JUVERIA ABDUL MAJID PATNI

*v.*

ATIF IQBAL MANSOORI AND ANR.

(Criminal Appeal No. 2069 of 2014)

SEPTEMBER 18, 2014.

**[SUDHANSU JYOTI MUKHOPADHAYA AND S.A. BOBDE, JJ.]**

*PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005:*

*ss.2 (a) and (f) – Expressions 'aggrieved person', and 'domestic relationship' – Explained.*

*s.12 r/w ss.18 to 23 – Monetary relief to 'person aggrieved'(wife) — An act of domestic violence once committed, 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 under the Domestic Violence Act — Even if it is accepted that the appellant during the pendency of SLP has obtained ex parte Khula (divorce) under Muslim Personal Law from the Mufti, the petition u/s12 of the Domestic Violence Act, 2005 is maintainable.*

*MOHAMMEDAN LAW:*

*'Khula' – Explained.*

**Allowing the appeal, the Court**

**HELD: 1.1. Section 2(a) of the Domestic Violence Act, 2005, makes it clear that apart from the woman who is in a domestic relationship, any woman who has been, in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the**

A respondent comes within the meaning of "aggrieved person". Section 2(f) defines domestic relationship, according to which a person aggrieved (wife), who at any point of time has lived together with husband in a shared household, is also covered by the meaning of "domestic
B relationship." In view of s.2(s) of the Act, if the 'person aggrieved' (wife) at any stage has lived in a domestic relationship with the respondent (husband) in a house, the person aggrieved can claim a "shared household". [para 20] [494-A, B, E; 495-D]

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1.2. The Monetary relief as stipulated u/s 20 of 2005 Act is different from maintenance, which can be in addition to an order of maintenance u/s 125 of the Cr.P.C. or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the
D aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application u/s 12 is in a domestic relationship with the respondent. [para 24] [501-B-C]

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1.3. In view of ss.22 and 23, it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief as he deems just and proper, if the Magistrate is satisfied that the application *prima facie* discloses that the
F respondent 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. Relief available u/ss 18, 19, 20, 21 and 22 may also be sought for in any legal proceeding even before a Civil Court and Family Court, apart from the Criminal Court,
G affecting the aggrieved person whether such proceeding was initiated before or after commencement of the Domestic Violence Act. Even before the Criminal Court where the case u/s 498A is pending, if allegation is found genuine, it is always open to the appellant to ask for

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**reliefs u/ss 18 to 22 of the Domestic Violence Act and interim relief u/s 23 of the said Act. [paras 25, 26, 27] [502-A-D; 503-A-B]** A

*V.D. Bhanot vs. Savita Bhanot* **2012 (1) SCR 867 = (2012) 3 SCC 183 – relied on.**

B

*Inderjit Singh Grewal vs. State of Punjab and another* **2011 (10) SCR 557 = (2011) 12 SCC 588 – held inapplicable.**

**1.4. The 'Khula' is a mode of divorce which proceeds from the wife, the husband cannot refuse subject only to reasonable negotiation with regard to what the wife has offered to give him in return. The Mufti gives his fatwa or advisory decision based on the Shariat of his school. However, if the matter is carried to the point of litigation and cannot be settled privately then the Qazi(Judge) is required to deliver a qaza (judgment) based upon the Shariat. In the instant case, the husband, 1st respondent has not accepted 'Khula' given by Mufti which is in the form of fatwa or advisory decision based on the Shariat. He, however, has not moved before the Qazi (Judge) to deliver a qaza (judgment) based upon the Shariat. Instead, he has moved before the Family Court, against the 'Khula' by filing petition. He has also prayed for restitution of conjugal right. Even if it is accepted that the appellant during the pendency of the SLP before this Court has obtained ex parte Khula (divorce) under the Muslim Personal Law from the Mufti on 9.5.2008, the petition u/s12 of the Domestic Violence Act, 2005 is maintainable. [para 14-15 and 30] [491-B-G-E; 504-F-G]** C D E F

