



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/s 482 No. - 7721 of 2023

A F R

Reserved on : 16th February, 2026

Delivered on : 24th March, 2026

Judgment uploaded on : 24th March, 2026

Smt. Hasina Khatoon

.....Applicant(s)

Versus

State of U.P. and another

....Opposite Party(s)

Counsel for Applicant(s)	: Akshaya Kumar, Jaideep Pandey
Counsel for Opposite Party(s)	: G.A., Mahtab Alam

Court No. - 87

HON'BLE PRAVEEN KUMAR GIRI, J.

1. Heard Sri Jaideep Pandey, learned counsel for the applicant, Sri Mahtab Alam and Sri R.K. Shukla, learned counsel for O.P. No.2 and Sri Shashidhar Pandey, learned A.G.A. for the State.

2. Learned counsel for the applicant submits that the present application has been filed under **Section 482 Cr.P.C.**, for the relief mentioned in the **prayer clause** of the application. The relief sought in the application is delineated below:

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and to quash the order dated 23.01.2023 passed by Ld. Civil Judge (Junior Division)/F.T.C. (Crime against women), Moradabad in Execution Case No. 697 of 2022 Smt. Hasina Khatoon Vs. Ahmad @ Ramzani, under Section 31 of Domestic Violence Act-2005, arising out of Case No. 10095 of 2017, Hasina Khatoon Vs. Ahmad Ali, under Section 12 of Domestic

Violence Act, by which the courts below partly rejecting the Execution Application the applicant for recovery of amount Rs. 2,64,000/-;

AND

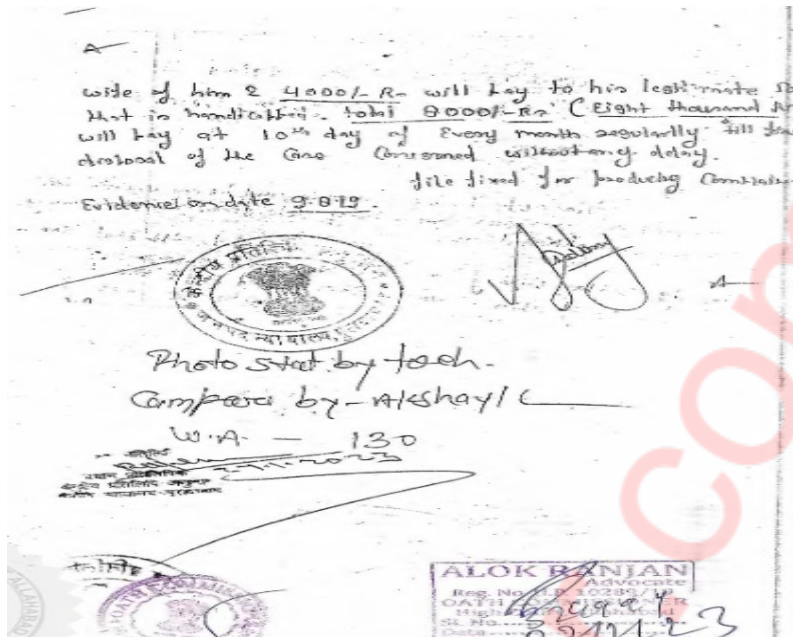
in the meantime directing the court below to issue a recovery certificate against the Opposite Party No. 2 for amount of Rs. 2,64,000/- from the dues amount of the maintenance awarded as an interim maintenance for the period October-2022 to January-2023, and/or pass such other and further order, which this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. The **factual matrix** of the case is that the applicant was married with O.P. No.2 according to Muslim Customary rites on 23.05.1990 and from their wedlock one male child was born in 1992. Thereafter, some dispute arose between the parties and the O.P. No.2 ousted the applicant as well as her handicapped son from his house on 21.07.1995. The reason for throwing the applicant out of her matrimonial home was non-fulfillment of demand of dowry by applicant's parents. Thereafter, the applicant filed a case under Section 498-A of the I.P.C. etc. against her husband (O.P. no.2) and his relatives. In the year 2011, matter was compromised and the applicant started living with her husband (O.P. No.2). However, after some time i.e. on 20.05.2017, O.P. no.2 has again kicked out the applicant alongwith her son and from that day onward, she has been residing in the same village alongwith her handicapped son in a rented house.

4. The applicant (wife) alleged that the O.P. No.2 (Husband) failed to support and denied any financial assistance for her maintenance, whereas he was earning about Rs.50,000/- per month from various sources. Consequently, the applicant **filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005. This application was registered as Case No. 10095 of 2017, (Hasina Khatoon Vs. Ahmad Ali), before the Court of A.C.J.M. IV, Moradabad.** The applicant has **also filed an interim maintenance application under Section 23 of Domestic Violence Act.** O.P. No.2 appeared and filed his objections. However, after

considering the facts and circumstances of the case, the trial court **vide order dated 19.07.2019, allowed the interim maintenance application.** The court directed the O.P. No.2 to pay Rs.4,000/- per month to the applicant, as well as Rs.4,000/- per month to her disabled son (totalling Rs.8,000/- per month) on 10th day of every month. The order dated 19.07.2019 is being pasted below :-

Smt. Hastag Kintarny Ahmed Ali G Remani
 2 mother
 Camp: 10095/2017
 19.7.19
 Called out. Both 2d Counsels had heard on AIL U/s 23 D.V Act on previous date. Today file filed for pronouncing order on above mentioned AIL.
 Applicant stated in AIL that she is legally wedded wife of Defendant No.1 and Defendant No.2 is second wife of Defendant No.1. She stated that she has a boy that is handicapped & he is legitimate child of Defendant No.1. She said that Applicant is illiterate lady & she has no source of income. She is legally wedded wife of Defendant No.1 till now. She has not married another. Defendant No.1 has more property & he runs a school. Defendant stated in objection that Applicant known knitting & stitching & Son muddair has a mobile selling & repairing shop.
 Heard both 2d Counsels & counsel for Defendant No.1 accepted this that Defendant No.2 her son is legally wedded wife & legitimate child of him respectively. Every husband has legal, social & moral responsibility towards his wife & children. Hence AIL U/s 23 D.V Act is partially allowed as Defendant No.1 Ahmed Ali G Remani will pay 4000/- to Applicant that is legally wedded



5. Typed copy of above order dated 19.07.2019 is reproduced below :-

“19.7.19

Called out. Both Ld. Counsels has heard on App. U/s 23 D.V. Act on previous date. Today fixed for pronouncing order on abovementioned app.

Applicant stated in App. that she is legally wedded wife of opponent No. 1 and opponent No. 2 is second wife of opponent No. 1. She stated that she has a boy that is handicapped. He is legitimate child of opponent No. 1. She said that applicant is illiterate lady & she has no source of income. She is legally wedded wife of opponent No. 1 till now because she has not married another. Opponent No. 1 has more property and he is running a school.

Opponent stated in objection that abovestated app based on frivolous facts. He stated that complainant known knitting & stitching & son Muddasir has a mobile selling & repairing shop.

Heard both Ld. Counsels & perused the record. Applicant app. u/s 23 D.V. Act supported with affidavit. Opponent No.1 accept this that complainant & her son is legally wedded wife & legitimate child of him respectively. Every husband has legal social & moral responsibility towards his wife & children. Hence app. u/s 23 D.V. Act is partially allowed as opponent No. 1 Ahmed Ali @ Ramzani will pay 4000/- Rs to complainant that is legally wedded wife of him & 4000/- Rs. will pay to his legitimate son that is handicapped. Total 8000/- Rs. (eight thousand Rs.) will pay at 10th day of every month regularly till fine disposal of the case concerned without any delay.

File fixed for producing complainant
evidence on date 9.8.19.

Sd./-”

6. Aggrieved by the order dated 19.07.2019, O.P. No.2 preferred an Appeal under section 23 of the D.V. Act in the Court Sessions Judge, Moradabad, being Criminal Appeal No. 41 of 2019 (Old No. 22807 of 2019) (Ahmad Ali @ Ramzani Vs. State of U.P. & others), which was rejected vide order dated 01.04.2022. The order dated 01.04.2022 is being pasted below :-



UPMO010080742019

न्यायालय अपर जिला एवं सत्र न्यायाधीश, काश संख्या-4/विशेष न्यायाधीश
(यू.पी. ई.सी.) स्पेशल प्रोविजन एक्ट 1981, मुरादाबाद, ।
पीठासीन अधिकारी- (संध्या चौधरी), (उ०प्र० न्यायिक सेवा) - UP06161

दाखिल अपील संख्या- 41/2019

अहमद अली उर्फ रमजानी पुत्र एवं 0 जुम्मा निवासी ग्राम शाहपुर मुबारकपुर उर्फ कोकरपुर
थाना छजलैट जिला मुरादाबाद।

.....अपीलार्थी

बनाम:-

1-उत्तर प्रदेश राज्य
2-श्रीमती हसीना खातून पत्नी अहमद अली उर्फ रमजानी
3-मुदस्तिर पुत्र अहमद अली उर्फ रमजानी
निवासीग्राम शाहपुर मुबारकपुर उर्फ कोकरपुर थाना छजलैट जिला मुरादाबाद।

.....विपक्षीय



-निर्णय-

अपीलार्थी अहमद अली उर्फ रमजानी द्वारा प्रस्तुत दाखिल अपील अपर न्यायालय के आदेश दिनांक 19-7-2019 जिसके द्वारा अपर मुख्य न्यायिक मजिस्ट्रेट कोर्ट संख्या-4 मुरादाबाद द्वारा परियाद संख्या-10095/2017 पारा 18,19,20,22 डी.पी.एक्ट हसीना खातून बनाम अहमद अली उर्फ रमजानी में प्रार्थनी के प्रार्थना-पत्र 23 डी.पी.एक्ट में प्रार्थनी को 4,000/-रुपये व उसके बालिग अपंग पुत्र मुदस्तिर को 4,000/-रुपये प्रतिमाह कुल 8,000/-रुपये प्रतिमाह अन्तरिम भरण-पोषण अदा करने हेतु आदेश पारित किया गया था, से शुद्ध होकर प्रस्तुत की गयी।

प्रार्थनी द्वारा प्रार्थना-पत्र अन्तर्गत धारा 23 धरेलू हिंसा से महिला संरक्षण अधिनियम 2005 में इस आशय से दिया था कि उसकी शादी 23-5-1990 को मुस्लिम रीति रिवाज से प्रतिवादी संख्या-1 अहमद अली उर्फ रमजानी से हुई थी। प्रतिवादी संख्या-2 प्रतिवादी संख्या-1 की दूसरी पत्नी है प्रार्थनी का विवाह उसके घर वालों ने अपनी हैसियत के अनुसार दान दहेज देकर किया था किन्तु प्रतिवादी व उसके घर वाले उससे सन्तुष्ट नहीं थे और अतिरिक्त दहेज की मांग करते थे। मांग पूरी न होने पर प्रार्थनी को घर से निकालने व जान से मारने की धमकी देते थे इसी बीच प्रार्थनी के एक पुत्र पैदा हुआ जो पोलियोग्रस्त है और उसकी आयु 23 वर्ष है। दिनांक 21-7-1995 को दहेज के कारण प्रार्थनी व उसके पुत्र को प्रतिवादी संख्या-1 ने मारपीट कर घर से

संविन अली(सुपुन)/22807/2019 -आपरा अली एवं सखानी बनन, राज्य सलार - 2

निकाल दिया। प्रार्थनी ने प्रतिवादी संख्या-1 के विरुद्ध दहेज का मुकदमा सम्बन्धित थाने में पंजीकृत कराया था इस दौरान प्रतिवादी संख्या-1 ने प्रतिवादी संख्या-2 से दूसरी शादी कर ली। वर्ष 2011 मुकदमे में सजा के तहत से प्रतिवादी संख्या-1 ने कैसला करके प्रार्थनी व उसके पुत्र को अपने घर ले आया। जब तक धारा 498 ए वा.द.स. का मुकदमा समाप्त नहीं हुआ तब तक प्रतिवादी का व्यवहार प्रार्थनी के प्रति ठीक ठाक रहा और उक्त मुकदमा के समाप्त होने के पश्चात प्रतिवादी व उसकी दूसरी पत्नी प्रार्थनी को तरह-तरह से मानसिक व शारीरिक रूप से तंग व परेशान करते रहे। प्रार्थनी घटना के दिनांक 20-5-2017 से गांव में डी बुनियाद अली के मकान में अपने विकलांग पुत्र के साथ रह रही हैं उसके तथा उसके पुत्र का सारा खर्चा मायके वाले व गांव के लोग कर रहे हैं। प्रतिवादी न तो प्रार्थनी को कोई खर्चा दे रहा है और न ही प्रार्थनी व उसके पुत्र को साथ रखने को तैयार है। प्रार्थनी को काम नहीं जानती है वह अनुपढ़ महिला है उसको व उसके विकलांग पुत्र का खर्चा उसके मायके वालों पर निर्भर है प्रतिवादी के पास कृषि योग्य काफी जमीन है दो मकान हैं जिसमें प्रतिवादी व उसके बच्चे रह रहे हैं तथा दूसरे मकान में स्कूल चलाता है प्रतिवादी संख्या-1 को 50 हजार रुपये प्रतिमाह की आमदनी आसानी से हो जाती है अतः वह 10 हजार रुपये प्रतिमाह प्रार्थनी व उसके पुत्र को 3 हजार रुपये प्रतिमाह अन्तरिम परब-पोषण दिये जाने का आदेश पारित किया जाये।

