

household". Such an interpretation would lead to chaos and would give rise to filing of complaints in total abuse of the provisions of the Domestic Violence Act.

- *Arun Sharma v. State of U.P.*, 2016 (1) DMC 859 (All.) : 2016 (5) RCR (Cri) 123 : 2017 (5) RCR (Civil) 649.

**48. Complaint being filed to harass respondents—Not maintainable.**

The complaint has been filed in clear abuse of the process of law and process of the court. In the considered opinion of this Court, provisions of the Domestic Violence Act have been abused in filing the complaint, although the same is not maintainable as against the petitioners in these cases.

- *Arun Sharma v. State of U.P.*, 2016 (1) DMC 859 (All.) : 2016 (5) RCR (Cri) 123 : 2017 (5) RCR (Civil) 649.

**49. Conduct likely to harm other person—Squarely comes within definition of Domestic Violence.**

Even though the Courts below have mentioned that there is no material relating to "domestic violence" available on record, the petitioner has mentioned in ground No. D that it is case of domestic violence which has been lost sight of by the learned Court below. On perusal of the definition of "domestic violence" as per the section 3 of the 2005 Act, it appears that if the conduct of the respondent harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so, it would amount to "domestic violence" which includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. If the respondent harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable security, it would also amount to "domestic violence".

- *Sabita Bijuli Sahoo v. Niranjan Sahoo*, 2017 (3) Crimes 431 (Orissa) : 2017 (123) Cut LT 679 : 2017 (66) Orissa Cri R 563 : 2017 (2) DMC 241 : 2017 (Supp) Orissa Law Rev 332: 2017 (3) HLR 20.

**50. Date till which maintenance order is effective not mentioned—Modification proper remedy.**

It can be inferred that the findings of Learned Executing Court that the impugned order pertains to the period till the date of order and does not go beyond that cannot be sustained. Apparently, the maintenance awarded was to operate till the disposal of the main petition. It is true that in the order dated 08.09.2008 there is no specific mention about it. The proper remedy before the petitioner in such a scenario is to seek necessary clarification from the Court concerned. Learned counsel for the petitioner seeks permission to withdraw the present petition with liberty to move the learned Trial Court to seek necessary clarification/review of the order. The petition is dismissed as withdrawn with liberty prayed for. The petitioner will be within her right to move an application

instead of ₹ 2.50 lakhs, as awarded by the trial Court. Criminal Revision Case No. 374 of 2014 is devoid of merits and is liable to be dismissed. Accordingly, both the revisions are dismissed. The orders of the Appellate Court granting return of ₹ 2 lakhs by the first respondent/husband to the complainant/wife and also return of gold bracelet and gold ring and to pay compensation of ₹ 4 lakhs within two months from the date of the order are confirmed. The first respondent/husband shall return ₹ 2 lakhs as well as gold bracelet and gold ring within two months from the date of the order and shall pay compensation of ₹ 4 lakhs within two months from today together with arrears payable from the date of the order, failing which the amount shall attract penal interest at 18% per annum from the date of the order till payment.

- *V. Chandrasekhar v. K. Bhavana*, 2015 (3) Crimes 293 (AP) : 2015 (1) ALT (Cri) 132 : 2014 (2) Andh LD (Cri) 669 : 2014 (33) RCR (Cri) 438.

#### **156. Right of appeal—Act does provide a remedy of appeal.**

As rightly pointed out by the learned counsel for the Opposite Party No. 2, the Act does provide a remedy of appeal to the Court of Sessions against the final orders, passed by the Magistrate at the conclusion of the enquiry, made under Section 18 of the Act.

- *Rakesh Sachdeva v. State of Jharkhand*, 2014 (1) Crimes 507 (Jhar) : 2013 (129) AIC 743: 2013 (4) East Cri C 9 : 2014 (1) AIR Jhar R 208 : 2014 (7) RCR (Cri) 2150 : 2014 (1) HLR 703 : 2014 (1) JLJR 17 : 2014 (2) Civ CC 234.