*Masroor Ahmed vs. State (NCT of Delhi) and Anr.,* **(2007) ILR 2 Delhi 1329;** *Shamim Ara vs. State of U.P. and Anr.* **2002 (3) Suppl. SCR 19 = (2002) 7 SCC 518 referred to.** G

**1.5. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability** H

A **of the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief u/s 20, child custody u/s 21, Compensation u/s 22 and interim or ex parte order u/s 23.**
B **[para 31] [504-H; 505-A-B]**

**Case Law Reference:**

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|---|---|---|
| **2011 (10) SCR 557** | **held inapplicable** | **para 9** |
| **(2007) ILR 2 Delhi 1329** | **referred to** | **para 13** |
| **2002 (3) Suppl. SCR 19** | **referred to** | **Para 16** |
| **2012 (1) SCR 867** | **relied on** | **para 28** |

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2069 of 2014.

From the Judgment & Order dated 23.01.2013 of the High Court of Judicature at Bombay in Writ Petition No. 4250 of 2012.
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Samir A. Vaidya, Shilpa Singh, Pankaj Sharma for the Appellant.

P. Janardanan, Pradeep K.B., Anil Kaushik, Gopal Singh
F Chauhan, K.C. Dua for the Respondents.

The Judgment of the Court was delivered by

**SUDHANSU JYOTI MUKHOPADHAYA, J.** 1. Leave granted.
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2. This appeal has been preferred by the appellant against the judgment dated 23rd January, 2013 passed by the High Court of Judicature at Bombay in Writ Petition No.4250 of 2012. By the impugned judgment, the High Court dismissed the
H writ petition preferred by the appellant and upheld the order

dated 3rd November, 2012 passed by the Additional Sessions Judge, Sewree, Mumbai whereby the Sessions Judge held that the application filed by the appellant under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Domestic Violence Act, 2005") is not maintainable.

3. The case of the appellant is that she got married to 1st respondent according to Muslim rites and rituals on 13th May, 2005. 1st respondent was in the habit of harassing her. She was subjected to physical abuse and cruelty. For example, 1st respondent acted with cruelty, harassed her and had banged her against a wall on her back and stomach on 5th January, 2006, due to which she suffered severe low back pain. The 1st respondent refused her entry into the matrimonial house on 19th February, 2006 and asked her to stay with her parents. She delivered a baby boy at Breach Candy Hospital, Mumbai on 10th August, 2006 but the 1st respondent never visited to see the new born baby. Later, the 1st respondent filed a petition seeking custody of the minor child.

4. The appellant lodged FIR No.224 of 2007 on 6th September, 2007 before Agripada Police Station under Section 498A and 406 IPC against the 1st respondent, his mother and his sister. Against the same, a writ petition was filed by the 1st respondent bearing Writ Petition No.1961 of 2007 seeking quashing of the FIR. The High Court dismissed the said writ petition and the same was challenged by the 1st respondent on which this Court issued notice. Subsequently, this Court by order dated July, 2008 remitted the matter to the High Court for hearing afresh Writ Petition No.1961 of 2007. On 4th December, 2008, Writ Petition No.1961 of 2007 was partly allowed by the High Court quashing the FIR against the 1st respondent's mother and sister with the observation that the prima facie case under Section 498A was made out against the 1st respondent.

5. According to the appellant, she obtained an *ex parte*

A 'Khula' from Mufti under the Muslim Personal Law on 9th May, 2008. The 1st respondent challenged the 'Khula' pronounced by Mufti before the Family Court, Bandra vide M.J. Petition No.B-175 of 2008. He also filed a petition for restitution of conjugal right.