प्रतिवादी संख्या-1 द्वारा प्रार्थनी के प्रार्थना-पत्र पर आपत्ति दिनांक 3-12-2018 को प्रस्तुत की गयी व प्रार्थनी के कथनों से इन्कार करते हुये कहा है कि उसने प्रार्थनी व उसके परिजनों से कोई दहेज की मांग नहीं की है प्रार्थनी दिनांक 15-6-1995 को अपना सारा लेकर मायके चली गयी थी और वहीं से वह प्रतिवादी पर अपनी सम्पत्ति को बेचने का दबाव बनाती थी। प्रतिवादी ने प्रार्थनी को बुलाने का काफी प्रयास किया परन्तु वह नहीं आयी। इस कारण वर्ष 1997 में प्रतिवादी ने प्रतिवादी संख्या-2 से दूसरी शादी कर ली है जिससे प्रतिवादी के 6 बच्चे हैं जो जीवित हैं। वर्ष 2011 में रिश्तेदारों व परिवार वालों ने बीच में पड़कर प्रार्थनी व प्रतिवादी के मध्य राजीनामा करा दिया था उसके पश्चात वह प्रार्थनी व उसके पुत्र को बुलाकर अपने घर ले गया कुछ दिनों तक प्रार्थनी का व्यवहार ठीक रहा उसके पश्चात प्रार्थनी प्रतिवादी संख्या-1 व से छोटी-छोटी बातों पर मारपीट झगड़ा व बटवारे का दबाव बनाने लगी व प्रतिवादी के विरुद्ध शिकायती प्रार्थना-पत्र देने लगी। प्रतिवादी ने प्रार्थनी को 3 कमरे स्कूल के मुख्य सहक की तरफ एक कमरा 11X 10 फिट चौड़ा दे दिया तथा उसके पीछे उतनी ही चौड़ाई में तथा 20 फिट गहराई में मकान बनाने हेतु भूमि दे दी है उक्त कमरे में प्रार्थनी का पुत्र ने मोबाइल बेचने व रियेयरिंग करने की दुकान खोल रखी है जिससे वह 20 हजार रुपये प्रतिमाह आसानी से कमा लेता है। प्रार्थनी ने प्रतिवादी का परित्याग कर रखा है व बुनियाद अली से अवैध सम्बन्ध बना लिये हैं उन्हीं के घर पर रहकर सिलाई कढ़ाई का काम करके 15 हजार रुपये प्रतिमाह कमा लेती हैं। प्रतिवादी के पास कोई जमीन है तीन कमरे का स्थान बना रखा है जिसको जयनोट कुमार को 1500/-रुपये प्रतिमाह किराये

दंडिक अपील(पुराण)/22807/2019 -अज्ञात अती बर्ग रमजानी बनन. तज्जुं सल्लाह 3

पर दे रखा है। प्रतिवादी मजदूरी करता है और 4 हजार रुपये प्रतिमाह कमा पाता है अतः प्रार्थनी का प्रार्थना-पत्र स्वीकार किये जाने योग्य नहीं है।

दिनांक 19-7-2019 को विद्वान अवर न्यायालय ने उभय पक्षों को बुलाने के पश्चात प्रार्थनी का धारा 23 घरेलू हिंसा से महिला का संरक्षण अधिनियम 2005 का प्रार्थना-पत्र स्वीकार करते हुये 4 हजार रुपये प्रार्थनी व 4 हजार रुपये उसकी पुत्र को कुल 8 हजार रुपये प्रतिमाह का अन्तरिम भरण-पोषण प्रदान करने का आदेश पारित किया गया है।

प्रतिवादी/अपीलार्थी द्वारा दिनांक 19-7-2019 के आदेश से कुछ ही दिनों में प्रस्तुत की गयी है व अपील के आधार संक्षेप में यह है कि अवर न्यायालय द्वारा दिनांक 19-7-2019 का आदेश गैर कानूनी व निरुद्धार है तथा यह मनमाने तरीके से पारित किया गया है। प्रार्थनी ने अपने प्रार्थना-पत्र में गलत तथ्य प्रस्तुत किये हैं। अपीलकर्ता मजदूरी करते 4-5 हजार रुपये प्रतिमाह कमा पाता है उसके पास आराजी काशत नहीं है और न ही वह स्कूल बसाता है। प्रार्थनी ने न्यायालय के समक्ष इस सन्वन्ध में कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया है। प्रार्थनी द्वारा अपीलार्थी के विलुप्त वर्ष 2001 में मुकदमा संख्या 44/2001 परिवार न्यायालय में धारा 125 द.प्र.सं. थाना छजलैंट योजित किया था जो दिनांक 29-3-2007 को गुण-दोष के आधार पर निर्णित हुआ जिसमें परिवार न्यायालय द्वारा प्रार्थनी को धारा 125 द.प्र.सं. के तहत भरण-पोषण पाने का अधिकारिणी नहीं माना था तथा प्रार्थनी के पुत्र को आदेश की तिथि से बालिग होने तक 1500/- रुपये प्रतिमाह अपने पिता से पाने का अधिकार दिया था। चूंकि प्रार्थनी का पुत्र अब बालिग हो चुका है उसकी आयु 25 वर्ष है परन्तु अधीनस्थ न्यायालय द्वारा प्रार्थनी के पुत्र को बालिग न मानते हुये आदेश पारित किया गया है जो त्रुटिपूर्ण है। प्रार्थनी संख्या-3 केवल पैर से पोलियोग्रस्त है तथा हाथों से पूर्णतया स्वस्थ है और मोबाइल बेचने व रिपैरिंग का काम करता है उसने फोटो स्टेट मशीन लगा रखी है जिससे वह 20 हजार रुपये प्रतिमाह कमा लेता है। प्रार्थनी/प्रार्थनी ने अपीलार्थी का परित्याग कर रखा है तथा उसे बुनियाद अली से अवैध बना लिये हैं। अतः प्रश्नगत आदेश 19-7-2019 निरस्त कर अपीलार्थी की अपील स्वीकार की जाये।

सुन: तथा पत्रावली का परिशीलन किया।

जिस प्रकार से धारा 397 द.प्र.सं. पुनरीक्षण का प्रावधान प्राविधानित करता है उसके विधिक अणुलोकन से यह तथ्य प्रकट होता है कि न्यायालय को आलौच्य आदेश में मात्र अशुद्धता, अवैधानिकता एवं औचित्यहीनता पर विचार करना होता है अर्थात् यदि आलौच्य आदेश में इन तथ्यों का अभाव है तो पुनरीक्षण/अपीलीय न्यायालय को यह अधिकार प्राप्त नहीं है कि वह आलौच्य आदेश में हस्तक्षेप कर सके।

अपीलीय न्यायालय को इस बिन्दु पर सतर्क रहना होगा कि यदि अधीनस्थ न्यायालय के समक्ष किसी मामले के दो वैकल्पिक निष्कर्ष उपलब्ध हैं और उनमें से अधीनस्थ न्यायालय एक विकल्प का चयन कर लेती है तो ऐसे अपीलीय न्यायालय को

न्यायिक अधीनस्थान/22807/2019 -अन्तर्गत जली तक लागूनी बला, राज्य कोर्टों

यह अधिकार नहीं होगा कि अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करके अपना वृत्तिपूर्ण प्रतिस्थापित कर सके।

सम्मानित विधि व्यवस्था डी.स्टीफन बनाम नसीबुल्ला ए.आई.आर. 1991(सुप्रीम कोर्ट) 196 में माननीय सर्वोच्च न्यायालय ने प्रारम्भ से ही यह विधि विनिश्चित कर दिया था कि यदि अधीनस्थ न्यायालय के द्वारा दो उपलब्ध विधिक विकल्पों में से एक विकल्प का चयन कर लिया जाता है तो ऐसे मामलों में अपील/पुनरीक्षण न्यायालय को हस्तक्षेप करने का अधिकार नहीं होगा।

सम्मानित विधि व्यवस्था के.बिना स्वामी रेडडी बनाम आन्ध्र प्रदेश सरकार आई.आर. 1962 सुप्रीम कोर्ट 1788 में उच्चतम न्यायालय ने यह विनिश्चयन किया कि अपीलीय न्यायालय को अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करने का अधिकार मात्र उन्हीं परिस्थितियों में उपलब्ध है जब कि अधीनस्थ न्यायालय द्वारा बिना क्षेत्राधिकार के कोई आदेश पारित किया गया है अर्थात् किसी सुसंगत साक्ष्य को तिरस्कृत कर दिया गया है अथवा किसी असंगत साक्ष्य को स्वीकार कर लिया गया है तथा किसी तात्त्विक साक्ष्य को नजर अन्दाज कर दिया गया है।

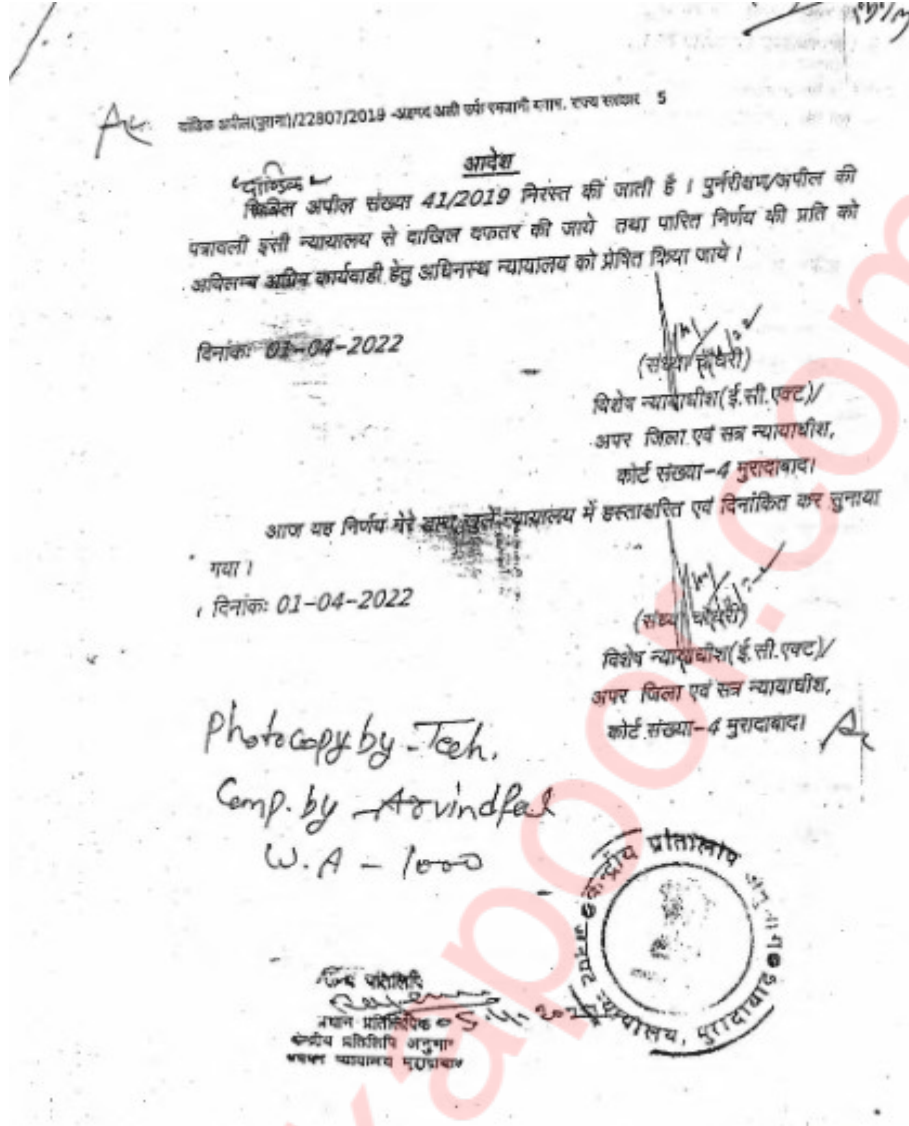
माननीय सर्वोच्च न्यायालय ने इसी क्रम में मुन्ना देवी बनाम रजिस्थान राज्य 2001(1) एम.सी.सी. 631 में यह विनिश्चयन किया है कि यदि अधीनस्थ न्यायालय के द्वारा अपने क्षेत्राधिकार में रखे हुए सुसंगत साक्ष्य के आधार पर उपलब्ध विधिक विकल्प का चयन कर लिया गया है तो पुनरीक्षण/अपीलीय न्यायालय अपने किसी अधिकार को प्रतिस्थापित नहीं कर सकता।

माननीय उच्चतम न्यायालय की सम्मानित विधि व्यवस्था हमीमा फारुखी बनाम साहिद खान(2015)5 ए.सी.सी. 705 में यह विनिश्चयन किया है कि पुनरीक्षण/अपीलीय न्यायालय को अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करने का अधिकार तब तक प्राप्त नहीं है जब तक कि आलोच्य आदेश अनुचित एवं विधिक दृष्टि से त्रुटिपूर्ण न हो।

