KRISHNA BHATACHARJEE A

v.

SARATHI CHOUDHURY AND ANR.

(Criminal Appeal No. 1545 of 2015) B

NOVEMBER 20, 2015

[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Protection of Women from Domestic Violence Act, 2005 – ss. 2(a), 3(iv) and 12 – Application u/s. 12 – By the wife – Seeking seizure of Stridhan *articles in possession of her husband – Dismissed on the grounds that the application was not maintainable as the wife has ceased to be an 'aggrieved person' u/s. 2(a) as the parties had been judicially separated and that the application was barred by limitation – The order was upheld by Sessions Judge as well as the High Court – On appeal, held: The Act being a legislation to provide for more effective protection of the rights of the women guaranteed under the Constitution, a more sensitive approach is expected from the Court – Before dismissing a petition under the Act, on the ground of its maintainability, there has to be a thorough deliberation on the issues raised – In the present case, the applicant-wife has not ceased to be an 'aggrieved person' u/s. 2(a) because even after decree of judicial separation marital status between the parties is not snapped – Retention of Stridhan by the husband is a continuing offence – As long as the marital status remains and Stridhan remains in the custody of husband, wife can always put forth her claim u/s. 12 – The application cannot be said to be barred by limitation.* C D E F G

Matrimonial law – 'Divorce' and 'Judicial Separation' – Distinction between. H

A *Words and Phrases: 'Stridhan' – Meaning of, in the context of matrimonial law.*

Allowing the appeal, the Court

B **HELD: 1. The 2005 Act has been legislated to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, is in a broader spectrum. The definition of "domestic violence" covers a range of violence which takes within its sweep "economic abuse" and the words "economic abuse", has many a facet. [Para 3] [70-E-G]**

D **2. Regard being had to the nature of the legislation, a more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence. [Para 4] [70-H; 71-A-B, B-C, D-E]**

H **3. There is a distinction between a decree for**

divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the latter, the relationship between husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below that the parties having been judicial separated, the appellant wife has ceased to be an "aggrieved person" is wholly unsustainable. [Para 22] [84-A-C]

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Hirachand Srinivas Managaonkar v. Sunanda **(2001) 4 SCC 125 : 2001 (2) SCR 491 – relied on.**

Jeet Singh and Ors. v. State of U.P. and Ors. **(1993) 1 SCC 325 : 1992 (3) Suppl. SCR 246;** *Bai Mani v. Jayantilal Dahyabhai* **AIR 1979 Guj 209;** *Soundaram mal v. Sundara Mahalinga Nadar* **AIR 1980 Mad 294 – referred to.**

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"Hindu Law of Marriage and Stridhan" **by Sir Gooroodas – referred to.**

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4. As long as the status of the aggrieved person remains and *stridhan* remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act, because the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the *stridhan* and they remain the custodians. For the purpose of the 2005 Act, wife can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act. In the present case, the wife had submitted the application on

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A **22.05.2010 and the said authority had forwarded the same on 01.06.2010. In the application, the wife had mentioned that the husband had stopped payment of monthly maintenance from January 2010 and, therefore, she had been compelled to file the application for** B ***stridhan*. Regard being had to the said concept of "continuing offence" and the demands made, the application was not barred by limitation and the courts below as well as the High Court had fallen into a grave error by dismissing the application being barred by** C **limitation. [Para 31] [90-A-E]**

State of Bihar v. Deokaran Nenshi **(1972) 2 SCC 890 : 1973 (3) SCR 1004 – relied on.**