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6. On 29th September, 2009, the appellant filed a petition under Section 12 of the Domestic Violence Act, 2005 against the 1st respondent before the ACMM's 46th Court, Mazgaon, Mumbai for relief under Section 18 to 23 of the Domestic Violence Act, 2005 alleging that he is not providing C maintenance for herself as well as for the minor child. The 1st respondent filed his reply to the said application which was followed by the rejoinder filed by the appellant. The Protection Officer appointed by the Magistrate under Domestic Violence Act, 2005 filed his report, inter alia, stating that an act of D domestic violence was committed by the 1st respondent upon the appellant. But the Magistrate was transferred, the Court fell vacant and no order was passed. Subsequently, the appellant filed an application for interim maintenance and the Magistrate by order dated 4th February, 2012 allowed the application E directing the 1st respondent to pay interim maintenance of Rs.25,000/-. Without paying the maintenance, the 1st respondent preferred an appeal before the Sessions Court challenging the order of Magistrate dated 4th February, 2012. The Sessions Court, Sewree, Mumbai by order dated 3rd F August, 2012 condoned the delay in preferring the appeal and directed the 1st respondent to deposit the entire amount of maintenance prior to the hearing of the appeal. As the 1st respondent did not deposit the amount, the appellant filed an application for issuance of distress warrant. Accordingly a G notice was issued on 1st September, 2012. The counsel for the respondent stated across the bar that the 1st respondent had deposited the money before the Sessions Court and filed two applications on 3rd September, 2012 for recalling the order dated 4th February, 2012 and for dismissal of the application

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on the ground that the domestic relationship did not exist between the appellant and the 1st respondent.

7. The Sessions Judge, Seweree, Mumbai by order dated 3rd November, 2012 observed and held as follows:

*"**14.** First I will take the legal point which has been taken by the learned advocate for the appellant as to whether there was domestic relationship between the parties on the divorce took place between the parties on 09/05/2008. The learned advocate for the respondent submitted that though the divorce is taken place as per custom, then also it is not confirm by Civil Court. Secondly, he argued that non-applicant himself filed a proceeding for restitution of conjugal rights after this date and also filed proceedings for setting aside that divorce obtained by custom and therefore, it cannot be said that divorce took place between the parties. But this argument cannot be accepted because we have to see pleadings of the applicant. She herself came with a case that marriage was dissolved by Mufti on 09/05/2008. She herself filed such documents along with application in which declaration is made about Nikah of the applicant with the non-applicant is declared null and void and therefore, applicant is no more wife of the appellant, after period of Iddat she was wife of the appellant, after period of Iddat she was free from any hindrance. She herself came with a case that she is no more wife of the non-applicant after 09/05/2008. It is further to be noted that she herself moved for this customary divorce and according to non-applicant same was obtained ex-parte. In this background applicant cannot blow hot and cold by saying that though she took such divorce then also same has not been confirmed by Civil Court as well as the non-applicant has filed the proceeding for restitution of conjugal rights and setting aside of that divorce and therefore, she may be treated as his wife.*

A *15. So, now a legal question arise as to whether in view of divorce took place on 09/05/2008, the domestic relationship between the parties exist on the date of filing of this petition on 29/09/2009 ? and if there is no domestic relationship then whether the application is*
B *maintainable ?*

*20. So, it is the consistent view of Hon'ble Apex Court, Hon'ble Bombay High Court and other Hon'ble High Court that after divorce domestic relationship between the parties was not remain and therefore, application under*
C *the Act after date of divorce is not maintainable. In the present case also the facts are similar and therefore, the law laid down is applicable. In the present case also the facts are similar and therefore, the law laid down is applicable.*

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*21.....So, I conclude that in view of divorce took place between the parties on 09/05/2008 the domestic relationship between parties did not remained and therefore, this application filed on 29/06/2009 under the*
E *Act is not maintainable and therefore, question of granting of any interim relief does not arise because it can be said that applicant has no prima-facie case.*

*23.....Even if I would have held that application is maintainable, then in such circumstances it would have*
F *remanded back the matter to Lower Court for hearing fresh and recording such reasons. But when I am coming to a conclusion that as prima facie the application is itself not maintainable so applicant has no prima facie case and therefore, I told that impugned order is liable to be*
G *set aside straight away."*

The Sessions Judge by the aforesaid judgment allowed the appeal and set aside the interim order dated 4th February, 2012 passed by the Additional Chief Metropolitan Magistrate,

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46th Court at Mazgaon, Mumbai. By the impugned judgment, the High Court affirmed the aforesaid order.