हस्तगत मामले में अवर न्यायालय द्वारा विपक्षी/परिवादनी के प्रार्थना-पत्र धारा 23 बरोलू हिंसा में प्रार्थना-पत्र को गुण-दोष के आधार पर सुनकर और समुचित कारण पाते हुये प्रार्थनी व अपीलार्थी के विकलांग पुत्र जो कि परिवादनी के साथ रहता है और परिवादनी स्वयं कोई भी कार्य करने में अशम है अतः न्यायालय द्वारा दोनों को अन्तरिम भरण-पोषण के रूप में 4,000-4,000/-रुपये प्रतिमाह धनराशि निर्धारित की गयी है।

अपील में अवर न्यायालय के आदेश दिनांक 19-3-2019 में कोई अवैधानिकता,अशुद्धता एवं औचित्यहीनता नहीं पायी जाती है अवर न्यायालय का आदेश पुष्ट किये जाने योग्य है।

अतः उपर्युक्त समस्त विश्लेषण के आधार पर हस्तगत अपील स्वीकृत किये जाने योग्य नहीं है।



7. Typed copy of above order dated 01.04.2022 is reproduced below :-

(यू.पी. ई.सी.) स्पेशल प्रोविजन एक्ट 1981,
पीठासीन अधिकारी (संध्या चौधरी), (उ०प्र० न्यायिक सेवा) - UP06161
वाण्डिया अपील संख्या-41/2019

अहमद अली उर्फ स्पलानी पुत्र स्वं जुम्दा निवासी प्रास शाहपुर मुधारकपुर उर्फ
कोकारपुर थाना छजलैट जिला मुरादाबाद ... अपीलार्थी
बनाम

1-उत्तर प्रदेश राज्य
2-श्रीमती हसीना खातून पत्नी अहमद अली उर्फ रमजानी
3-मुदस्सिर पुत्र अहमद अली उर्फ रमजानी
निवासीगण ग्राम शाहपुर मुबारकपुर उर्फ कोफरपुर थाना छजलैट जिला
मुरादाबादीदाबाद ... विपक्षीगण

-निर्णय-

अपीलार्थी अहमद अली उर्फ रमजानी द्वारा प्रस्तुत दाण्डिक अपील अवर
न्यायालय के आदेश दिनांक 19-7-2019 जिसके द्वारा अपर मुख्य न्यायिक
मजिस्ट्रेट कोर्ट संख्या-4 मुरादाबाद द्वारा परिवाद संख्या-10095/2017 धारा
18,19,20,22 डी.पी. एक्ट हसीना खातून बनाम अहमद अली उर्फ रमजानी में

प्रार्थनी के प्रार्थना-पत्र 23 डी.वी. एक्ट में प्रार्थनी को 4,000/-रुपये व उसके बालिग अपंग पुत्र मुदस्सिर को 4,000/-रुपये प्रतिमाह कुल 8,000/-रुपये प्रतिमाह अन्तरिम भरण-पोषण अदा करने हेतु आदेश पारित किया गया था, से क्षुब्ध होकर प्रस्तुत की गयी।

प्रार्थनी द्वारा प्रार्थना-पत्र अन्तर्गत थारा 23 घरेलू हिंसा से महिला संरक्षण अधिनियम 2005 में इस आशय से दिया था कि उसकी शादी 23-5-1990 को मुस्लिम रीति रिवाज से प्रतिपादी संख्या-1 अहमद अली उर्फ रमजानी से हुई थी। प्रतिवादी संख्या-2 प्रतिवादी संख्या-1 की दूसरी पत्नी है प्रार्थनी का विवाह उसके घर वालों ने अपनी हैसियत के अनुसार दान दहेज देकर किया था किन्तु प्रतिवादी व उसके घर वाले उससे सन्तुष्ट नहीं थे और अतिरिक्त दहेज की मांग करते थे। मांग पूरी न होने पर प्रार्थनी को घर से निकालने व जान से मारने की धमकी देते थे इसी बीच प्रार्थनी के एक पुत्र पैदा हुआ जो पोलियोग्रस्त है और उसकी आयु 23 वर्ष है। दिनांक 21-7-1995 को दहेज के कारण प्रार्थनी व उसके पुत्र को प्रतिवादी संख्या-1 ने मारपीट कर घर से निकाल दिया। प्रार्थनी ने प्रतिवादी संख्या-1 के विरुद्ध दहेज का मुकदमा सम्बन्धित थाने में पंजीकृति कराया था इस दौरान प्रतिवादी संख्या-1 ने प्रतिवादी संख्या-2 से दूसरी शादी कर ली। वर्ष 2011 मुकदमें में सजा के उर से प्रतिवादी संख्या-1 ने फैसला करके प्रार्थनी व उसके पुत्र को अपने घर ले आया। जब तक धारा 498 ए भा.दं.सं. का मुकदमा समाप्त नहीं हुआ तब तक प्रतिवादी का व्यवहार प्रार्थनी के प्रति ठीक ठाक रहा और उक्त मुकदमा के समाप्त होने के पश्चात प्रतिवादी व उसकी दूसरी पत्नी प्रार्थनी को तरह-तरह से मानसिक व शारीरिक रूप से तंग व परेशान करते रहे। प्रार्थनी घटना के दिनांक 20-5-2017 से गांव में ही बुनियाद अली के मकान में अपने विकलांग पुत्र के साथ रह रही है उसके तथा उसके पुत्र का सारा खर्चा मायके वाले व गांव के लोग कर रहे हैं। प्रतिवादी न तो प्रार्थनी को कोई खर्चा दे रहा है और न ही प्रार्थनी व उसके पुत्र को साथ रखने को तैयार है। प्रार्थनी को काम नहीं जानती है वह अनपढ़ महिला है उसके व उसके विकलांग पुत्र का खर्चा उसके मायके वालों पर निर्भर है प्रतिवादी के पास कृषि योग काफी जमीन है दो मकान है जिसमें प्रतिवादी व उसके बच्चे रह रहे हैं तथा दूसरे मकान में स्कूल चलाता है प्रतिवादी संख्या-1 को 50 हजार रुपये प्रतिमाह की आमदनी आसानी से हो जाती है अतः वह 10 हजार रुपये प्रतिमाह प्रार्थनी व उसके पुत्र को 3 हजार रुपये प्रतिमाह अन्तरिम भरण-पोषण दिये जाने का आदेश पारित किया जाये। प्रतिवादी संख्या-1 द्वारा प्रार्थनी के प्रार्थना-पत्र पर आपत्ति दिनांक 3-12-2018 को प्रस्तुत की गयी व प्रार्थनी के कथनों से इन्कार करते हुये कहा है कि उसने प्रार्थनी व उसके परिजनो से कोई दहेज की मांग नहीं की है प्रार्थनी दिनांक 15-6-1995 को अपना सारा लेकर मायके चली गयी थी और वहीं से

वह प्रतिवादी पर अपनी सम्पत्ति को बेचने का दबाव बनाती थी। प्रतिवादी ने प्रार्थनी को बुलाने का काफी प्रयास किया परन्तु वह नहीं आयी। इस कारण वर्ष 1997 में प्रतिवादी ने प्रतिवादनी संख्या-2 से दूसरी शादी कर ली है जिससे प्रतिवादी के 6 बच्चे हैं जो जीवित हैं। वर्ष 2011 में रिश्तेदारों व परिवार वालों ने बीच में पड़कर प्रार्थनी व प्रतिवादी के मध्य राजीनामा करा दिया था उसके पश्चात वह प्रार्थनी व उसके पुत्र को बुलाकर अपने घर ले गया कुछ दिनों तक प्रार्थनी का व्यवहार ठीक रहा उसके पश्चात प्रार्थनी प्रतिवादी संख्या-1 व से छोटी-छोटी बातों पर मारपीट झगड़ा व बटवारे का दबाव बनाने लगी व प्रतिवादी के विरुद्ध शिकायती प्रार्थना-पत्र देने लगी। प्रतिवादी ने प्रार्थनी को 3 कमरे स्कूल के मुख्य सड़क की तरफ एक कमरा 11 X 10 फिट चौड़ा दे दिया तथा उसके पीछे उतनी ही चौड़ाई में तथा 20 फिट गहराई में मकान बनाने हेतु भूमि दे दी है उक्त कमरे में प्रार्थनी का पुत्र ने मोबाइल बेचने व रिपेयरिंग करने की दुकान खोल रखी है जिससे यह 20 हजार रुपये प्रतिमाह आसानी से कमा लेता है। प्रार्थनी ने प्रतिवादी का परित्याग कर रखा है व बुनियाद अली से अवैध सम्बन्ध बना लिये हैं उन्हीं के घर पर रहकर सिलाई कढ़ाई का काम करके 15 हजार रुपये प्रतिमाह कमा लेती हैं। प्रतिवादी के पास कोई जमीन है तीन कमरे का स्कूल बना रखा है जिसको जयनोट कुमार को 15 हजार रुपये प्रतिमाह किराये पर दे रखा है। प्रतिवादी मजदूरी करता है और 4 हजार/- रुपए प्रतिमाह केमा पाता है। अतः प्रार्थनी का प्रार्थना-पत्र स्वीकार किये जाने योग्य नहीं है।

दिनांक 19-7-2019 को विद्वान अवर न्यायालय ने उभय पक्षों को सुनने के पश्चात प्रार्थनी का धारा 23 घरेलू हिंसा से महिला का संरक्षण अधिनियम 2005 का प्रार्थना-पत्र स्वीकार करते हुये 4 हजार रुपये प्रार्थनी व 4 हजार रुपये पुत्र को कुल 8 हजार रुपये प्रतिमाह का अन्तरिम भरण-पोषण प्रदान करने का आदेश पारित किया गया है।

प्रतिवादी/अपीलार्थी द्वारा दिनांक 19-7-2019 के आदेश से क्षुब्ध होकर अपील प्रस्तुत की गयी है व अपील के आधार संक्षेप में यह है कि अवर न्यायालय द्वारा दिनांक 19-7-2019 का आदेश गैर कानूनी व निराधार है तथा यह मनमाने तरीके से पारित किया गया है। प्रार्थनी ने अपने प्रार्थना-पत्र में गलत तथ्य प्रस्तुत किये हैं। अपीलकर्ता मजदूरी करते 4-5 हजार रुपये प्रतिमाह कमा पाता है उसके पास आराजी काशत नहीं है और न ही यह स्कूल चलाता है। प्रार्थनी ने न्यायालय के समक्ष इस सम्बन्ध में कोई अभिलेखीय साक्ष्य प्रस्तुत नहीं किया है। प्रार्थनी द्वारा अपीलार्थी के विरुद्ध वर्ष 2001 में मुकदमा संख्या 44/2001 परिवार न्यायालय में धारा 125. दं.प्र.सं. थाना छजलैट योजित किया था जो दिनांक 29-3-2007 को गुण-दोष के आधार पर निर्णीत हुआ जिसमें परिवार न्यायालय द्वारा प्रार्थनी को धारा 125 दं.प्र.सं. के तहत भरण-पोषण पाने का अधिकारिणी नहीं

माना था तथा प्रार्थनी के पुत्र को आदेश की तिथि से बालिग होने तक 1500/- रुपये प्रतिमाह अपने पिता से पाने का अधिकार दिया था। चूंकि प्रार्थनी का पुत्र अब बालिग हो चुका है उसकी आयु 25 वर्ष है परन्तु अधीनस्थ न्यायालय द्वारा प्रार्थनी के पुत्र को बालिग न मानते हुये आदेश पारित किया गया है जो त्रुटिपूर्ण है। प्रत्यर्थी संख्या-3 केवल पैर से पोलियोग्रस्त है तथा हाथों से पूर्णतया स्वस्थ है और मोबाइल बेचने व रिपेयरिंग का काम करता है उसने फोटो स्टेट मशीन लगा रखी है जिससे वह 20 हजार रुपये प्रतिमाह कमा लेता है। प्रार्थनी/प्रत्यर्थी ने अपीलार्थी का परित्याग कर रखा है तथा उसे बुनियाद अली से अवैध बना लिये है। अतः प्रश्नगत आदेश 19-7-2019 निरस्त कर अपीलार्थी की अपील स्वीकार की जाये।

सुना तथा पत्रावली का परिशीलन किया।

जिस प्रकार से धारा 397 दं.प्र.सं. पुनरीक्षण का प्रावधान प्राविधानित करता है उसके विधिक अवलोकन से यह तथ्य प्रकट होता है कि न्यायालय को आलोच्य आदेश में मात्र अशुद्धता, अवैधानिकता एवं औचित्यहीनता पर विचार करना होता है अर्थात् यदि आलोच्य आदेश में इन तथ्यों का अभाव है तो पुनरीक्षण/अपीलीय न्यायालय को यह अधिकार प्राप्त नहीं है कि वह आलोच्य आदेश में हस्तक्षेप कर सके।

