability of an application under Section125 of Cr.P.C. There is no jurisdictional error in the view taken by these two courts so as to warrant interference under Article 227 of the Constitution of India.

14. In Shahnaz Bano d/o Aslam Khan (Smt.) vs. Babbu Khan s/o Nanhekhan Pathan & Another 1, learned Single Judge of this Court has held, considering the trend of decisions of different courts in India and the Supreme Court, that he was firmly of the view that even in a case covered by Clause (c) of Section 127 (3) of Cr.P.C., where

the wife has surrendered her rights voluntarily, in a given case, if after waiving her rights to maintenance, she becomes vagrant and destitute and is unable to maintain herself, then irrespective of her personal law, she would be entitled to avail statutory remedy for maintenance under Section 125 of Cr.P.C.

15. In Rameshwar s/o Sandu Kachkure VS. State of Maharashtra & Another, learned Single Judge of this Court has taken a view that an agreement, by which the wife relinquishes her right to receive maintenance any time in future, is contrary to public policy and consequently unenforceable.

16. In Tejaswini d/o Anandrao Tayade And Anr. vs. Chandrakant Kisanrao Shirsat And Anr.3, another Single Judge of this 1 1985 Mh.L.J. 853 2 2018(4) Mh.L.J.(Cri.) 3 2005(3) Mh.L.J. 137, Court refused to reject an application under Section 125 Cr.P.C. on the ground that wife in the customary divorce deed and consent deed executed by her relinquished her claim for past and future maintenance. To the same effect are the observations of a learned Single Judge of Allahabad High Court in Mahesh Chandra Dwivedi Vs. State of U.P. & Another.

17. In Rajesh R. Nair vs. Meera Babu 5, Division Bench of Kerala High Court has held that an agreement, by which the wife waived her right to claim maintenance, would be a void agreement as against public policy. Such an agreement would amount to ousting of jurisdiction of Magistrate and Family Court to entertain maintenance claim, which cannot be permitted by law. Therefore, the claim for maintenance cannot be rejected on the basis of such agreement of waiver of right to maintenance."

25. On overall evaluation and deeper scrutiny of the records of the present criminal revision, submissions made by the learned counsel for the parties and also the case laws referred to herein above, this Court finds substance in the submissions made by the learned counsel for opposite party no.2 that no provisions of law like Hindu Marriage Act or Protection of Women from Domestic Violence Act restrict any wife to file an application seeking maintenance allowance from her husband on the ground that she has already obtained permanent alimony on the basis of a compromise in a proceedings initiated by her under the provisions of Section 125 of Code of Criminal Procedure.

26. So far as the submission made by the learned counsel for the revisionist that since the opposite party no.2 is residing separately from the revisionist since 28th July, 2009 after final settlement between the parties, no offence under the provisions of D.V. Act is made out against the revisionist, is concerned, this Court may refer to the provisions of Section 2 (s) of D.V. Act in which definition of shared household has been given. For ready reference, Section 2 (s) reads as follows:

"2. Definitions.--

.....

(s) “shared household” means a 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 or 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 the aggrieved person has any right, title or interest in the shared household.”

27. From the perusal of the aforesaid definition of Shared Household it is apparently clear that The use of the expression “at any stage has lived” immediately after words “person aggrieved lives” has been used to protect the women from denying any on the ground that on the date when application is filed, she was excluded from possession of the house or temporarily absent. The shared household is contemplated to be the household, which is a dwelling place of aggrieved person in present time. The shared household referred to in Sec 2(s) is the shared household of the aggrieved person where she was living at the time when the application was filed or in the recent past had been excluded from the use or she is temporarily absent.

28. In the case of Juveria Abdul Majid Patni vs. Atif Iqbal Mansoori and Another reported in [(2014) 10 SCC 736], the Hon’ble Supreme Court while interpreting the definition of aggrieved person under Section 2(a) of the D.V. Act has held that apart from the woman who is in a domestic relationship, any woman who has been in a domestic relationship with the respondent, if alleged to have been subjected to any act of domestic violence by the respondent comes within the meaning of aggrieved person.