8. Before this Court the parties have taken similar pleas as taken before lower courts. According to the appellant the cause of action i.e. domestic violence took place much before the divorce, therefore, FIR was filed and hence the appellant is entitled for the relief under the Domestic Violence Act, 2005. The Protection Officer has already submitted report holding that the domestic violence was committed by the 1st respondent upon the appellant.

9. On the other hand, according to the counsel for the 1st respondent after dissolution of the marriage no relief can be granted under the Domestic Violence Act, 2005. In his support reliance was placed on the decision of this Court in *Inderjit Singh Grewal vs. State of Punjab and another,* (2011) 12 SCC 588.

10. The questions arise for our consideration are:

*(i) Whether divorce of the appellant and the 1st respondent has taken place on 9th May, 2008; and*

*(ii) Whether a divorced woman can seek for reliefs against her ex-husband under Sections 18 to 23 of the Domestic Violence Act, 2005.*

11. For determination of the issue, it is necessary to notice the relationship between the appellant and the 1st respondent. It is not in dispute that the appellant got married to 1st respondent according to the Muslim-rites and rituals on 13th May, 2005. Since then their relationship was 'domestic relationship' as defined under Section 2(f) of the Domestic Violence Act, 2005. Both of them had lived together in a 'shared household' as defined under Section 2(s) of the Domestic Violence Act when they are/were related by marriage.

12. The appellant had taken plea that she obtained an *ex*

A *parte* 'Khula' from Mufti under the Muslim Personal Law. But the 1st respondent has not accepted the same and has challenged the 'Khula' obtained by the appellant, before the Family Court, Bandra vide M.J. Petition No.B-175 of 2008. The respondent has also filed a petition for restitution of conjugal
B rights.

13. The concept of dissolution of marriage under Muslim Personal Law was noticed and discussed by Single Judge of the High Court of Delhi in *Masroor Ahmed vs. State (NCT of Delhi) and Anr.*, (2007) ILR 2 Delhi 1329. In the said case, the
C High Court noticed different modes of dissolution of marriage under the Muslim Personal Law (Shariat) and held:

*"**15.** The question which arises is, given the shariat and its various schools, how does a person proceed on an*
D *issue which is in dispute? The solution is that in matters which can be settled privately, a person need only consult a mufti (jurisconsult) of his or her school. The mufti gives his fatwa or advisory decision based on the Shariat of his school. However, if a matter is carried to the point of*
E *litigation and cannot be settled privately then the qazi (judge) is required to deliver a qaza (judgment) based upon the Shariat(A qazi (or qadi) is a judge appointed by the political authority or state. He or she may pass judgments in his or her jurisdiction in respect of many*
F *legal matters, including divorce, inheritance, property, contractual disputes, etc. Schacht, p. 188. A qaza or kada is a judgment, which must be given according to the madhab to which the qadi belongs. Schacht, p. 196. More information on qazis and qazas can be found at pp. 188-*
G *198.). The difference between a fatwa and a qaza must be kept in the forefront. A fatwa is merely advisory whereas a qaza is binding. Both, of course, have to be based on the shariat and not on private interpretation de hors the shariat( Abdur Rahim, p. 172 (in respect of qazis).*
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*The Muslim Personal Law (Shariat) Application Act, 1937 and the various forms of dissolution of marriage recognised by it.*

*16. In India, the confusion with regard to application of customary law as part of muslim law was set at rest by the enactment of The Muslim Personal Law (Shariat) Application Act, 1937. Section 2 of the 1937 Act reads as under:-*

*2. Application of Personal Law to Muslims.— Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law ( Shariat ).*