अपीलीय न्यायालय को इस बिन्दू पर सतर्क रहना होगा कि यदि अधीनस्थ न्यायालय के समक्ष किसी मामले के दो वैकल्पिक निष्कर्ष उपलब्ध हैं और उनमें से अधीनस्थ न्यायालय एक विकल्प का चयन कर लेती है तो ऐसे अपीलीय न्यायालय को यह अधिकार नहीं होगा कि अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करके अपना दृष्टिकोण प्रतिस्थापित कर सके।

सम्मानित विधि व्यवस्था डी. स्टीफन बनाम नसीबुल्ला ए.आई.आर. 1991 (सुप्रीम कोर्ट) 196 में माननीय सर्वोच्च न्यायालय ने प्रारम्भ से ही यह विधि विनिश्चित कर दिया था कि यदि अधीनस्थ न्यायालय के द्वारा दो उपलब्ध विधिक विकल्पों में से एक विकल्प का चयन कर लिया जाता है तो ऐसे मामलों में अपीलीय/पुनरीक्षण न्यायालय को हस्तक्षेप करने का अधिकार नहीं होगा।

सम्मानित विधि व्यवस्था के. चित्रा स्वामी रेड्डी बनाम आन्ध्र प्रदेश सरकार आई.आर. 1962 सुप्रीम कोर्ट 1788 में उच्चतम न्यायालय में यह विनिश्चयन किया कि अपीलीय न्यायालय को अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करने का अधिकार मात्र उन्हीं परिस्थितियों में उपलब्ध है जब कि अधीनस्थ न्यायालय द्वारा बिना क्षेत्राधिकार के कोई आदेश पारित किया गया है अर्थात् किसी सुसंगत साक्ष्य को तिरस्कृत कर दिया गया है अथवा किसी असंगत साक्ष्य को स्वीकार कर लिया गया है तथा किसी तात्त्विक साक्ष्य को नजर अन्दाज कर दिया गया है।

माननीय सर्वोच्च न्यायालय ने इसी क्रम में मुन्ना देवी बनाम राजस्थान राज्य 2001(1) एस.सी.सी. 631 में यह विनिश्चयन किया है कि यदि अधिनस्थ न्यायालय के द्वारा अपने क्षेत्राधिकार में रहते हुये सुसंगत साक्ष्य के आधार पर उपलब्ध विधिक विकल्प का चयन कर लिया गया है तो पुनरीक्षण/अपीलीय न्यायालय अपने किसी अधिकार को प्रतिस्थापित नहीं कर सकता।

माननीय उच्चतम न्यायालय की सम्मानित विधि व्यवस्था शमीमा फारुखी बनाम साहिद खान (2015) 5 ए.सी.सी. 705 में यह विनिश्चयन किया है कि पुनरीक्षण/अपीलीय न्यायालय को अधीनस्थ न्यायालय के आदेश में हस्तक्षेप करने का अधिकार तब तक प्राप्त नहीं है जब तक कि आलौच्य आदेश अनुचित एवं विधिक दृष्टि से त्रुटिपूर्ण न हो।

हस्तगत मामले में अवर न्यायालय द्वारा विपक्षी/परिवादनी के प्रार्थना-पत्र धारा 23 घरेलू हिंसा में प्रार्थना-पत्र को गुण-दोष के आधार पर सुनकर और समुचित कारण पाते हुये प्रार्थनी व अपीलार्थी के विकलांग पुत्र जो कि परिवादिनी के साथ रहता है और परिवादनी स्वयं कोई भी कार्य करने में अक्षम है अतः न्यायालय द्वारा दोनों को अन्तरिम भरण-पोषण के रूप में 4,000-4,000/-रुपये प्रतिमाह धनराशि निर्धारित की गयी है।

अपील में अवर न्यायालय के आदेश दिनांक 19-3-2019 में कोई अवैधानिकता, अशुद्धता एवं औचित्यहीनता नहीं पायी जाती है अवर न्यायालय का आदेश पुष्ट किये जाने योग्य है।

अतः उपर्युक्त समस्त विश्लेषण के आधार पर हस्तगत अपील स्वीकृत किये जाने योग्य नहीं है।

आदेश

दाण्डिक अपील संख्या 41/2019 निरस्त की जाती है। पुनरीक्षण/अपील की पत्रावली इसी न्यायालय से दाखिल दफतर की जाये तथा पारित निर्णय की प्रति को अविलम्ब अग्रिम कार्यवाही हेतु अधिनस्थ न्यायालय को प्रेषित किया जाये।

दिनांक: 01-04-2022

संध्या चौधरी
विशेष न्यायाधीश (ई.सी.एक्ट)/
अपर जिला एवं सत्र न्यायाधीश,
कोर्ट संख्या-4 मुरादाबाद।

8. Aggrieved by the order of rejection of appeal, the O.P. No.2 approached the High Court by filing **Criminal Misc. Application (482 Cr.P.C.) No. 11881 of 2022 (Ahmad Ali @ Ramzani Vs. State of U.P. & 2 others)**. This Court, **vide order dated 02.11.2022**, dismissed the application of the applicant. The order dated 02.11.2022 is being reproduced below :-

“Heard learned counsel for the applicant and the learned A.G.A. for the State-respondent.

The present 482 Cr.P.C. application has been filed to quash the order dated 01.04.2022 passed by Additional District and Sessions Judge, Court No.4/Special Judge (U.P.E.C.) Special Provision Act, 1981, Moradabad in Criminal Appeal No.41 of 2019, under Section 23 of Protection of Women from Domestic Violence Act, 2005, Police Station- Chajlait, District- Moradabad and order dated 19.07.2019 passed by A.C.J.M. 6th Moradabad in Complaint Case No.10095 of 2017, under Section 23 of Protection of Women from Domestic Violence Act, 2005, pending in the court of A.C.J.M. 6th Moradabad.

Challenge is to the order impugned dated 19.07.2019 on various counts prime being that the applicant is not possessing sufficient money to pay the maintenance amount to the tune of Rs.8000/- to his son and his wife who moved application under Section 23 of Domestic Violence Act before the lower court concerned and the lower court concerned was oblivious of the earning capacity of the applicant passed order directing the applicant to pay Rs.4000/- to the respondent no.2 (wife of the applicant) and Rs.4000/- to the respondent no.3 (handicapped son of applicant). The admitted position is that the applicant has already got married with another lady and the previous wife (respondent no.2) has moved application under the provisions of Domestic Violence Act, 2005 before the Magistrate concerned, whereupon, case was registered as Case No. 10095 of 2017 and after hearing to the applicant and under circumstance it was observed, inter alia, that both the respondent nos.2 and 3 are admittedly wife and son of the applicant. That being so considering the hardship being faced by the applicant of the aforesaid case the order/direction was passed. No fault is perceptible in the impugned order.

At this stage, petitioner- husband express desire to enter into compromise, if allowed.

Learned A.G.A. has submitted that there is no need of directing the applicant for any compromise because it is within the wisdom of the applicant to utilise this opportunity as an when and the doors are always open because the other side is none other than the wife of the applicant and there is no legal hindrance in arriving at any compromise.

I have considered each and every aspects of this case. Upon consideration under prevailing facts and circumstances, it is not a fit case for interference. However, doors are open for the applicant to reach some understanding so as to amicably settle their differences.

In view of above, this application is dismissed.

Nothing has been observed on the merit of the case.”

9. The order dated 19.07.2019, by which interim maintenance was granted, by the learned Judicial Magistrate, was upheld by the Sessions Court (appellate court), and finally confirmed by the High Court vide order dated 02.11.2022. Thereafter, the applicant/wife moved an application for the execution/compliance of the order dated 19.07.2019 before the concerned trial court. She also prayed for the issuance of recovery warrant against the O.P. No.2 for recovery of Rs. 2,64,000/-, covering the period from July-2019 to April-2022

(totalling 33 months x Rs. 8,000/- per month i.e. total 2,64,000/-). The trial court vide order dated 29.09.2022, allowed the execution application and issued a recovery warrant against O.P. No.2. On the basis of this recovery warrant, O.P. No.2 was arrested on 30.10.2022. As O.P. no.2 (husband) refused to deposit the maintenance amount awarded by the trial court, the learned Judicial Magistrate vide order dated 21.11.2022, directed that O.P. no.2 be sent to civil prison for a period of 30 days. The order dated 21.11.2022 is being delineated below :-