#### **157. Right of residence in shared household—Has to be proved by Aggrieved person.**

Even this widest view of the concept of a shared household would not entitle the respondent No. 1 to any benefit of the legislative provision, which is not intended for an estranged daughter-in-law who has settled abroad with her husband for five years to seek a right of residence in a property owned by the mother-in-law of her mother-in-law. The commensality shared was broken way back on September 02, 2008. The respondent No. 1 and her husband had their matrimonial house in Canada. During pendency of the divorce proceedings in Canada she continued to stay in the matrimonial house in Canada. She cannot come back one fine day to India and force an entry into the house which five years back was the matrimonial house. The intention under the legislation is to protect the existing right of an estranged wife and protect the roof above her head which was available to her when the marriage soured. The fact that respondent No. 1 has executed a power of attorney in favour of her father to prosecute various proceedings initiated by her in India and she went back to Canada to contest not only the divorce petition filed by her husband but even prosecute her counter claim shows that she continues to accept her residence to be the matrimonial house in Canada.

- *Purinma Sahni v. Rati Sahni*, 2016 (4) JCC 2213 (Del) : 2017 (2) RCR (Civil) 463 : 2017 (1) RCR (Cri) 776.

violence would fall under the definition of “aggrieved person”. Mere allegation is sufficient enough by aggrieved person to set into motion the proceedings under the Act.

- ❑ *Hema Rawal v. Prashant Sharma*, 2015 Cri LJ 4378 (P&H) : 2015 (2) RCR (Cri) 195 : 2015 All MR (Cri) (JS) 244 : 2015 (2) JCC 1351 : 2015 (3) PLJ (Cri) 509 : 2015 (Sup) Civ CC 60 : 2015 (Sup) Cri CC 653.

### **200. Word “change in circumstances”.**

In both the definitions of “aggrieved person” and “domestic relationship”, the legislature in its wisdom used present tense and present perfect tense. In order to bring an action and to get a relief under the Act the aggrieved person has to show that she is in domestic relationship with the husband or has been in a domestic relationship with him. In both Cr. P. C. and D. V. Act the words ‘change in circumstances’ are used in connection with alteration of an order of maintenance. Use of same words in similar connection in a subsequent Act gives rise to a presumption that they are used to carry the same meaning as in the earlier statute. The term ‘wife’ has not been defined in the Act of 2005. Explanation (b) of sub-section (1) of S. 125 of the Code says that wife includes a woman who has been divorced by or has obtained a decree of divorce from her husband and has not remarried.

- ❑ *Krishnendu Das Thakur v. State of West Bengal*, 2019 Cri LJ 4422 (Calcutta).

### **201. Word “Domestic relationship”—Meaning of—Domestic relationship would mean a relationship between two persons, who live or have at any point of time lived together in a shared household.**

“Domestic relationship” would mean a relationship between two persons, who live or have at any point of time lived together in a shared household. ‘Shared household’ means a household where the person aggrieved lives at any stage in a domestic relationship either singly or along with respondent. The respondent has, thus, never resided with the petitioners in the household along with her husband to constitute an offence under the Act against the petitioners. *Held*, the continuation of criminal proceedings against the petitioners would be nothing but an abuse of process of law.

- ❑ *Girish v. Poonam*, 2013 (2) Crimes 18 (P&H) : 2012 (4) Law Herald 3547 : 2013 (1) RCR (Civil) 751 : 2013 (1) RCR (Cri) 767.

### **202. Word “relative” as used in the Act—Meaning of—Includes female relative as well for the purpose of certain provisions.**

The word “relative” in proviso to section 2(g) includes a female relative. The relevant part of the statement of objects and reasons of the said Act reads thus :

4 The Bill, *inter alia*, seeks to provide for the following—

It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household

the learned Magistrate which he could consider before passing the order dated 22.9.2008. Accordingly, it appears that there was no illegality or impropriety or material irregularity in passing the said order without considering the report which was not with the record.

- *Kajal Baran Das v. Santa Das*, 2012 (4) Crimes 540 (Cal.) : 2013 (1) Cri CC 12 : 2013 (1) Civ CC 571 : 2013 (3) AICLR 711 : 2014 (11) RCR (Cri) 1416.

#### **99. Filing of complaint—Not required to be filed while living in the shared household.**

Moreover, Section 3 also notes the definition of domestic violence. There is no specification that the applicants had been contacted only at the time when the complainant was residing in the home of her husband or partner. The Fourth submission raised by the learned Counsel for the applicants was that the Magistrate should have called for a report from a Protection Officer before proceeding in the matter. This is apparently what he has done by their order dated 14.11.2007, whereby he has “merely registered the miscellaneous case on the basis of an application and has issued notice to the complainant through the Protection Officer and put up the matter on 21.11.2007. Moreover, as cognizance even has not been taken in this case, Court thinks, an application under Section 482 Criminal Procedure Code is not maintainable in this court.