*The key words are notwithstanding any customs or usage to the contrary and ?the rule of decision in cases where the parties are muslims shall be the muslim personal law (shariat). This provision requires the court before which any question relating to, inter-alia, dissolution of marriage is in issue and where the parties are muslims to apply the muslim personal law (shariat) irrespective of any contrary custom or usage. This is an injunction upon the court (See: C. Mohd. Yunus v. Syed Unnissa:(1962) 1 SCR 67). What is also of great significance is the expression – 'dissolution of marriage, including talaq, ila, zihar, lian, 'khula and mubaraat. This gives statutory recognition to the fact that under muslim personal law, a*

A *dissolution of marriage can be brought about by various means, only one of which is talaq. Although islam considers divorce to be odious and abominable, yet it is permissible on grounds of pragmatism, at the core of which is the concept of an irretrievably broken marriage.*
B *An elaborate lattice of modes of dissolution of marriage has been put in place, though with differing amplitude and width under the different schools, in an attempt to take care of all possibilities. Khula, for example, is the mode of dissolution when the wife does not want to continue with*
C *the marital tie. She proposes to her husband for dissolution of the marriage. This may or may not accompany her offer to give something in return. Generally, the wife offers to give up her claim to Mahr (dower). Khula is a divorce which proceeds from the wife*
D *which the husband cannot refuse subject only to reasonable negotiation with regard to what the wife has offered to give him in return. Mubaraat is where both the wife and husband decide to mutually put an end to their marital tie. Since this is divorce by mutual consent there*
E *is no necessity for the wife to give up or offer anything to the husband. It is important to note that both under khula and mubaraat there is no need for specifying any reason for the divorce. It takes place if the wife (in the case of khula) or the wife and husband together (in the case of mubaraat) decide to separate on a no fault/no blame*
F *basis. Resort to khula (and to a lesser degree, mubaraat) as a mode of dissolution of marriage is quite common in India."*

14. From the discussion aforesaid, what we find is that
G 'Khula' is a mode of dissolution of marriage when the wife does not want to continue with the marital tie. To settle the matter privately, the wife need only to consult a Mufti (juris consult) of her school. The Mufti gives his fatwa or advisory decision based on the Shariat of his school. Further, if the wife does not want
H to continue with marital tie and takes mode of 'Khula' for

dissolution of marriage, she is required to propose her husband for dissolution of marriage. This may or may not accompany her offer to give something in return. The wife may offer to give up her claim to Mahr (dower). The 'Khula' is a mode of divorce which proceeds from the wife, the husband cannot refuse subject only to reasonable negotiation with regard to what the wife has offered to give him in return. The Mufti gives his fatwa or advisory decision based on the Shariat of his school. However, if the matter is carried to the point of litigation and cannot be settled privately then the Qazi(Judge) is required to deliver a qaza (judgment) based upon the Shariat.

15. In the present case, the appellant stated that she has obtained an *ex parte* 'Khula' on 9th May, 2008 from Mufti under the Muslim Personal Law. Neither it is pleaded nor it is made clear by the appellant or the 1st respondent as to whether for such 'Khula' the appellant made a proposal to husband-1st respondent for dissolution of marriage accompanied by an offer to give something in return. It has not been made clear that whether the appellant gave up her claim to Mahr(dower). The husband, 1st respondent has not accepted 'Khula' given by Mufti (jurisconsult) which is in the form of fatwa or advisory decision based on the Shariat. He, however, has not moved before the Qazi (Judge) to deliver a qaza (judgment) based upon the Shariat. Instead, he has moved before the Family Court, Bandra against the 'Khula' by filing petition-M.J. Petition No.B-175 of 2008. He has also prayed for restitution of conjugal right. Therefore, with no certainty, it can be stated that the divorce was taken on 9th May, 2008.

16. In *Shamim Ara vs. State of U.P. and Anr.*, (2002) 7 SCC 518, this Court considered valid 'Talaq' in Islamic Law. This Court while discussing the correct law of 'Talaq, as ordained by the Holy Quran observed that Talaq must be for a reasonable cause and be preceded by attempts at reconciliation between the husband and the wife by two arbiters – one from the wife's family and the other from the husband's;

A if the attempts fail Talaq may be effected. The Court further held that the Talaq to be effective has to be pronounced.