D *Inderjit Singh Grewal v. State of Punjab* **(2011) 12 SCC 588 : 2011 (10) SCR 557;** *V.D. Bhanot v. Savita Bhanot* **(2012) 3 SCC 183 : 2012 (1) SCR 867;** *Saraswathy v. Babu* **(2014) 3 SCC 712 : 2013 (12) SCR 914;** *D. Velusamy v. D.* E *Patchaiammal* **(2010) 10 SCC 469 : 2010 (13) SCR 706;** *Savitaben Somabhai Bhatiya v. State of Gujarat* **(2005) 3 SCC 636 : 2005 (2) SCR 638;** *Pratibha Rani v. Suraj Kumar and Anr.* **(1983) 2 SCC 370 : 1985 (3) SCR 191:** *Rashmi kumar* F *(Smt) v. Mahesh Kumar Bhada* **(1997) 2 SCC 397 : 1996 (10) Suppl. SCR 347** *; Raja Bhadur Singh v. Provident Fund Inspector and Ors.* **(1984) 4 SCC 222 : 1985 (1) SCR 626 – referred to.**

G *"Hindu Law" by N.R. Raghavachariar and Maine's "Treatise on Hindu Law."* **– referred to.**

Case Law Reference

2011 (10) SCR 557	**referred to**	**Para 7**

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2012 (1) SCR 867	**referred to**	**Para 13**	A
2013 (12) SCR 914	**referred to**	**Para 14**	
2010 (13) SCR 706	**referred to**	**Para 15**	
2005 (2) SCR 638	**referred to**	**Para 15**	B
1992 (3) Suppl. SCR 246	**referred to**	**Para 17**	
2001 (2) SCR 491	**relied on**	**Para 19**	
AIR 1979 Guj 209	**referred to**	**Para 21**	C
AIR 1980 Mad 294	**referred to**	**Para 21**	
1985 (3) SCR 191	**referred to**	**Para 24**	
1996 (10) Suppl. SCR 347	**referred to**	**Para 26**	D
1985 (1) SCR 626	**relied on**	**Para 28**	
1973 (3) SCR 1004	**relied on**	**Para 28**	

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1545 of 2015. E

From the Judgment and Order dated 26.08.2014 of the High Court of Tripura, at Agartala in CRL. REV. P. No. 19 of 2014.

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Mr. Pijush K. Roy, Ms. Kakali Roy (For Rajan K. Chourasia) for the Appellant.

Manoj, Ms. Aparna Sinha (For Abhijat P. Medh), Ms. N. S. Neeppinai, Rituraj Biswas (For Gopal Singh) for the Respondents. G

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

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A 2. The appellant having lost the battle for getting her *Stridhan* back from her husband, the first respondent herein, before the learned Magistrate on the ground that the claim preferred under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'the 2005 Act') was B not entertainable as she had ceased to be an "aggrieved person" under Section 2(a) of the 2005 Act and further that the claim as put forth was barred by limitation; preferred an appeal before the learned Additional Sessions Judge who concurred with the view expressed by the learned Magistrate, and being C determined to get her lawful claim, she, despite the repeated non-success, approached the High Court of Tripura, Agartala in Criminal Revision No. 19 of 2014 with the hope that she will be victorious in the war to get her own property, but the High Court, as is perceivable, without much analysis, declined to D interfere by passing an order with Spartan austerity possibly thinking lack of reasoning is equivalent to a magnificent virtue and that had led the agonised and perturbed wife to prefer the present appeal, by special leave.

E 3. Prior to the narration of facts which are essential for adjudication of this appeal, we may state that the 2005 Act has been legislated, as its Preamble would reflect, to provide for more effective protection of the rights of the women guaranteed under the Constitution who are victims of violence F of any kind occurring within the family and for matters connected therewith or incidental thereto. The 2005 Act is a detailed Act. The dictionary clause of the 2005 Act, which we shall advert to slightly at a later stage, is in a broader spectrum. The definition of "domestic violence" covers a range of violence G which takes within its sweep "economic abuse" and the words "economic abuse", as the provision would show, has many a facet.