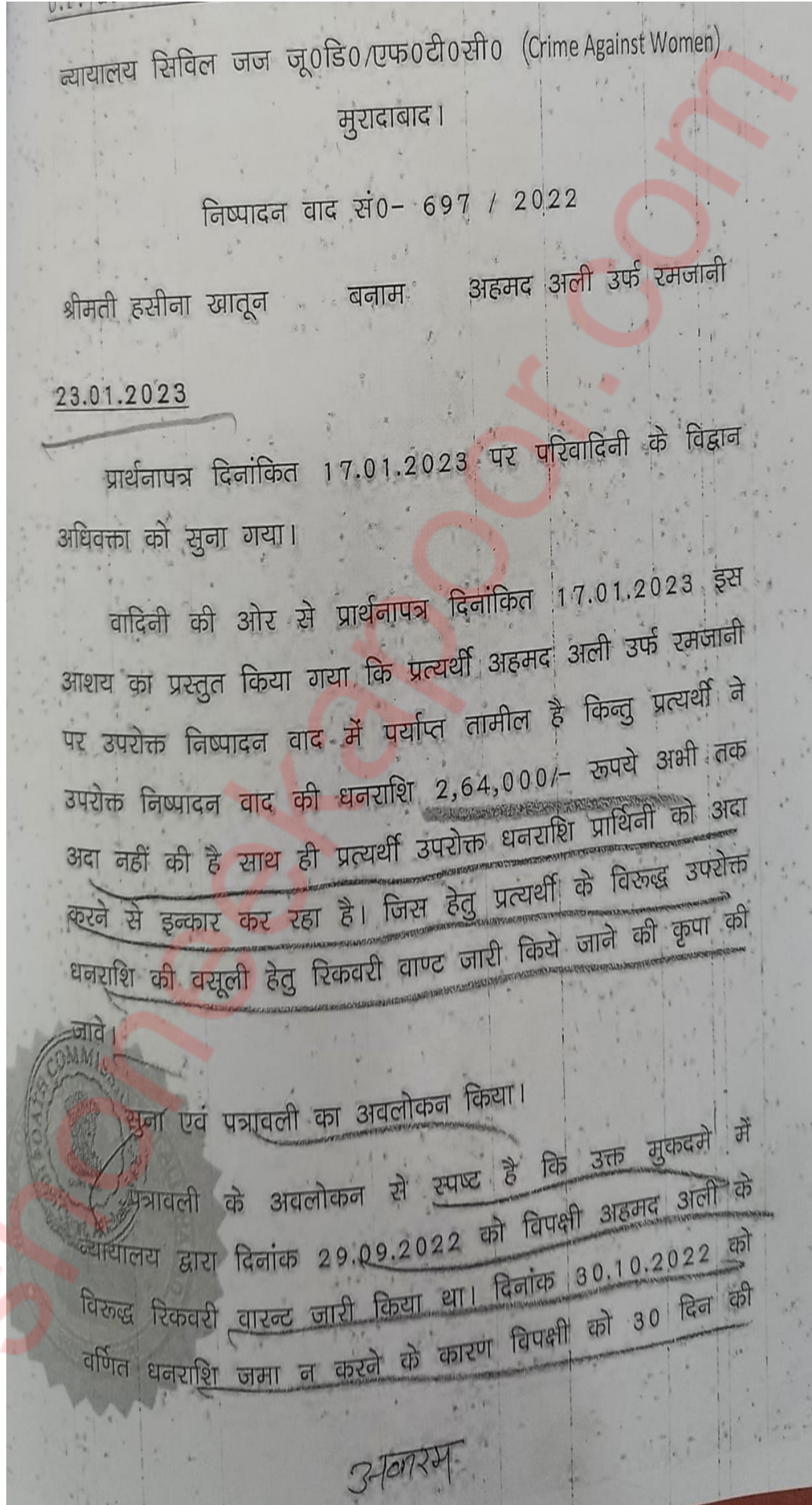
"21.11.2022

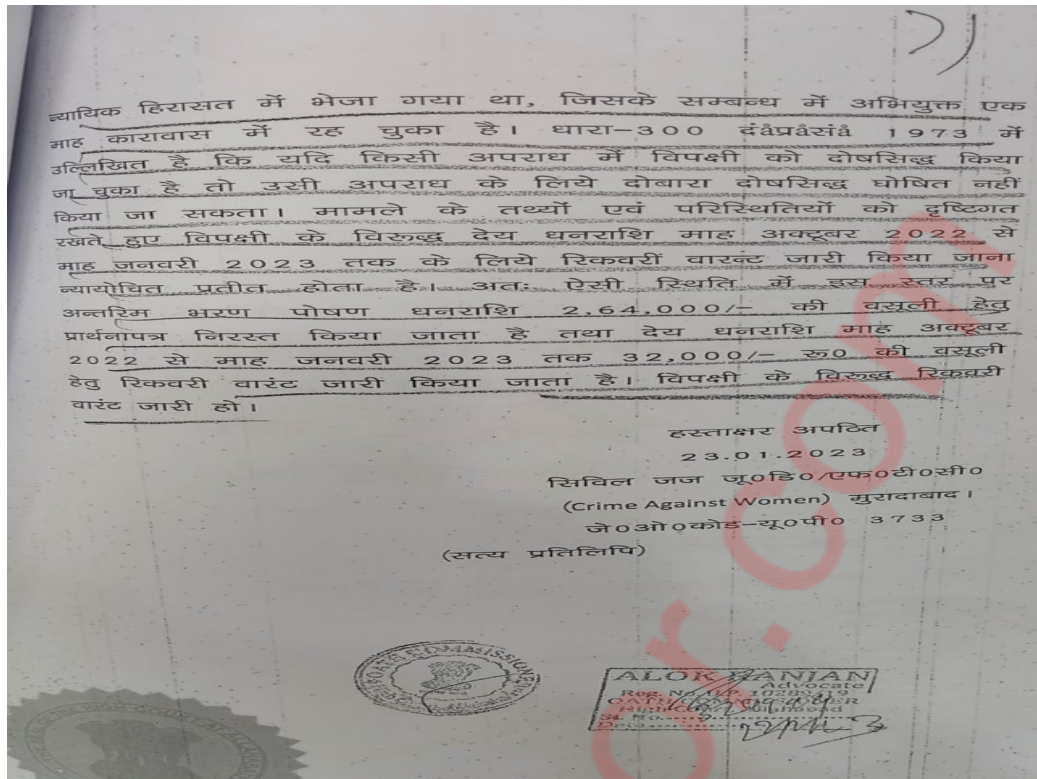
आज विपक्षी अहमद आनी उर्फ रमजानी पुत्र स्व० जुम्मा निवासी शाहपुर, मुबारकपुर उर्फ खोकरपुर थाना छजलैट जिला मुरादाबाद को न्यायालय द्वारा जारी किए गए रिकवरी गिरफ्तारी वारंट मूल्य 2,64,000/- रुपये की वसूली हेतु दिनांक 30.10.2022 को रिमाण्ड मजिस्ट्रेट द्वारा जेल भेजा गया था। विपक्षी आज जेल से न्यायालय में उपस्थित आया। विपक्षी से न्यायालय द्वारा पूछा गया कि क्या वह उपरोक्त वर्णित धनराशि जमा करने के लिए तैयार है। विपक्षी द्वारा वर्णित संपूर्ण धनराशि जमा करने से इंकार किया गया। रिकवरी के सम्बन्ध में विपक्षी की 30 दिन की न्यायिक हिरासत में रखा जाना था परन्तु विपक्षी का धारा-309 सी०आर०पी०सी० का वारंट बन गया था। अतः धारा 309 सी०आर०पी०सी० का वारंट निरस्त किया जाता है। विपक्षी को 30 दिन की न्यायिक विरासत में रखने हेतु आदेशित किया जाता है। अतः विपक्षी को दिनांक 30.11.2022 तक या उपरोक्त वर्णित धनराशि जमा करने तक सिविल कारागार में भेजा जाता है। वाद दीवानी प्रकृति का है।"

10. After the expiry of 30-days period, O.P. no.2 was released from jail; however, he still failed to pay the maintenance amount to the applicant. Consequently, the applicant moved a subsequent application on 17.01.2023 before the trial court, seeking the issuance of a fresh recovery warrant against Opposite Party No. 2.

11. Thereafter, the learned Civil Judge (Junior Division)/F.T.C. (Crime against Women), Moradabad vide order dated 23.01.2023, partly rejected the applicant's application dated 17.01.2023. The court issued a recovery warrant only for the period from October 2022 to January 2023 (totalling Rs. 32,000/-). However, the application for the recovery of Rs. 2,64,000/- was rejected on the grounds that O.P. No.2 had already served a 30-days period of detention in respect of the arrears of maintenance amounting to Rs.2,64,000/-, based on the plea

taken under Section 300 Cr.P.C. The order dated 23.01.2023 is pasted below :-





12. The Typed copy of the above order dated 23.01.2023 is reproduced below :-

23.01.2023

प्रार्थनापत्र दिनांकित 17.01.2023 पर परिवादिनी के विद्वान अधिवक्ता को सुना गया।

वादिनी की ओर से प्रार्थनापत्र दिनांकित 17.01.2023 इस आशय का प्रस्तुत किया गया कि प्रत्यर्थी अहमद अली उर्फ रमजानी पर उपरोक्त निष्पादन वाद में पर्याप्त तामील है किन्तु प्रत्यर्थी ने उपरोक्त निष्पादन वाद की धनराशि 2,64,000/- रुपये अभी तक अदा नहीं की है साथ ही प्रत्यर्थी उपरोक्त धनराशि प्रार्थिनी को अदा करने से इन्कार कर रहा है। जिस हेतु प्रत्यर्थी के विरुद्ध उपरोक्त धनराशि की वसूली हेतु रिकवरी वारंट जारी किये जाने की कृपा की जावे।

सुना एवं पत्रावली का अवलोकन किया।

पत्रावली के अवलोकन से स्पष्ट है कि उक्त मुकदमे में न्यायालय द्वारा दिनांक 29.09.2022 को विपक्षी अहमद अली के विरुद्ध रिकवरी वारंट जारी किया था। दिनांक 30.10.2022 को वर्णित धनराशि जमा न करने के कारण विपक्षी को 30 दिन की न्यायिक हिरासत में भेजा गया था, जिसके सम्बन्ध में अभियुक्त एक माह कारावास में रह चुका है। धारा-300 दं.प्र.सं. 1973 में उल्लिखित है कि यदि किसी अपराध में विपक्षी को दोषसिद्ध किया जा चुका है तो उसी अपराध के लिये दोबारा दोषसिद्ध घोषित नहीं किया जा सकता। मामले के तथ्यों एवं परिस्थितियों

को दृष्टिगत रखते हुए विपक्षी के विरुद्ध देय धनराशि माह अक्टूबर 2022 से माह जनवरी 2023 तक के लिये रिकवरी वान्ट जारी किया जाना न्यायोचित प्रतीत होता है। अतः ऐसी स्थिति में इस स्तर पर अन्तरिम भरण पोषण धनराशि 2,64,000/- की वसूली हेतु प्रार्थनापत्र निरस्त किया जाता है तथा देय धनराशि माह अक्टूबर 2022 से माह जनवरी 2023 तक 32,000/- रु० की वसूली हेतु रिकवरी वारंट जारी किया जाता है। विपक्षी के विरुद्ध रिकवरी वारंट जारी हो।

हस्ताक्षर अपठित

23.01.2023

सिविल जज जू०डि०/एफ०टी०सी०

(Crime Against Women) मुरादाबाद।

जे०ओ० कोड-यू०पी० 3733

13. The learned counsel for the applicant submits that the applicant (wife) challenged the order dated 23.01.2023 by way of this **application filed under Section 482 Cr.P.C., being Application No.7721 of 2023 titled Smt. Hasina Khatoon Vs. State of U.P. and another**, before this Court. This Court vide order dated 05.04.2023, set aside the impugned order dated 23.01.2023 passed by the Civil Judge (J.D.)/F.T.C. (Crime Against Women), Moradabad, and issued certain directions, while disposing this application. The order dated 05.04.2023 is delineated below :-

“(1). Heard Shri Akshay Kumar, learned counsel for applicant and learned A.G.A. for the State of UP. Perused the record.

(2). Extraordinary powers of this Court is being invoked by the applicant u/s 482 Cr.PC. to quash order dated 23.01.2023 passed by the Civil Judge (Junior Division) F.T.C. (Crime against Women), Moradabad in Execution Case No.697 of 2022 (Smt. Hasina Khatoon vs Ahmad Ramzani) u/s 31 of the Domestic Violence Act, 2005, arising out of Case No. 10095 of 2017 (Hasina Khatoon vs. Ahmad Ali) u/s 12 of the Domestic Violence Act by which the court below has rejected the claim of applicant for maintenance amount of Rs 2.64 lacs on the ground that the opposite party no.2 has undergone an imprisonment of one month, and thus, the balance amount cannot be claimed from the opposite party no.2.

(3). Before coming to the actual legal aspect of the issue, it is imperative to spell out the bare skeleton facts of the case to appreciate the controversy in its correct perspective.

(a). The applicant Hasina Khatoon got married with opposite party no 2 on 23.5.1990 as per the Muslim rites, rituals and customs. This couple was blessed with one son, unfortunately he was handicapped. It seems that there was deep rooted discord between the husband and wife on account of various factors, consequentially the opposite party no.2 kicked her out along with her handicapped son on 21.7.1995. Thus, a usual proceeding u/s 498A IPC and other allied sections was initiated against the opposite party no.2.

(b) After some time, on account of intervention of certain well-meaning persons of the society and respectable members and with the help and aid of their relatives, better sense prevailed upon the opposite party no.2 thereafter a compromise deed was executed inter-se. As a consequence thereof, the applicant started living with opposite party no.2. After sometime, the applicant was again thrown out of with her handicapped son from her domestic unit on 20.5.2017 and since then she is residing in a rented accommodation along with her handicapped son in most pathetic condition, having no fixed source of income.

(c). It is further contended by learned counsel for the applicant, that opposite party no.2 has sufficient source of income and by a rough estimate he is earning above Rs.50,000/- per month from various sources.

(d) The applicant was not having any means of earning, wholly dependent upon her husband, who is still willfully ignoring her and her handicapped son, thus, she was running from pillar to post. Under compelling circumstances, the applicant filed a proceeding under Section 12 of the Domestic Violence Act having Case No.20095 of 2017 (Hasina Khatoon vs Ahmad Ali) in the court of Additional Chief Judicial Magistrate-IV, Moradabad.

(e) As the applicant was in dire need of money so as to make both the ends meet for herself and her handicapped son, and therefore, she moved yet another application under Section- 23 of the Domestic Violence Act, seeking

an ex-parte interim order keeping in view the exigency of the circumstances.

(f) After service of notice upon opposite party no.2, the opposite party no.2 has filed his objection denying the allegations made in the claim.

(g) Having thrashed the material on record, the court below vide order dated 19.7.2019 allowed applicant's application for interim maintenance and directed opposite party no.2 to pay Rs.4,000/- to the applicant and Rs.4,000/- to his handicapped son, totalling Rs.8,000/- per month, payable on 10th day of every month.

(h) Aggrieved by the aforesaid interim order dated 19.7.2019, opposite party no.2 preferred an appeal having Criminal Appeal No.41 of 2019 (Ahmad Ali Ramzani vs. State of U.P. and others), but the Additional Session Judge. Moradabad vide its order dated 01.4.2022 have rejected the appeal preferred by opposite party no.2.

(i) Opposite party no.2, aggrieved by order dated 01.04.2022, again came to this Court by filing Cri. Misc. Application u/s 482 No. 11881 of 2022 (Ahmad Ali Ramzani vs. State of U.P. and two others), but sensing the adverse observation of the Court, learned counsel for opposite party no.2 expressed his desire to enter into a compromise with the applicant and on this ground, without adverting anything on the merit of the case, aforesaid 482 application was dismissed on 02.11.2022.

(j) Opposite party no.2 have exploited all the avenues available to him and resorted to gimmicks and chicanery so that he had not to pay single penny to the applicant, under the circumstances left with no other option, applicant Hasina Khatoon has moved an execution case for compliance of order dated 19.7.2019 passed by the court below and has prayed for issuance of recovery warrant against opposite party no 2 for recovery of totalling amount of Rs 2.64 lacs for the period of July, 2019 to April, 2022 after computing at the rate of Rs.8,000/- per month.

(k) The court below on 29.9.2022 was pleased to pass a detailed order in Execution Case No.697 of 2022, whereby the recovery warrants were issued against opposite party no.2 Ahmad Ali Ramzani. Pursuant to aforesaid recovery warrant, when opposite party no.2 has failed to comply

with the order, he was arrested by the police and produced before the court below on 30.10.2022 in police custody and was sent to district jail Moradabad.

(l) It was pleaded by learned counsel for the applicant that since opposite party no.2 declined to adhere to the directions of executing court and consequently he was sent behind the bars for 30 days vide order dated 21.11.2022. Order dated 21.11.2022 is being quoted hereunder:

"21.11.2022

आज विपक्षी अहमद आनी उर्फ रमजानी पुत्र स्व० जुम्मा निवासी शाहपुर, मुबारकपुर उर्फ खोकरपुर थाना छजलैट जिला मुरादाबाद को न्यायालय द्वारा जारी किए गए रिकवरी गिरफ्तारी वारंट मूल्य 2,64,000/- रुपये की वसूली हेतु दिनांक 30.10.2022 को रिमाण्ड मजिस्ट्रेट द्वारा जेल भेजा गया था। विपक्षी आज जेल से न्यायालय में उपस्थित आया। विपक्षी से न्यायालय द्वारा पूछा गया कि क्या वह उपरोक्त वर्णित धनराशि जमा करने के लिए तैयार है। विपक्षी द्वारा वर्णित संपूर्ण धनराशि जमा करने से इंकार किया गया। रिकवरी के सम्बन्ध में विपक्षी की 30 दिन की न्यायिक हिरासत में रखा जाना था परन्तु विपक्षी का धारा-309 सी०आर०पी०सी० का वारंट बन गया था। अतः धारा 309 सी०आर०पी०सी० का वारंट निरस्त किया जाता है। विपक्षी को 30 दिन की न्यायिक विरासत में रखने हेतु आदेशित किया जाता है। अतः विपक्षी को दिनांक 30.11.2022 तक या उपरोक्त वर्णित धनराशि जमा करने तक सिविल कारागार में भेजा जाता है। वाद दीवानी प्रकृति का है।"

(m) Thus, from the aforesaid order it is clear that the court has directed to send the opposite party no.2 to a civil prison for 30 days i.e. up to 30.11.2021 or till such time he deposits the outstanding maintenance amount. Thus, the underline idea to send opposite party no.2 in jail is to exert pressure upon him so that he may cough up the outstanding maintenance amount. In fact, this was a mode of enforcement of the order and not a mode of satisfaction. The court was insisting that the opposite party no 2 must pay the outstanding maintenance amount.