17. In the said case, the muslim woman claimed maintenance under Section 125 of the Code of Criminal Procedure, 1973. The husband – respondent No.2 in his written statement filed in proceedings under Section 125, Cr.P.C. alleged his wife, the applicant under Section 125 Cr.P.C. to be sharp, shrewd and mischievous and stated that he divorced her on 11th July, 1987 being fed up with all such activities unbecoming of the wife. This Court noticed that the particulars of the alleged Talaq were not pleaded and even during the trial, the husband, examining himself, adduced no evidence in proof of Talaq said to have been given by him on 11th July, 1987. It was further observed that there were no reasons substantiated in justification of Talaq and no plea or proof that any effort at reconciliation preceded Talaq. Subsequently, it was held that there is no proof of Talaq for having been taken place on 11th July, 1987. What the High Court has upheld as Talaq is the plea taken in the written statement and its communication to the wife by delivering a copy of the written statement on 5th December, 1990. This Court held that a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating Talaq on the date of delivery of the copy of the written statement to the wife. The husband ought to have adduced evidence and proved the pronouncement of Talaq on 11th July, 1987 and if he failed in proving the plea raised in the written statement, the plea ought to have treated as failed.

18. In the present case, as noticed that there is no definite plea taken either by the appellant or by the 1st respondent that 'Khula' become effective in accordance with Muslim Personal Law (Shariat). Neither the appellant nor the 1st respondent placed any evidence in support of such divorce. No specific pleading was made that the appellant proposed to her husband – 1st respondent for dissolution of marriage. On the other hand,

it is clear that the 'Khula' was pronounced by the Mufti *ex parte*. For the said reason, the 1st respondent challenged the same by filing M.J. Petition No.B-175 of 2008, before the Family Court, Bandra. In this background, we hold that the Sessions Judge, Sewree, Mumbai by order dated 3rd November, 2012 wrongly observed and held that the appellant is no more wife of the 1st respondent. The High Court has also failed to notice that no evidence was produced in support of the statement either made by the appellant or by the 1st respondent. It also failed to appreciate the fact that the 'Khula' was obtained from the Mufti and not from Qazi and the same was challenged by the 1st respondent before the Family Court, Bandra, Mumbai and wrongly upheld the finding of the Sessions Judge. Therefore, with no certainty, it can be stated that the divorce has taken place on 9th May, 2008, in absence of pleading, evidence and finding.

19. Even if it is presumed that the appellant has taken 'Khula'(divorce) on 9th May, 2008 and the 1st respondent is no more the husband, the question arises that in such case whether the erstwhile-wife can claim one or other relief as prescribed under Sections 18, 19, 20, 21, 22 and interim relief under Section 23 of the Domestic Violence Act, 2005, if domestic violence had taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage.

20. For determination of such issue, it is desirable to notice the relevant provisions of the Domestic Violence Act, 2005, as discussed hereunder:

(20.1) Section 2(a) of the Domestic Violence Act, 2005 defines "aggrieved person" as follows:

> *"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*

A *subjected to any act of domestic violence by the respondent;"*

Therefore, it is clear that apart from the woman who is in a domestic relationship, any woman who has been, in a domestic relationship with the respondent, if alleges to have been subjected to act of domestic violence by the respondent comes within the meaning of "aggrieved person".

(20.2) Definition of Domestic relationship reads as follows:

C *"2(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;*

From the aforesaid provision we find that a person aggrieved (wife herein), who at any point of time has lived together with husband (1st respondent) in a shared household, is also covered by the meaning of "domestic relationship"

**(20.3)** Section 2(s) defines "shared household"

*"**2(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 etc." (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."*

Therefore, if the 'person aggrieved' (wife herein) at any stage has lived in a domestic relationship with the respondent (husband herein) in a house, the person aggrieved can claim a "shared household".