4. Regard being had to the nature of the legislation, a

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more sensitive approach is expected from the courts where under the 2005 Act no relief can be granted, it should never be conceived of but, before throwing a petition at the threshold on the ground of maintainability, there has to be an apposite discussion and thorough deliberation on the issues raised. It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the court under the compelling circumstances. It is the duty of the court to scrutinise the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "justice to the cause is equivalent to the salt of ocean" should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realisation of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

5. Presently to the narration of the facts. The marriage between the appellant and the respondent No. 1 was solemnised on 27.11.2005 and they lived as husband and wife. As the allegations proceed, there was demand of dowry by the husband including his relatives and, demands not being satisfied, the appellant was driven out from the matrimonial home. However, due to intervention of the elderly people of the locality, there was some kind of conciliation as a consequence of which both the husband and the wife stayed in a rented house for two months. With the efflux of time, the husband filed a petition seeking judicial separation before the Family Court and eventually the said prayer was granted by the learned Judge, Family Court. After the judicial separation, on 22.5.2010 the appellant filed an application under Section

A 12 of the 2005 Act before the Child Development Protection Officer (CDPO), O/O the District Inspector, Social Welfare & Social Education, A.D. Nagar, Agartala, Tripura West seeking necessary help as per the provisions contained in the 2005 Act. She sought seizure of *Stridhan* articles from the possession
B of the husband. The application which was made before the CDPO was forwarded by the said authority to the learned Chief Judicial Magistrate, Agartala Sadar, West Tripura by letter dated 1.6.2010. The learned Magistrate issued notice to the respondent who filed his written objections on 14.2.2011.
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6. Before the learned Magistrate it was contended by the respondent that the application preferred by the wife was barred by limitation and that she could not have raised claim as regards *Stridhan* after the decree of judicial separation
D passed by the competent court. The learned Magistrate taking into consideration the admitted fact that respondent and the appellant had entered into wedlock treated her as an "aggrieved person", but opined that no "domestic relationship" as defined under Section 2(f) of the 2005 Act existed between
E the parties and, therefore, wife was not entitled to file the application under Section 12 of the 2005 Act. The learned Magistrate came to hold that though the parties had not been divorced but the decree of judicial separation would be an impediment for entertaining the application and being of this
F view, he opined that no domestic relationship subsisted under the 2005 Act and hence, no relief could be granted. Be it stated here that before the learned Magistrate, apart from herself, the appellant examined three witnesses and the husband had examined himself as DW-1. The learned Magistrate while
G dealing with the maintainability of the petition had noted the contentions of the parties as regards merits, but has really not recorded any finding thereon.

7. The aggrieved wife preferred criminal appeal No. 6(1)
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of 2014 which has been decided by the learned Additional Sessions Judge, Agartala holding, *inter alia*, that the object of the 2005 Act is primarily to give immediate relief to the victims; that as per the decision of this Court in ***Inderjit Singh Grewal v. State of Punjab***[1] that Section 468 of the Code of Criminal Procedure applies to the proceedings under the 2005 Act and, therefore, her application was barred by time. Being of this view, the appellate court dismissed the appeal.

8. On a revision being preferred, the High Court, as is demonstrable from the impugned order, after referring to the decision in ***Inderjit Singh Grewal*** (supra), has stated that the wife had filed a criminal case under Section 498(A) IPC in the year 2006 and the husband had obtained a decree of judicial separation in 2008, and hence, the proceedings under the 2005 Act was barred by limitation. That apart, it has also in a way expressed the view that the proceedings under the 2005 Act was not maintainable.

9. In our prefatory note, we have stated about the need of sensitive approach to these kinds of cases. There can be erroneous perception of law, but as we find, neither the learned Magistrate nor the appellate court nor the High Court has made any effort to understand and appreciate the stand of the appellant. Such type of cases and at such stage should not travel to this Court. We are compelled to say so as we are of the considered opinion that had the appellate court and the High Court been more vigilant, in all possibility, there could have been adjudication on merits. Be that as it may.