29. Further, after analysing the relevant provisions of the D.V. Act, the Hon’ble Supreme Court in the case of Juveria Abdul Majid Patni (Supra) while referring to the earlier judgment of the Apex Court in the case of V.D. Bhanot vs. Savita Bhanot reported in [(2012) 3 SCC 183], held that the conduct of the parties even prior to coming into force of the D.V. Act could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. The wife who had shared a household in the past but was no longer residing with her husband can file a petition under section 12 if subjected to domestic violence. It was further observed that where an act of domestic violence is once committed, then a subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled to.

30. The High Court of Madras in the case of Vandhana Vs. T. Srikanth and Krishnamachari reported in 2007 SCC OnLine Mad 553 has held that it is not necessary for any woman to establish her physical act of living in “Shared Household” either at time of institution of proceedings or in the past. It has been

further opined that her her bodily presence or absence from “shared household” cannot belittle her relationship on anything other than “domestic relationship”. Relevant paragraph 20 of the judgement of the Madras High Court is being extracted herein-below:

“20. In a society like ours, there are very many situations, in which a woman may not enter into her matrimonial home immediately after marriage. A couple leaving for honeymoon immediately after the marriage and whose relationship gets strained even during honeymoon, resulting in the wife returning to her parental home straight away, may not stand the test of the definition of domestic relationship under Section 2(f) of the Act, if it is strictly construed. A woman in such a case, may not live or at any point of time lived either singly or together with the husband in the “shared household”, despite a legally valid marriage followed even by its consummation. It is not uncommon in our society, for a woman in marriage to be sent to her parental home even before consummation of marriage, on account of certain traditional beliefs, say for example, the intervention of the month of Aadi. If such a woman is held to be not entitled to the benefit of Section 17 of the Act, on account of a strict interpretation to Section 2(f) of the Act that she did not either live or at any point of time lived together in the shared household, such a woman will be left remediless despite a valid marriage. One can think of innumerable instances of the same aforesaid nature, where the woman might not live at the time of institution of the proceedings or might not have lived together with the husband even for a single day in the shared household. A narrow interpretation to Sections 2(f), 2(s) and 17 of the Act, would leave many a woman in distress, without a remedy. Therefore, in my considered view a healthy and correct interpretation to Sections 2(f) and 2(s) would be that the words “live” or “have at any point of time lived” would include within their purview “the right to live”. In other words, it is not necessary for a woman to establish her physical act of living in the shared household, either at the time of institution of the proceedings or as a thing of the past. If there is a relationship which has legal sanction, a woman in that relationship gets a right to live in the shared household. Therefore, she would be entitled to protection under Section 17 of the Act, even if she did not live in the shared household at the time of institution of the proceedings or had never lived in the shared household at any point of time in the past. Her right to protection under Section 17 of the Act, co-exists with her right to live in the shared household and it does not depend upon whether she had marked her physical presence in the shared household or not. A marriage which is valid and subsisting on the relevant date, automatically confers a right upon the wife to live in the shared household as an equal partner in the joint venture of running a family. If she has a right to live in the shared household, on account of a valid and subsisting marriage, she is definitely in “domestic relationship” within the meaning of Section 2(f) of the Act and her bodily presence or absence from the shared household cannot belittle her relationship as anything other than a domestic relationship. Therefore, irrespective of the fact whether the

applicant/plaintiff in this case ever lived in the house of the first respondent/first defendant after 7.2.2007 or not, her marriage to the first respondent/first defendant on 7.2.2007 has conferred a right upon her to live in the shared household. Therefore, the question as to whether the applicant/plaintiff ever lived in the shared household at any point of time during the period from 7.2.2007 to 13.6.2007 or not, is of little significance."

31. In the present case, it is an admitted position that the aggrieved person i.e. opposite party no.2 lived with the revisionist earlier, therefore, offence under the provisions of D.V. Act will make out against the revisionist and the opposite party no.2 has every right to seek relief under the provisions of D.V. Act at any stage. As such, this Court has not found any substance in the submissions made by the learned counsel for the revisionist that since she is living separately from the revisionist, she is not entitled to any relief under the provisions of D.V. Act.

32. Resultantly, this Court finds no illegality or infirmity in the orders passed by the Courts below so as to warrant any interference by this Court under Sections 397/401 Cr.P.C.

33. The present criminal revision lacks merit and is accordingly dismissed.

34. There shall be no orders as to costs.