(20.4) Definition of "Domestic violence" as assigned in Section 3 reads:

*"**3. Definition of domestic violence**.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—"*

*(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or*

*(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or*

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

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

*Explanation I.—For the purposes of this section,—*

*(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger*
C *to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;*

*(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise*
D *violates the dignity of woman;*

*(iii) "verbal and emotional abuse" includes—*

*(a) insults, ridicule, humiliation, name calling and*
E *insults or ridicule specially with regard to not having a child or a male child; and*

*(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.*

F *(iv) "economic abuse" includes—"*

*(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom*
G *whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately*
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*owned by the aggrieved person, payment of rental related to the shared household and maintenance;*

*(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and*

*(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.*

*Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."*

Therefore, apart from 'physical abuse' and 'sexual abuse', 'verbal and emotional abuse' and 'economic abuse' also constitute 'domestic violence'.

21. Chapter IV of the Domestic Violence Act, 2005 deals with "Procedure for obtaining the orders of reliefs". Section 12 relates to the application to Magistrate, which reads as follows:

*"**Section 12. Application to Magistrate.**—(1) An*

A *aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:*

B *Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.*

*(2) The relief sought for under sub-section (1) may* C *include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:*

D *Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the* E *amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.*

F

*(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.*

G *(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.*

*(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period* H *of sixty days from the date of its first hearing."*

22. As per proviso to sub-section (1) of Section 12, the Magistrate before passing any order under Section 12 is required to take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

23. The reliefs which can be granted by the Magistrate under the Domestic Violence Act, 2005 are as follows:

*(i) Right to reside in a shared household - Section 17 ;*

*(ii) Protection orders - Section 18 ;*

*(iii) Residence orders - Section 19 ;*

*(iv) Monetary relief - Section 20 ;*

*(v) Custody orders - Section 21 ;*

*(vi) Compensation orders - Section 22 and*

*(vii) Interim and ex parte orders - Section 23.*

24. In the instant case, the appellant sought relief under Sections 18 to 23 of the Domestic Violence Act, 2005. It includes Protection order under Section 18, Monetary relief under Section 20, Custody orders under Section 21, Compensation under Section 22 and interim relief under Section 23. Relevant provisions read as follows:

*"**Section 20.Monetary reliefs.**—(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—*

*(a) the loss of earnings;*

A *(b) the medical expenses;*

*(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and*

B *(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time*

C *being in force.*

*(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is*

D *accustomed.*

*(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.*

E

*(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the*

F *respondent resides.*

*(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).*

G *(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries*

H *or debt due to or accrued to the credit of the respondent,*

*which amount may be adjusted towards the monetary relief payable by the respondent."*

The Monetary relief as stipulated under Section 20 is different from maintenance, which can be in addition to an order of maintenance under Section 125 of the Cr.P.C. or any other law. Such monetary relief can be granted to meet the expenses incurred and losses suffered by the aggrieved person and child of the aggrieved person as a result of the domestic violence, which is not dependent on the question whether the aggrieved person, on the date of filing of the application under Section 12 is in a domestic relationship with the respondent.

**25.** *"**Section 22. Compensation orders.**—In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.*

***Section 23. Power to grant interim and ex parte orders.**—(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.*

*(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent 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, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."*

A Therefore, it is well within the jurisdiction of the Magistrate to grant the interim ex parte relief as he deems just and proper, if the Magistrate is satisfied that the application *prima facie* discloses that the respondent is committing, **or has committed an act of domestic violence** or that there is a B likelihood that the respondent may commit an act of domestic violence.