(n) From the aforesaid, it is culled out that the stubborn opposite party no.2 did not budge a single inch to pay the outstanding maintenance amount, rather he preferred to go behind the bars.

(o) After expiry of 30 days, on 30.12.2022 opposite party no.2 was released from jail, even though, he has not bothered to pay the outstanding maintenance amount of Rs.2.64 lacs to the applicant. Under compelling circumstances, the applicant moved yet another application on 17.1.2023 before the court below for issuance of "fresh recovery warrants" against opposite party no.2. This application, contended by learned counsel for the applicant, was surprisingly partly rejected by the

court concerned vide order dated 23.01.2023 and issued recovery warrant for the period of October, 2022 to January, 2023 only for a sum of Rs 32,000/-. Relevant portion of the impugned order dated 23.01.2023, is being reproduced herein below :-

"सुना एवं पत्रावली का अवलोकन किया।

पावली के अवलोकन से स्पष्ट है कि उस मुकदमें में न्यायालय द्वारा दिनांक 29.09.2022 को विपक्षी अहमद आली के विरुद्ध रिकवरी वारंट जारी किया था। दिनांक 30.10.2022 को वर्णित धनराशि जमा न करने के कारण विपक्षी की 30 दिन की न्यायिक हिरासत में भेजा गया था। जिसके सम्बन्ध में अभियुक्त एक माह कारावास में रह चुका है। धारा 300 द०प्र०सं० 1973 में उल्लिखित है कि यदि किसी अपराध में विपक्ष को दोषसिद्ध किया जा चुका है तो उसी अपराध के लिये दोबारा दोषसिद्ध घोषित नहीं किया जा सकता। मामले के तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए विपक्षी के विरुद्ध देय धनराशि माह अक्टूबर 2022 से माह जनवरी 2023 तक के लिये रिकवरी वारंट जारी किया जाना न्यायोचित प्रतीत होता है अतः ऐसी स्थिति में इस स्तर पर आन्तरिम भरण पोषण धनराशि 2,64,000/- की वसूली हेतु प्रार्थनापत्र निरस्त किया जाता है तथा देय धनराशि माह अक्टूबर 2022 से माह जनवरी 2023 तक 32,000/- रु की वसूली हेतु रिकवरी वारंट जारी किया जाता है। विपक्षी के विरुद्ध रिकवरी वारंट जारी हो।"

(4). I have gone through the order impugned dated 23.01.2023 which indicates that the reasoning adopted by the court of FTC (Crime Against Women), Moradabad is palpably myopic and puerile, inasmuch as, that the concerned court while passing impugned order has taken recourse of Section 300 of CrPC, which speaks about the doctrine of "autrefois convict and autrefois acquit". The essentials of the applicability of aforesaid Section 300 of Cr.P.C. are:

- (i) That he (the accused person) had previously been tried by a court for an offence.
- (ii) That such Court was competent to try that offence.
- (iii) That he was either convicted or acquitted of that offence, at the former trial.
- (iv) That such conviction or acquittal still remains in force when a subsequent proceeding has been brought against him.
- (v) That at the subsequent proceeding he is being tried again-
(a) for the same offence; or (b) on the same facts for any other offence for which a different charge might have been made under s. 221(1)-(2).

(5). Now comparing aforementioned essentials with the reasoning given in the impugned order, indicates that the earlier part of the order for sending the opposite party no.2 in jail is not for any offence nor he was convicted for any offence. Since he was a defaulter in paying the outstanding maintenance amount, that is why, he has to face civil prison so that he may pay the maintenance amount, and therefore, the reasoning adopted by the court

concerned while passing impugned order is per se absurd and total non-application of correct law.

(6). Now coming to yet another aspect of the issue i.e. the application for execution under Section-31 of the Protection of Women from Domestic Violence Act, 2005 (Act No.43 of 2005). Before delving into this legal point, it is imperative to have a fleeting glance over the object of "The Protection of Women from Domestic Violence Act, 2005 The OBJECT speaks that aforesaid Bill seeks to provide the following objects :

"(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women or living with the abuser are entitled to legal protection under the proposed legislation, However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression "domestic violence to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii). It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv). It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person her relatives or others who provide her assistance from the domestic violence.

(v). It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid safe shelter, etc."

(7). Since the aforesaid application has been moved under Section-31 of the Protection of Women from Domestic Violence Act, as such, its imperative to quote Sections 31 and 32 of this Act, which reads thus :

"31. Penalty for breach of protection order by respondent.-

(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1) the Magistrates may also frame charges under section 498.4 of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be if the facts disclose the commission of an offence under those provisions.

32. Cognizance and proof.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused."

(8). The provisions of aforesaid sections speak about the penalty for breach of protection by the respondents. Thus, it is evident that the breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(9). On this score, it has been submitted that vide order dated 29.9.2022 while issuing the recovery warrant against opposite party no.2, the police on 30.10.2022 have arrested the opposite party no.2 and sent him to District Jail, Moradabad by passing an order mentioned above, whereby it has been mentioned that the applicant was directed to remain in jail up to 30.11.2022 or till the deposit of outstanding amount of Rs. 2.64 lacs. It seems that the opposite party no.2 has preferred earlier one and served out his time up to 30.11.2022 (say about one month) in jail to allegedly absolve him from the liability of paying outstanding maintenance amount.

(10). In this regard it has been contended by learned counsel for the applicant that this was not an object of the Protection of Women from Domestic Violence Act. This in fact is social legislation in tenting the wives and the children and levying the responsibility upon the shoulders of husbands to maintain their wives and children. Serving out in jail for month, would not absolve the opposite party no.2 from the liability of maintaining his wife and children. Sending a prison into jail is a mode of deterrence so that he may clear off the outstanding maintenance amount and keep on paying regularly so that his wife and children may not die in a destitute condition. This is the precise underline idea which has been expatiated upon by the Hon'ble Apex Court in the case of **Smt. Kuldip Kant vs. Surender Singh and another, 1989 SCC 111 405**. The ratio laid down in this case may be usefully recalled and applied in the present case Exercise of power under Section-31 of the Domestic Violence Act is a mode of enforcement of the alleged protection orders under Section-18 of the Act and it is distinguished from the mode of satisfaction and the liability which can only be made by means of the an actual payment. Relevant portion of the order in **Smt. Kuldip Kaur (supra)** is being quoted herein below:

"A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a 'mode of enforcement'. It is not a 'mode of satisfaction' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the liability which he has refused to discharge. Be it also realised that a person ordered to pay monthly allowance can be sent to jail only if he fails to pay monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who 'without reasonable cause' refuses to comply with the order of the Court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail sentence of jail is no substitute for the recovery of the amount of maintenance allowance which has fallen in arrears. Monthly allowance is paid in order to enable the wife and child to live by providing with the essential economic wherewithal. Neither the neglected wife nor the neglected child can live without funds for purchasing food and the essential articles to enable them to live. Instead of providing them with the funds no useful purpose, would be served by sending the husband to jail. Sentencing to jail is the means for achieving the end of enforcing the order by

recovering the amount of arrears. It is not a mode of discharging liability. The section does not say so. The Parliament in its wisdom has not said so commence does not support such a construction. From where does the Court draw inspiration for persuading itself that the liability arising under the order for maintenance would stand discharged upon an effort being made to recover it? The order for monthly allowance can be discharged only upon the monthly allowance being recovered.....”

(11). In yet another case of **Shantha @ Ushadevi & Anr vs. B.G. Shivananjappa**, (2005) 4 SCC 468, whereby it has been held that liability to pay the maintenance amount u/s 125 Cr.P.C. or in the instant enactment is in nature of continuing liability. The nature of right to receive the maintenance and the concomitant liability to pay goes hand in hand and it cannot be substituted by any civil imprisonment.

(12). In the case of **Poongodi & Anr vs. Thangavel**, (2015) 10 SCC 618 it was held by the Hon'ble Apex Court that the proviso of Section 125(3) Cr.P.C. signifies that it is a mode of enforcement i.e. sending a defaulter to a civil prison and does not create any bar or affects the actual right of receiving maintenance amount from the said defaulter. It lays down the procedure for recovery of maintenance from a defaulter and compel him to clear off the dues. Sending a defaulter to jail is not going to serve the object of Enactment. It would not going to absolve the defaulter from liability accrued upon him by way of his status as husband.

(13). Thus, taking into account the help from the aforesaid decisions of the Hon'ble Apex Court, this Court is of the considered opinion that the order impugned dated 23.01.2023 can't be sustained in the eyes of law and the F.T.C. Court while passing the impugned order has grossly erred by re-issuing the recovery warrant for the revised period i.e. from October, 2022 to January, 2023. A defaulter has to be dealt with an iron hand as per the provisions of Section 31 that any violation of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(14). This offence being non-bailable and cognizable, therefore, the court ought to have penalized the alleged defaulter for imposing the maximum punishment according to the guilt, where the opposite party no.2 has got remarried with some other lady and enjoying the life, leaving behind the applicant and her handicapped son on road. This is an unpardonable offence and a sin whereby the extraordinary punishment has to be levied mercilessly. The Magistrate ought to have proceeded against opposite party no.2 under Section -

31 of the Protection of Women from Domestic Violence Act and even if fails to recover the amount, he can put the immovable property to auction to recover the entire outstanding maintenance amount.

(15). Under these circumstances, I have no hesitation to say that the impugned order suffers from the vice of law mentioned above, and therefore, impugned order dated 23.01.2023 passed by the Civil Judge (JD/ETC. (Crime against Women), Moradabad is hereby quashed, with the following direction:-

(i) The court below concerned will issue a fresh notice to the opposite party no. 2 to the effect that he shall clear off the entire outstanding maintenance amount by 15.5.2023 pursuant to order dated 19.7.2019 i.e. from July, 2019 up to 30 April, 2023 @ Rs.4,000-4,000-Rs.8000/- per month by way of interim maintenance.

(ii) If the opposite party no.2 fails to deposit the entire outstanding amount of maintenance in this period, then the court concerned shall proceed against opposite party no.2 u/s 31 of the Protection of Women from Domestic Violence Act for penalizing him for imprisonment of one year and a fine of Rs 20,000/- or both.

(iii) Simultaneously, in case of failure to deposit the entire outstanding amount within time prescribed, the court concerned would attach the entire movable and immovable property belonging to the opposite party no.2 and the said property shall put to auction in order to recover the outstanding maintenance amount to be paid to the applicant.

(iv) Since the court concerned has only fixed the interim maintenance, the court concerned is expected to gear up the matter and decide the Case No. 10095 of 2017 (Hasina Khatoon vs. Ahmad Ali) u/s 12 of Domestic Violence Act on priority basis and while calculating the final figure of maintenance amount, the court concerned shall adjust the interim maintenance amount given by the opposite party no.2 and shall be paid to the applicant.

16. The aforesaid directions must be adhered strictly within the time specified above and no laxity would be tolerated in compliance of the above directions.

17. With the above observations, this application u/s 482 Cr.PC. is disposed off.”

14. The opposite party No. 2 (Husband) filed a **Special Leave Petition (Criminal) No. 14166 of 2023 before the Hon’ble Supreme Court** challenging the order dated 05.04.2023 passed by this Court. The Hon’ble Supreme Court, vide order dated 20.09.2024, disposed of the Special Leave Petition by setting aside the order dated 05.04.2023,

on the grounds that no opportunity of hearing was granted to the husband (O.P. No.2). Consequently the application filed under Section 482 Cr.P.C. (No.7721 of 2023) was restored to its original number, with a direction to decide the matter on its merits after hearing the contesting parties. The order dated 20.09.2024, passed by the Hon'ble Supreme Court is delineated below :-

"Leave granted.

2. Heard Mr. Narendra Kumar, learned counsel appearing for the appellant.

3. The contesting respondent no.1 is represented by Mr. Pankaj Kumar Mishra, learned counsel.

4. Notice in this case was issued on 30.10.2023 with the following order:-

"Delay condoned.

Heard Mr. Narendra Kumar, learned counsel appearing for the petitioner.

The counsel would submit that the High Court passed an ex parte order against the petitioner in the respondent's Section 482 Cr.P.C. petition. In support, the counsel would read the impugned order dated 05.04.2023 and the two earlier orders passed on 01.03.2023 and 17.03.2023 to point out that notice was never issued to the petitioner. It is seen that the present petitioner was impleaded as respondent No. 2 in the application under Section 482 Cr.P.C. No. 7721 of 2023. The Court however passed the impugned order only after hearing the petitioner's counsel and the counsel for the State of Uttar Pradesh.