10. The facts that we have enumerated as regards the "status of the parties", "judicial separation" and "the claim for *Stridhan*" are not in dispute. Regard being had to the undisputed facts, it is necessary to appreciate the scheme of the 2005 Act. Section 2(a) defines "aggrieved person" which

[1] (2011) 12 SCC 588

A means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Section 2(f) defines "domestic relationship" which means a relationship between two persons who live or have, at any point
B 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. Section 2(g) defines the term "domestic violence" which has been assigned and given the
C same meaning as in Section 3. Sub-section (iv) of Section 3 deals with "economic abuse". As in the facts at hand, we are concerned with the "economic abuse", we reproduce Section 3(iv) which reads as follows:-

D **"Section 3. Definition of domestic violence.**

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled
E under any law or custom 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
F children, if any, stridhan, property, jointly or separately 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,
G 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
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property jointly or separately held by the aggrieved person; and A

(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. B

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." C

11. Section 8(1) empowers the State Government to appoint such number of Protection Officers in each district as it may consider necessary and also to notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under the 2005 Act. The provision, as is manifest, is mandatory and the State Government is under the legal obligation to appoint such Protection Officers. Section 12 deals with application to Magistrate. Sub-sections (1) and (2) being relevant are reproduced below:- D E

"**Section 12. Application to Magistrate.**-(1) An 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: 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. F G

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right H

A 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: Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the B 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 amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 C (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."

12. Section 18 deals with passing of protection orders D by the Magistrate. Section 19 deals with the residence orders and Section 20 deals with monetary reliefs. Section 28 deals with procedure and stipulates that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of E Criminal Procedure, 1973. Section 36 lays down that the provisions of the 2005 Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

F 13. Having scanned the anatomy of the 2005 Act, we may now refer to a few decisions of this Courts that have dealt with the provisions of the 2005 Act. In ***V.D. Bhanot v. Savita Bhanot***[2] the question arose whether the provisions of the 2005 Act can be made applicable in relation to an incident that had G occurred prior to the coming into force of the said Act. Be it noted, the High Court had rejected the stand of the respondent therein that the provisions of the 2005 Act cannot be invoked if the occurrence had taken place prior to the coming into force of the 2005 Act. This Court while dealing with the same referred

H [2] (2012) 3 SCC 183

to the decision rendered in the High Court which after considering the constitutional safeguards under Article 21 of the Constitution vis-à-vis the provisions of Sections 31 and 33 of the 2005 Act and after examining the Statement of Objects and Reasons for the enactment of the 2005 Act, had held that it was with the view of protecting the rights of women under Articles 14, 15 and 21 of the Constitution that Parliament enacted the 2005 Act in order to provide for some effective protection of rights guaranteed under the Constitution to women, who are victims of any kind of violence occurring within the family and matters connected therewith and incidental thereto, and to provide an efficient and expeditious civil remedy to them and further that a petition under the provisions of the 2005 Act is maintainable even if the acts of domestic violence had been committed prior to the coming into force of the said Act, notwithstanding the fact that in the past she had lived together with her husband in a shared household, but was no more living with him, at the time when the Act came into force. After analyzing the verdict of the High Court, the Court concurred with the view expressed by the High Court by stating thus:-

> "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."

14. In ***Saraswathy v. Babu***[3] a two-Judge Bench, after referring to the decision in ***V.D. Bhanot*** (supra), reiterated

[3] (2014) 3 SCC 712

A the principle. It has been held therein:-

> "We are of the view that the act of the respondent husband squarely comes within the ambit of Section 3 of the DVA, 2005, which defines "domestic violence" in wide terms. The High Court made an apparent error in holding that the conduct of the parties prior to the coming into force of the DVA, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent husband has not complied with the order and direction passed by the trial court and the appellate court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant wife. The appellant wife having being harassed since 2000 is entitled for protection order and residence order under Sections 18 and 19 of the DVA, 2005 along with the maintenance as allowed by the trial court under Section 20(1)(*d*) of the DVA, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant wife should be compensated by the respondent husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs 5,00,000 in favour of the appellant wife."