26. It is not necessary that relief available under Sections 18, 19, 20, 21 and 22 can only be sought for in a proceeding under Domestic Violence Act, 2005. Any relief available under C the aforesaid provisions may also be sought for in any legal proceeding even before a Civil Court and Family Court, apart from the Criminal Court, affecting the aggrieved person whether such proceeding was initiated before or after commencement of the Domestic Violence Act. This is apparent from Section D 26 of the Domestic Violence Act, 2005 as quoted hereunder:

> *"**26. Relief in other suits and legal proceedings.**—(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil* E *court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.*
>
> F *(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court."*
>
> *(3) In case any relief has been obtained by the* G *aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief."*

27. Appellant has filed an F.I.R. against the 1st Respondent H for the offence committed under Section 498A of I.P.C. The

High Court refused to quash the F.I.R. qua 1st respondent on the ground that prima facie case has been made out. Even before the Criminal Court where such case under Section-498A is pending, if allegation is found genuine, it is always open to the appellant to ask for reliefs under Sections 18 to 22 of the Domestic Violence Act and Interim relief under Section 23 of the said Act.

28. In *V.D. Bhanot vs. Savita Bhanot,* (2012) 3 SCC 183, this Court held that the conduct of the parties even prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 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 any act of domestic violence. In *V.D. Bhanot* (supra) this Court held as follows:

> "***12.*** *We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.*

29. In *Inderjit Singh Grewal* (supra) the appellant-Inderjit Singh and the respondent no. 2 of the said case got married on 23rd September, 1998. The parties to the marriage could not pull on well together and decided to get divorce and, therefore, filed a case for Divorce by mutual consent under Section 13-B of the Hindu Marriage Act,1955. After recording the statement in the said case, the proceedings were adjourned for a period of more than six months to enable them to ponder over the issue. The parties again appeared before the Court

A on second motion and on the basis of their statement, the District Judge, Ludhiana vide judgment and order dated 20th March, 2008 allowed the petition and dissolved their marriage. After dissolution of marriage, the wife filed a complaint before the Senior Superintendent of Police, Ludhiana against Inderjit B Singh under the provisions of the Domestic Violence Act alleging that the decree of divorce obtained by them was a sham transaction. It was further alleged that even after getting divorce both of them had been living together as husband and wife. In the said case, the Superintendent of Police, City I C conducted the full-fledged inquiry and reported that the parties had been living separately after the dissolution of the marriage. Hence, no case is made out against the Inderjit Singh. In this context, this Court held that Section 12- –'Application to Magistrate" under the Domestic Violence Act challenging the D said divorce was not maintainable and in the interest of justice and to stop the abuse of process of Court, the petitions under Section 482 Cr.P.C. was allowed. The law laid down in the said case is not applicable for the purpose of determination of the present case.

E 30. In the present case, the alleged domestic violence took place between January, 2006 and 6th September, 2007 when FIR No.224 of 2007 was lodged by the appellant under Section 498A and 406 IPC against the 1st respondent and his relatives. In a writ petition filed by 1st respondent the High Court refused F to quash the said FIR against him observing that prima facie case under Section 498A was made out against him. Even if it is accepted that the appellant during the pendency of the SLP before this Court has obtained ex parte Khula (divorce) under the Muslim Personal Law from the Mufti on 9th May, 2008, the G petition under Section 12 of the Domestic Violence Act, 2005 is maintainable.

31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the respondent from the offence committed or to deny the benefit H

to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and interim or ex parte order under Section 23 of the Domestic Violence Act, 2005.

32. Both the Sessions Judge and the High Court failed to notice the aforesaid provisions of the Act and the fact that the FIR was lodged much prior to the alleged divorce between the parties and erred in holding that the petition under Section 12 was not maintainable.

33. For the reasons aforesaid, we set aside the impugned judgment dated 23rd January, 2013 passed by the High Court of Judicature at Bombay in Writ Petition No.4250 of 2012, the order dated 3rd November, 2012 passed by the Additional Sessions Judge, Mumbai and uphold the order dated 4th February, 2012 passed by the Addl. Chief Metropolitan Magistrate, 46th Court at Mazgaon, Mumbai. The 1st respondent is directed to pay the amount, if not yet paid, in accordance with order passed by the Magistrate. The Magistrate will now proceed with the matter and finally dispose of the petition under Section 12 of the Domestic Violence Act after going through the report and hearing the parties.

34. The appeal is allowed with aforesaid observations and directions.

Rajendra Prasad Appeal allowed.