Issue notice, returnable in four weeks.

If the petitioner is actually placed in custody on account of the High Court's impugned order (dated 05.04.2023) in the application under Section 482 Cr.P.C. No. 7721 of 2023, he shall be released on interim bail, pending further consideration of the present matter. The bail terms and conditions to be imposed by the concerned court."

5. The counsel for the appellant submits that the High Court passed the impugned order (dated 05.04.2023) without hearing the appellant and only after hearing the respondent no.1 and the counsel for the State of Uttar Pradesh. The above contention is seriously disputed by the counsel for the respondent(s).

6. Having considered the above, we deem it appropriate to Set aside the impugned order (dated 05.04.2023). The application under Section 482 Cr.P.C. No. 7721/2023 is restored to its original number. The High Court should now decide the same on merit, after hearing the contesting parties.

7. As the respondent no.1 is seeking maintenance from the appellant, the High Court is requested to expeditiously decide the matter preferably within a period of eight weeks.

8. With the above order, the matter stands disposed of.

9. Pending application(s), if any, shall stand disposed of."

15. Pursuant to the order of the Hon'ble Supreme Court, this application is restored and placed before this Court for hearing and disposal.

16. The learned counsel for the applicant (wife) submits that the impugned order dated 23.01.2023, passed by the trial court, is unjust and improper, as well as contrary to the provisions of law. He further submits that the concerned trial court has wrongly opined that, pursuant to Section 300 Cr.P.C., Opposite Party No. 2 has already served a 30-day's jail term, for non-payment of maintenance and thus, he stood acquitted. Consequently, no recovery warrant has been issued against Opposite Party No. 2 for the arrear amount. Therefore, the impugned order dated 23.01.2023 is highly unjust and improper, and is liable to be quashed/set-aside by this Court.

17. Learned counsel for the applicant further submits that on 23.05.1990, the applicant was married to O.P. No.2 according to Muslim rites, rituals and customs. He further submits that from their wedlock, one male child was born; however, unfortunately, he has a disability. He further submits that on 21.07.1995, the applicant lodged a First Information Report (FIR), registered as Case Crime No.136 of 1995, Under Sections 498-A, 323 and 504. I.P.C and Sections 3/4 of the D.P Act at Police Station-Chhajlet, District-Moradabad, against Opposite Party No.2 and others. He further submits that on 13.09.1995, O.P. no.2 was granted bail by Additional Sessions Judge, Court no.4, Moradabad. He further submits that on 14.10.1995, the I.O. (Investigating Officer), after completing the investigation, filed a charge sheet in the aforementioned case against O.P. No.2 and others. He further submits that, while the trial of the above case was going on, the applicant, on 02.02.2001 filed an application u/s 125 Cr.P.C.

Learned counsel for the applicant further submits that during the pendency of the above trial, the O.P. No.2 agreed to take the applicant back, along with her son. The matter was initially orally compromised between the parties; therefore, the witnesses of the case turned hostile. As a result, on 02.12.2011, the trial court acquitted all the accused persons in the case. He further submits that thereafter, the applicant resumed residing with O.P. no.2, but in 2013, O.P. no.2 again subjected the applicant to domestic violence, leading to her and her son being ousted from the house once again. He further submits that the applicant subsequently started residing in a rented house in the same village. He further submits that the applicant filed a complaint under Section 12 of the Domestic Violence Act before the Additional Chief Judicial Magistrate, Court No.4, Moradabad along with an application of Section 23 of the Act and thereafter, on the interim application, an order was passed by the same court on 19.07.2019, directing the O.P. no.2 (husband) to pay Rs.4000/- per month to the applicant and Rs.4000/- per month to her disabled son. He further submits that the said order was challenged in appeal, but the appeal was dismissed vide order dated 01.04.2022. He further submits that the O.P. no.2 challenged the dismissal order by filing Application U/S 482 No.11881 of 2022, however, this Court dismissed the said application vide order dated 02.11.2022. He further submits that since the order dated 02.11.2022 has not been challenged before any higher court, it has attained finality. Therefore, it is no longer open for O.P. no.2 to raise any objection regarding, whether the interim maintenance order passed on 19.07.2019 is against the provisions of law. He further submits that as per Section 40 of the Evidence Act, 1872, the previous judgment and order bars a second suit or trial, as the matter has attained finality. He further submits that the applicant has challenged the order dated 23.01.2023, which was passed on the application for execution of the order dated 19.07.2019.

18. **Per contra**, learned counsel for O.P. no.2 submits that Execution Case No.697 of 2022, filed under Section 31 of the

Protection of Women from Domestic Violence Act, 2005, was not maintainable. This is because, the order dated 19.07.2019, passed by the Domestic Violence Court, was not issued under section 18 and 19 of the Act. He further submits, that the applicant's son has already attained the age of majority, he is not entitle to any monetary relief. He further submits that the order dated 23.01.2023 suffers from no illegality, as it was passed correctly, considering the thirty-days term of imprisonment served by O.P. No.2 as a penalty. Finally, he submits that the instant application under Section 482 Cr.P.C. is not maintainable and is liable to be dismissed.

19. The learned counsel for Opposite Party No.2 further submits that the impugned order dated 23.01.2023 is appellable under section 29 of the D.V. Act. Consequently, an application under Section 482 Cr.P.C. is not maintainable.

20. This Court has carefully considered the submissions advanced by the learned counsel for both parties and perused the record, as well as the law laid down by the Hon'ble High Court and the Supreme Court.

21. The validity of the order dated 19.07.2019 cannot be raised at this stage, as the issue has already been settled by this Court in an application under section 482 (No. 11881 of 2022, Ahmed Ali @ Ramzani vs. State of U.P.). This Court vide order dated 02.11.2022, dismissed the application; since that order **was not challenged** by opposite party No. 2 in the Hon'ble Supreme Court, it has attained finality. In a subsequent round of litigation, an execution application was filed before the concerned Magistrate's court. This application was rejected after the court accepted the plea taken under Section 300 Cr.P.C., which stipulates that a person who has been either convicted or acquitted cannot be tried for the same offence again. However, in the present case, a proceeding under the Domestic Violence Act, seeking maintenance does not result in either a conviction or an acquittal. O.P. No.2 (Husband) has failed to pay the maintenance amount granted by the order dated 19.07.2019, which has attained

finality up to this Court. Consequently, the trial court committed O.P. No.2 to civil prison for failing to make the payment; such detention does not fall within the purview of **Section 300 Cr.P.C.** The provisions of Section 300 of Cr.P.C. are delineated below:-

300. Person once convicted or acquitted not to be tried for same offence.—(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897 (10 of 1897) or of section 188 of this Code.

Explanation.—The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

22. The provision of section 300 of Cr.P.C. is not applicable to proceedings under the Domestic Violence Act, as such, proceedings result in neither a conviction nor an acquittal, in these matters, the court, only awards maintenance amounts to the aggrieved party (wife) as the, domestic violence has been committed by O.P. No.2 (husband).

23. Refusing to execute the awarded maintenance amount under the Domestic Violence Act, by invoking a plea under Section 300 Cr.P.C. appears to be contrary to the law and indicates a non-application of judicial mind by the concerned learned Judicial Magistrate.

24. This Court by order dated **07.09.2021** in **Application U/S 482 No. 6319 of 2021 (Tarun Kumar Mittal v. State of U.P. and another)** held in paragraph Nos. 11 and 17 that the provisions of section 31 of Domestic Violence Act can be invoked for execution of grant of maintenance order under section 12 of D.V. Act. The paragraph 11 and 17 are being quoted below:-

“11. However, Division Bench of Madhya Pradesh High Court considered the provisions of the 'Domestic Violence Act' and referring to the definition of "domestic violence" as provided under Section 2(g) and other relevant provisions has held that provisions of Section 31 of Domestic Violence Act can be invoked for execution of grant of maintenance order under Section 12 of D.V. Act.

17. Thus, in the light of the above discussion so also in view of a Division Bench decision of Madhya Pradesh High Court passed after relying on the judgments of Supreme Court in regard to purposive interpretation and keeping in mind the aim and object of a special statute namely, Protection of Women From Domestic Violence Act, 2005, I am of the opinion that provisions of Section 31 can be invoked to penalize even breach of orders passed under Section 12 of the said Act. Therefore, Application deserves to fail and is dismissed.”

25. The Hon'ble Supreme Court in **Rajnesh vs. Neha and another, (2021) 2 Supreme Court Cases 324** has held that the amount of maintenance shall be given for expenses and in case of non-payment, it may be recovered as **money decree**. The paragraph nos.91, 92, 93, 114, 115, 117, 118, 119, 120, 121, 122, 123, 124, 125 and 132 of the aforesaid judgment are delineated below :-

(d) Maintenance of minor children

91. *The living expenses of the child would include expenses for food, clothing, residence, medical expenses, education of children. Extra coaching classes or any other vocational training courses to complement the basic education must be factored in, while awarding child support. Albeit, it should be a reasonable amount to be awarded for extracurricular/coaching classes, and not an overly extravagant amount which may be claimed.*

92. Education expenses of the children must be normally borne by the father. If the wife is working and earning sufficiently, the expenses may be shared proportionately between the parties.

(e) Serious disability or ill health

93. Serious disability or ill health of a spouse, child/children from the marriage/dependent relative who require constant care and recurrent expenditure, would also be a relevant consideration while quantifying maintenance.

IV. Date from which Maintenance to be Awarded

*114. Enforcement of the order of maintenance is the most challenging issue, which is encountered by the applicants. If maintenance is not paid in a timely manner, it defeats the very object of the social welfare legislation. Execution petitions usually remain pending for months, if not years, which completely nullifies the object of the law. The Bombay High Court in *Sushila Viresh Chhadva v. Viresh Nagshi Chhadva* [Sushila Viresh Chhadva v. Viresh Nagshi Chhadva, 1995 SCC OnLine Bom 315 : AIR 1996 Bom 94] held that : (SCC OnLine Bom para 7)*

“7... The direction of interim alimony and expenses of litigation under Section 24 is one of urgency and it must be decided as soon as it is raised and ... the law takes care that nobody is disabled from prosecuting or defending the matrimonial case by starvation or lack of funds.”

115. An application for execution of an order of maintenance can be filed under the following provisions:

(a) Section 28-A of the Hindu Marriage Act, 1955 read with Section 18 of the Family Courts Act, 1984 and Order 21 Rule 94 CPC for executing an order passed under Section 24 of the Hindu Marriage Act (before the Family Court);

(b) Section 20(6) of the DV Act (before the Judicial Magistrate); and

(c) Section 128 CrPC before the Magistrate's Court.

117. Section 125(3) CrPC provides that if the party against whom the order of maintenance is passed fails to comply with the order of maintenance, the same shall be recovered in the manner as provided for fines, and the Magistrate may award sentence of imprisonment for a term which may extend to one month, or until payment, whichever is earlier.

Striking off the Defence

118. Some Family Courts have passed orders for striking off the defence of the respondent in case of non-payment of maintenance, so as to facilitate speedy disposal of the maintenance petition. In Kaushalya v. Mukesh Jain [Kaushalya v. Mukesh Jain, (2020) 17 SCC 822 : 2019 SCC OnLine SC 1915] , the Supreme Court allowed a Family Court to strike off the defence of the respondent, in case of non-payment of maintenance in accordance with the interim order passed.

119. The Punjab and Haryana High Court in Rani v. Parkash Singh [Rani v. Parkash Singh, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175] was considering a case where the husband failed to comply with the maintenance order, despite several notices, for a period of over two years. The Court taking note of the power to strike off the defence of the respondent, held that : (SCC OnLine P&H para 7)

“7. ... Law is not that powerless as not to bring the husband to book. If the husband has failed to make the payment of maintenance and litigation expenses to wife, his defence be struck out.”

120. The Punjab and Haryana High Court in Mohinder Verma v. Sapna [Mohinder Verma v. Sapna, 2014 SCC OnLine P&H 25147] , discussed the issue of striking off the defence in the following words : (SCC OnLine P&H para 8)

“8. Section 24 of the Act empowers the matrimonial court to award maintenance pendente lite and also litigation expenses to a needy and indigent spouse so that the proceedings can be conducted without any hardship on his or her part. The proceedings under this section are summary in nature and confer a substantial right on the applicant during the pendency of the proceedings. Where this amount is not paid to the applicant, then the very object and purpose of this provision stands defeated. No doubt, remedy of execution of decree or order passed by the matrimonial court is available under Section 28-A of the Act, but the same would not be a bar to striking off the defence of the spouse who violates the interim order of maintenance and litigation expenses passed by the said court. In other words, the striking off the defence of the spouse not honouring the court's interim order is the instant relief to the needy one instead of waiting endlessly till its execution under Section 28-A of the Act. Where the spouse

who is to pay maintenance fails to discharge the liability, the other spouse cannot be forced to adopt time consuming execution proceedings for realising the amount. Court cannot be a mute spectator watching flagrant disobedience of the interim orders passed by it showing its helplessness in its instant implementation. It would, thus, be appropriate even in the absence of any specific provision to that effect in the Act, to strike off the defence of the erring spouse in exercise of its inherent power under Section 151 of the Code of Civil Procedure read with Section 21 of the Act rather than to leave the aggrieved party to seek its enforcement through execution as execution is a long and arduous procedure. Needless to say, the remedy under Section 28-A of the Act regarding execution of decree or interim order does not stand obliterated or extinguished by striking off the defence of the defaulting spouse. Thus, where the spouse who is directed to pay the maintenance and litigation expenses, the legal consequences for its non-payment are that the defence of the said spouse is liable to be struck off.”