15. In the instant case, as has been indicated earlier, the courts below as well as the High Court have referred to the decision in ***Inderjit Singh Grewal*** (supra). The said case has to be understood regard being had to the factual exposè therein. The Court had referred to the decision in ***D. Velusamy v. D. Patchaiammal***[4] wherein this Court had considered the

[4] (2010) 10 SCC 469

expression "domestic relationship" under Section 2(f) of the Act and judgment in ***Savitaben Somabhai Bhatiya v. State of Gujarat*** [5] and distinguished the said judgments as those cases related to live-in relationship without marriage. The Court analyzing the earlier judgments opined that the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage. The said judgments were distinguished on facts as those cases related to live-in relationship without marriage. The Court opined that the parties therein had got married and the decree of the civil court for divorce subsisted and that apart a suit to declare the said judgment and decree as a nullity was still pending consideration before the competent court. In that background, the Court ruled that:-

> "In the facts and circumstances of the case, the submission made on behalf of Respondent 2 that the judgment and decree of a civil court granting divorce is null and void and they continued to be the husband and wife, cannot be taken note of at this stage unless the suit filed by Respondent 2 to declare the said judgment and decree dated 20-3-2008 is decided in her favour. In view thereof, the evidence adduced by her particularly the record of the telephone calls, photographs attending a wedding together and her signatures in school diary of the child cannot be taken into consideration so long as the judgment and decree of the civil court subsists. On a similar footing, the contention advanced by her counsel that even after the decree of divorce, they continued to live together as husband and wife and therefore the complaint under the 2005 Act is maintainable, is not worth acceptance at this stage."
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> [Emphasis supplied]

[5] (2005) 3 SCC 636

A 16. It may be noted that a submission was advanced by the wife with regard to the applicability of Section 468 CrPC. While dealing with the submission on the issue of limitation, the Court opined:-

B "..... in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the C Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Japani Sahoo* v. *Chandra Sekhar Mohanty*, (2007) 7 SCC 394, and *NOIDA Entrepreneurs Assn. v. NOIDA*, D (2011) 6 SCC 508."

17. As it appears, the High Court has referred to the same but the same has really not been adverted. In fact, it is not necessary to advert to the said aspect in the present case.

E 18. The core issue that is requisite to be addressed is whether the appellant has ceased to be an "aggrieved person" because of the decree of judicial separation. Once the decree of divorce is passed, the status of the parties becomes F different, but that is not so when there is a decree for judicial separation. A three-Judge Bench in ***Jeet Singh and Others Vs. State of U.P. and Others***[6] though in a different context, adverted to the concept of judicial separation and ruled that the judicial separation creates rights and obligations. A decree G or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree however, does not sever or dissolve the marriage. It affords an opportunity for

H [6] (1993) 1 SCC 325

reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime.

19. In this regard, we may fruitfully refer to the authority in ***Hirachand Srinivas Managaonkar v. Sunanda***[7] wherein the issue that arose for determination was whether the husband who had filed a petition seeking dissolution of the marriage by a decree of divorce under Section 13(1-A)(i) of the Hindu Marriage Act, 1955 can be declined relief on the ground that he had failed to pay maintenance for his wife and daughter despite an order of the court. The husband was appellant before this Court and had filed an application under Section 10 of the Hindu Marriage Act, 1955 for seeking judicial separation on the ground of adultery on the part of the appellant. Thereafter, the appellant presented the petition for dissolution of marriage by decree of divorce on the ground that there has been no resumption of cohabitation as between the parties to the marriage for a period of more than one year after passing of the decree for judicial separation. The stand of the wife was that the appellant having failed to pay the maintenance as ordered by the court, the petition for divorce filed by the husband was liable to be rejected inasmuch he was trying to get advantage of his own wrong for getting the relief. The High Court accepted the plea of the wife and refused to grant the prayer of the appellant seeking divorce. It was contended before this Court that the only condition for getting divorce under Section 13(1-A)(i) of the Hindu Marriage Act, 1955 is that there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the passing of the decree for judicial separation in a proceeding to which both the spouses are parties. It was urged