- *Azimuddin Kunta v. State of U.P.*, 2008 (3) CCR 358 (All) : 2008 (61) A Cr C 228 : 2008 (3) ADJ 665 : 2009 (2) LRC 150 : 2008 (25) RCR (Cri) 797.

#### **100. Filing of petition within reasonable time—Justified.**

Learned counsel for the petitioner filed an unauthentic copy of the order purported to have down loaded from the internet in which the District Judge, Saket, New Delhi, has allowed an appeal under Section 29 of the Act. Such judgment has no binding effect. Moreover, the issue therein is whether the interim order of maintenance passed by the learned Magistrate is correct or not. The District Judge himself was not in seisin of the matter where the proceeding was to be quashed for limitation. Another unreported decision of the Bombay High Court has been filed. As per the order dated 7th March, 2013 a single Judge of the Bombay High Court has held that the petition under Section 12 of the Act should be filed within a reasonable time. The learned Judge held that a wife who has returned from the USA and consequently from the domestic relationship and lived in India for one year cannot file an application with regard to that relationship after such time. In that case the domestic relationship existed in USA and she went away from the domestic relationship and then lived in India for one year. Thereafter she filed an application in India, *i.e.* is not entertained and the learned Single Judge of Bombay High Court upheld the same. This Court is of the opinion that the aforesaid cases are totally different from the present case.

- *Nihar Ranjan Parida v. Soochna Dhal*, 2016 (1) ILR (Cuttack) 323 : 2015 (47) RCR (Cri) 220 : 2016 (63) Orissa Cri R 907 : 2016 (Sup1) Orissa Law Rev 199.

which accommodation shall be named and mentioned to the applicant by the respondent No. 1. The applicant shall also pay the deposit, if any, required for obtaining such accommodation.

- *Lokesh Kiran Kumar Shah v. Shraddha Lokesh Shahs*, 2013 (1) DMC 261 (Bom) : 2013 (1) Civ CC 596 : 2013 (1) Cri CC 696 : 2013 (1) Crimes 208 : 2012 All MR (Cri) 3230 : 2012 (20) RCR (Cri) 184.

### **71. Passing interim *ex parte* order—Competency of Magistrate to pass.**

In view of the conjoint reading of section 21 and section 23 (2) of the P.W.D.V. Act, it is very clear that the Magistrate is empowered to pass an *ex parte* order in granting interim/temporary custody of any child or children to the aggrieved party even basing on the affidavit filed by such aggrieved party without notice to the respondent. The only criteria for passing such *ex parte* order must be a case of exigency under the facts and circumstances of each case which can only be considered if the application *prima facie* discloses regarding commission of domestic violence or likelihood of commission of such domestic violence on the aggrieved person. There must be sufficient and compelling reasons to persuade the Court to pass such *ex parte* interim/temporary custody order of the child. For example, if the Magistrate is *prima facie* satisfied that the minor child of tender age has been separated from the mother forcibly or custody of the child with the respondent is harmful and against the interest of the child and further custody with the respondent is likely to aggravate the situation, the Magistrate can certainly pass *ex parte* interim order relating to grant of interim/temporary custody of the child or children in favour of the aggrieved person basing on the affidavit in as much as if prompt action at that stage is not taken then the legislative intent of making such a provision would be frustrated.

- *Vinay Gupta v. Saveri Nayak*, 2017 (1) DMC 181 (Orissa) : 2017 (1) Crimes 53 : 2017 (3) RCR (Civil) 442 : 2017 (2) RCR (Cri) 929 : 2017 (66) Orrisa Cri R 199 : 2017 (1) OJR 34 : 2017 (3) Cri CC 103 : 2017 (3) JCC 1752.

### **72. Passing of *ad interim* order—Within competency of Court.**

Sub-section (2) of Section 23 clearly shows that in an appropriate case where the Magistrate is satisfied that the application discloses that the respondent to the application is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, the Magistrate is empowered to grant an *ex parte* order (*ad interim* order) on the basis of an affidavit in Form No. III of the Rules and such *ad interim* order can be passed either under Section 18, 19, 20 or 21. Annexure-C order is a Residence Order passed under Section 19 read with Section 23 (2) of the Act. The basis for moving the Magistrate was on account of the threat by the revision petitioner/father regarding the right of the daughter to reside in the “shared household” in question.

- *Chithrangathan v. Seema*, 2008 (1) DMC 365 (Ker) : 2008 (1) CCR 343 : 2007 (4) KLT 424 : 2008 (1) LRC 266 : 2007 (3) KHC 757.