121. The Delhi High Court in Satish Kumar v. Meena [Satish Kumar v. Meena, 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246] held that the Family Court had inherent powers to strike off the defence of the respondent, to ensure that no abuse of process of the court takes place.

122. The Delhi High Court in Santosh Sehgal v. Murari Lal Sehgal [Santosh Sehgal v. Murari Lal Sehgal, 2006 SCC OnLine Del 585 : AIR 2007 Del 210] , framed the following issue for consideration : (SCC OnLine Del para 3)

“3. ... whether the appeal against the decree of divorce filed by the appellant wife can be allowed straightaway without hearing the respondent husband in the event of his failing to pay interim maintenance and litigation expenses granted to the wife during the pendency of the appeal.”

The reference was answered as follows : (Santosh Sehgal case [Santosh Sehgal v. Murari Lal Sehgal, 2006 SCC OnLine Del 585 : AIR 2007 Del 210] , SCC OnLine Del para 5)

“5. The reference to the portion of the judgment in Rani case [Rani v. Parkash Singh, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175] extracted hereinabove would show that the Punjab and Haryana High Court and the Orissa

High Court have taken a unanimous view that in case the husband commits default in payment of interim maintenance to his wife and children then he is not entitled to any matrimonial relief in proceedings by or against him. The view taken by the Punjab and Haryana High Court in Rani case [Rani v. Parkash Singh, 1996 SCC OnLine P&H 52 : AIR 1996 P&H 175] has been followed by a Single Judge of this Court in Satish Kumar v. Meena [Satish Kumar v. Meena, 2001 SCC OnLine Del 817 : (2001) 60 DRJ 246] . We tend to agree with this view as it is in consonance with the first principle of law. We are of the view that when a husband is negligent and does not pay maintenance to his wife as awarded by the Court, then how such a person is entitled to the relief claimed by him in the matrimonial proceedings. We have no hesitation in holding that in case the husband fails to pay maintenance and litigation expenses to his wife granted by the Court during the pendency of the appeal, then the appeal filed by the wife against the decree of divorce granted by the trial court in favour of the husband has to be allowed. Hence the question referred to us for decision is answered in the affirmative.”

The Court concluded that if there was non-payment of interim maintenance, the defence of the respondent is liable to be struck off, and the appeal filed by the appellant wife can be allowed, without hearing the respondent.

123. The Punjab and Haryana High Court in Gurvinder Singh v. Murti [Gurvinder Singh v. Murti, 1990 SCC OnLine P&H 35 : (1990) 1 DMC 559] was considering a case where the trial court struck off the defence of the husband for non-payment of ad interim maintenance. The High Court set aside the order of the trial court, and held that instead of following the correct procedure for recovery of interim maintenance as provided under Section 125(3) or Section 421 CrPC the trial court erred in striking off the defence of the husband. The error of the court did not assist in recovery of interim maintenance, but rather prolonged the litigation between the parties.

124. The issue whether defence can be struck off in proceedings under Section 125 CrPC came up before the Madhya Pradesh High Court in Venkateshwar Dwivedi v. Ruchi Dwivedi [Venkateshwar Dwivedi v. Ruchi Dwivedi, 2017 SCC OnLine MP 2065 : (2018) 2 DMC 103 (MP). The Karnataka High Court affirmed this view in Ravindra

*Kumar v. Renuka, 2009 SCC OnLine Kar 481.] . The Court held that neither Section 125(3) CrPC nor Section 10 of the Family Courts Act either expressly or by necessary implication empower the Magistrate or Family Court to strike off the defence. A statutory remedy for recovery of maintenance was available, and the power to strike off defence does not exist in a proceeding under Section 125 CrPC. Such power cannot be presumed to exist as an inherent or implied power. The Court placed reliance on the judgment of the Kerala High Court in *Davis v. Thomas* [*Davis v. Thomas, 2007 SCC OnLine Ker 358 : ILR (2007) 4 Ker 389. See also Sakeer Hussain T.P. v. Naseera, 2016 SCC OnLine Ker 23592 : ILR (2016) 4 Ker 917*], and held that the Magistrate does not possess the power to strike off the defence for failure to pay interim maintenance.*

Discussion and Directions on Enforcement of orders of Maintenance

125. The order or decree of maintenance may be enforced like a decree of a civil court, through the provisions which are available for enforcing a money decree, including civil detention, attachment of property, etc. as provided by various provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.

(e) Enforcement/Execution of orders of maintenance

132. For enforcement/execution of orders of maintenance, it is directed that an order or decree of maintenance may be enforced under Section 28-A of the Hindu Marriage Act, 1955; Section 20(6) of the DV Act; and Section 128 of CrPC, as may be applicable. The order of maintenance may be enforced as a money decree of a civil court as per the provisions of the CPC, more particularly Sections 51, 55, 58, 60 read with Order 21.”

26. It is also pertinent to mention, that a Division Bench of the Madhya Pradesh High Court passed a judgment dated 15.05.2017 in the case of **Dr. Lalit Chaturvedi vs. Bharat Sarkar (W.P. No.7167 of 2017)**, whereby monetary relief granted under Section 20(1)(d) of the Protection of Women from Domestic Violence Act, 2005 was held to be valid. The aforesaid petition was preferred by the husband-petitioner challenging Section 20(1)(d) of the Protection of Women from Domestic Violence Act 2005, which contemplates the grant of maintenance, in addition to normal maintenance under Section 125 of

the Code of Criminal Procedure, 1973, as well as on the grounds of the applicability of Article 20 of the Constitution of India. The relevant paragraph of the said judgment is delineated below :-

“Article 20 has no applicability in the present case, as proceeding under Section 125 of the Code are not proceedings for offence, which leads to an order of punishment. It is for non-payment of amount of maintenance, the defaulter can be kept in prison, but such proceedings are neither prosecution nor leads to punishment for an offence, but, to seek execution of an order passed by the Court for providing sustenance to the family members.”

27. The Hon’ble Supreme Court in the case of **Rina Kumari @ Rina Devi @ Reena vs. Dinesh Kumar Mahto and another**, held that maintenance proceedings are civil in nature, although a breach may result in penal consequences. It was also held in paragraph nos.10, 11, 12, 13 and 30 of this judgment that, as maintenance is granted to prevent vagrancy by a summary proceedings of a civil nature, the provisions for maintenance are included within the Criminal Procedure Code. Paragraphs 10, 11, 12, 13 and 30 of the judgment are delineated below :-

*“10. On the same lines, in **Chaturbhuj vs. Sita Bai, (2008) 2 SCC 316**, this Court observed that the object of maintenance proceedings is not to punish a person for his neglect but to prevent the vagrancy and destitution of a deserted wife, by providing her food, clothing and shelter by a speedy remedy. It was held that Section 125 Cr.P.C. is a measure of social justice, especially enacted to protect women and children, falling within the constitutional sweep of Article 15(3) reinforced by Article 39 of the Constitution. Thus, the objective of the provision, then and now, is to alleviate the financial plight of destitute wives, children and now, parents, who are left to fend for themselves.*

*11. In **Bhuwan Mohan Singh vs. Meena and others, (2015) 6 SCC 353**, this Court observed that Section 125 Cr.P.C. was conceived to ameliorate the agony, anguish and financial suffering of a woman, who left her matrimonial home for the reasons provided in the provision, so that some suitable arrangement can be made by the Court and she can sustain herself and also her children, if they are with her. It was held that*

the concept of sustenance did not necessarily mean 'to lead the life of an animal, feel like an unperson to be thrown away from grace and roam for her basic maintenance somewhere else' and the wife would be entitled in law to lead a life in a similar manner as she would have lived in the house of her husband. This Court further cautioned that, in a proceeding of this nature, the husband cannot be permitted to take subterfuge to deprive the wife of the benefits of living with dignity and there could be no escape route, unless there is an order from the Court that the wife is not entitled to get maintenance from the husband on legally permissible grounds.

12. Earlier, in **Badshah vs. Urmila Badshah Godse and another, (2014) 1 SCC 188**, this Court held that the provision of maintenance aims at empowering the destitute and achieving social justice or equality and dignity of the individual and while dealing with cases thereunder, the drift in the approach from adversarial litigation to social context adjudication is the need of the hour. More recently, in **Rajnish vs. Neha and another, (2021) 2 SCC 324**, this Court emphasized that maintenance laws were enacted as a measure of social justice to provide recourse to dependent wives and children for their financial support, so as to prevent them from falling into destitution and vagrancy.

13. In **Shamima Farooqui vs. Shahid Khan (2015) 5 SCC 705**, this Court noted that the inherent and fundamental principle behind Section 125 Cr.P.C. is the amelioration of the financial state of affairs as well as the mental agony and anguish that a woman suffers when she is compelled to leave her matrimonial home. It was further observed that, as per law, she is entitled to lead life in a similar manner as she would have lived in the house of her husband and as long as she is held entitled to grant of maintenance within the parameters of Section 125 Cr.P.C., it has to be adequate so that she can live with dignity. Lastly, it was noted that, a plea is sometimes advanced by the husband that he does not have the means to pay as he does not have a job or his business is not doing well, but these are only bald excuses and, in fact, they have no acceptability in law as a husband, who is healthy, able-bodied and in a position to support himself is under a legal obligation to support his wife and her right to receive maintenance under Section 125 Cr.P.C., unless disqualified, is an absolute right.

30. Another contention that was urged before us is that the findings in the judgment for restitution of conjugal rights by the Family Court, being a Civil Court, would be binding on the Court seized of the petition under Section 125 Cr.P.C., as they are to be treated as criminal proceedings. This specious argument needs mention only to be rejected outright. No doubt, in **Shanti Kumar Panda vs. Shakuntala Devi, (2004) 1 SCC 438**, this

*Court held that a decision by a Criminal Court would not bind the Civil Court while a decision by the Civil Court would bind the Criminal Court. However, maintenance proceedings are essentially civil in nature and the reason for inclusion of the provisions dealing therewith in the Code of Criminal Procedure was clarified by the Law Commission of India in September, 1969. Significantly, as long back as in the year 1963, in **Mst. Jagir Kaur and another vs. Jaswant Singh, AIR 1963 SC 1521**, a 3-Judge Bench of this Court held that proceedings under Section 488 of the Code of Criminal Procedure, 1898, the precursor to Section 125 Cr.P.C., are in the nature of civil proceedings; the remedy, being a summary one; and the person seeking that remedy, ordinarily being a helpless person. Therefore, even if non-compliance with an order for payment of maintenance entails penal consequences, as may other decrees of a Civil Court, such proceedings would not qualify as or become criminal proceedings. Nomenclature of maintenance proceedings initiated under the Code of Criminal Procedure, as those provisions find place therein, cannot be held to be conclusive as to the nature of such proceedings.”*

28. In view of the aforesaid reasons and discussions, the impugned order dated 23.01.2023 passed by the learned Civil Judge (Junior Division)/FTC (Crime against Women, Moradabad) in Execution Case No.697 of 2022 (Smt. Hasina Khatoon vs. Ahmad @ Ramzani) under Section 31 of Domestic Violence Act 2005, arising out of Case No.10095 of 2017 under Section 12 of the same Act, is hereby **quashed**. Merely committing a defaulter to civil prison does not absolve him of the liability to pay monthly maintenance to the aggrieved wife. Consequently, the concerned trial court is directed to **pass a fresh order for recovery of** amount of arrears, including simple bank interest at the rate of 6%, on amount of arrears. In the event, that the amount is not deposited by the husband (O.P. no.2), as he has already served a term of civil detention for the non-payment of maintenance, the trial court of the Judicial Magistrate shall **attach the property** of O.P. no.2 (husband). The proceeds shall be kept in the account of the Principal Judge, Family Court, Moradabad, or the District Judge, Moradabad, or any other concerned court of the Civil Judge/Magistrate of District Moradabad, to be applied toward the payment of the arrears with simple bank interest at 6% on delayed

payment. O.P. No.2 shall continue to pay the current monthly maintenance to the applicant wife and her disabled son on regular basis and, thereafter, proceeds in accordance with law.

29. The said exercise of payment shall be completed within 60 days, from the date of passing of this order, as the applicant(wife) and her child (with a disability) have been struggling since 1995.

30. In the event, the concerned Presiding Officer fails to exercise jurisdiction or pass the necessary order(s) in a timely manner, thereby unnecessarily delaying the matter to the detriment of the applicant's interest, appropriate order(s) shall be passed, which may attract disciplinary action, as per the applicable rules on the subject.

31. With the aforesaid directions, the instant application stands **allowed.**

(Praveen Kumar Giri,J.)

March 24, 2026

Manish Himwan