[7] (2001) 4 SCC 125

A that if the said condition is satisfied the court is required to pass a decree of divorce. On behalf of the wife, the said submissions were resisted on the score that the husband had been living in continuous adultery even after passing of the decree of judicial separation and had reasonably failed to B maintain the wife and daughter. The Court proceeded to analyse Section 13(1-A)(i) of the Hindu Marriage Act, 1955. Analysing the provisions at length and speaking about judicial separation, it expressed that after the decree for judicial separation was passed on the petition filed by the wife it was C the duty of both the spouses to do their part for cohabitation. The husband was expected to act as a dutiful husband towards the wife and the wife was to act as a devoted wife towards the husband. If this concept of both the spouses making sincere contribution for the purpose of successful cohabitation after a D judicial separation is ordered then it can reasonably be said that in the facts and circumstances of the case the husband in refusing to pay maintenance to the wife failed to act as a husband. Thereby he committed a "wrong" within the meaning of Section 23 of the Act. Therefore, the High Court was justified E in declining to allow the prayer of the husband for dissolution of the marriage by divorce under Section 13(1-A) of the Act.

20. And, the Court further stated thus:-

F "... The effect of the decree is that certain mutual rights and obligations arising from the marriage are as it were suspended and the rights and duties prescribed in the decree are substituted therefor. The decree for judicial separation does not sever or dissolve the marriage tie G which continues to subsist. It affords an opportunity to the spouse for reconciliation and readjustment. The decree may fall by a conciliation of the parties in which case the rights of the respective parties which float from the marriage and were suspended are restored. H Therefore the impression that Section 10(2) vests a right

in the petitioner to get the decree of divorce notwithstanding the fact that he has not made any attempt for cohabitation with the respondent and has even acted in a manner to thwart any move for cohabitation does not flow from a reasonable interpretation of the statutory provisions. At the cost of repetition it may be stated here that the object and purpose of the Act is to maintain the marital relationship between the spouses and not to encourage snapping of such relationship."

21. It is interesting to note that an issue arose whether matrimonial offence of adultery had exhausted itself when the decree for judicial separation was granted and, therefore, it cannot be said that it is a new fact or circumstance amounting to wrong which will stand as an obstacle in the way of the husband to obtain the relief which he claims in the divorce proceedings. Be it stated that reliance was placed on the decision of Gujarat High Court in ***Bai Mani v. Jayantilal Dahyabhai*** [8]. This Court did not accept the contention by holding that living in adultery on the part of the husband is a continuing matrimonial offence, and it does not get frozen or wiped out merely on passing of a decree for judicial separation which merely suspends certain duties and obligations of the spouses in connection with their marriage and does not snap the matrimonial tie. The Court ruled that the decision of the Gujarat High Court does not lay down the correct position of law. The Court approved the principle stated by the Madras High Court in the case of ***Soundarammal v. Sundara Mahalinga Nadar*** [9] in which a Single Judge had taken the view that the husband who continued to live in adultery even after decree at the instance of the wife could not succeed in a petition seeking decree for divorce and that Section 23(1)(*a*) barred the relief.

[8] AIR 1979 Guj 209
[9] AIR 1980 Mad 294

A 22. In view of the aforesaid pronouncement, it is quite clear that there is a distinction between a decree for divorce and decree of judicial separation; in the former, there is a severance of status and the parties do not remain as husband and wife, whereas in the latter, the relationship between B husband and wife continues and the legal relationship continues as it has not been snapped. Thus understood, the finding recorded by the courts below which have been concurred by the High Court that the parties having been judicial separated, the appellant wife has ceased to be an C "aggrieved person" is wholly unsustainable.

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

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

F 24. The said passage, be it noted, has been quoted ***Pratibha Rani v. Suraj Kumar and Another***[10]. In the said case, the majority referred to the *stridhan* as described in "Hindu Law" by N.R. Raghavachariar and Maine's "Treatise G on Hindu Law". The Court after analyzing the classical texts opined that:-

> "It is, therefore, manifest that the position of stridhan of a Hindu married woman's property during coverture is

H [10] (1985) 2 SCC 370

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

25. In the said case, the Court ruled:-

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

26. The decision rendered in the said case was referred for

A a fresh look by a three-Judge Bench. The three-Judge Bench ***Rashmi Kumar (Smt) v. Mahesh Kumar Bhada***[11] while considering the issue in the said case, ruled that :-

> "9. A woman's power of disposal, independent of her
> B husband's control, is not confined to saudayika but extends to other properties as well. Devala says: "A woman's maintenance (*vritti*), ornaments, perquisites (*sulka*), gains (*labha*), are her stridhana. She herself has the exclusive right to enjoy it. Her husband has no
> C right to use it except in distress...." In N.R. Raghavachariar's *Hindu Law — Principles and Precedents*, (8th Edn.) edited by Prof. S. Venkataraman, one of the renowned Professors of Hindu Law para 468 deals with "Definition of Stridhana".
> D In para 469 dealing with "Sources of acquisition" it is stated that the sources of acquisition of property in a woman's possession are: gifts before marriage, wedding gifts, gifts subsequent to marriage etc. Para 470 deals with "Gifts to a maiden". Para 471 deals with
> E "Wedding gifts" and it is stated therein that properties gifted at the time of marriage to the bride, whether by relations or strangers, either Adhiyagni or Adhyavahanika, are the bride's stridhana. In para 481 at page 426, it is stated that ornaments presented to
> F the bride by her husband or father constitute her Stridhana property. In para 487 dealing with "powers during coverture" it is stated that saudayika meaning the gift of affectionate kindred, includes both Yautaka or gifts received at the time of marriage as well as its
> G negative Ayautaka. In respect of such property, whether given by gift or will she is the absolute owner and can deal with it in any way she likes. She may spend, sell or give it away at her own pleasure.

H [11] (1997) 2 SCC 397

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

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

28. Having appreciated the concept of *Stridhan*, we shall now proceed to deal with the meaning of "continuing cause of

A action". In ***Raja Bhadur Singh v. Provident Fund Inspector and Others***[12] the Court while dealing with the continuous offence opined that the expression "continuing offence" is not defined in the Code but that is because the expressions which do not have a fixed connotation or a static import are difficult
B to define. The Court referred to the earlier decision in ***State of Bihar v. Deokaran Nenshi***[13] and reproduced a passage from the same which is to the following effect:-

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

29. The Court further observed :-

> "This passage shows that apart from saying that a
> G continuing offence is one which continues and a non-continuing offence is one which is committed once and for all, the Court found it difficult to explain as to when an offence can be described as a continuing offence.

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[12] (1984) 4 SCC 222
H [13] (1972) 2 SCC 890

Seeing that difficulty, the Court observed that a few illustrative cases would help to bring out the distinction between a continuing offence and a non-continuing offence. The illustrative cases referred to by the Court are three from England, two from Bombay and one from Bihar." A B

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

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

31. Regard being had to the aforesaid statement of law, we have to see whether retention of *stridhan* by the husband or any other family members is a continuing offence or not. There can be no dispute that wife can file a suit for realization of the *stridhan* but it does not debar her to lodge a criminal complaint for criminal breach of trust. We must state that was the situation before the 2005 Act came into force. In the 2005 Act, the definition of "aggrieved person" clearly postulates about the status of any woman who has been subjected to domestic violence as defined under Section 3 of the said Act. "Economic abuse" as it has been defined in Section 3(iv) of the said Act has a large canvass. Section 12, relevant portion of which have been reproduced hereinbefore, provides for procedure for obtaining orders of reliefs. It has been held in ***Inderjit Singh Grewal*** (supra) that Section 498 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the E F G H

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

32. Consequently, the appeal is allowed and the orders passed by the High Court and the courts below are set aside. The matter is remitted to the learned Magistrate to proceed with the application under Section 12 of the 2005 Act on merits.

Kalpana K. Tripathy Appeal allowed.