

**THE HIGH COURT OF SIKKIM: GANGTOK**  
(Criminal Jurisdiction)

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**SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE**  
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**CrI. M. C. No. 11 of 2021**

Anil Jain,  
S/o Babulal Jain,  
R/o Sr. No. 121, Khandwe Nagar,  
Lohegaon, Pune,  
Maharashtra – 411 047.

**..... Petitioner**

**Versus**

Rekha Jain,  
W/o Anil Jain,  
R/o D. P. H. Road,  
Near Janta Bhawan,  
Gangtok, East Sikkim – 737 101.

**.....Respondent**

**An application under Section 482 of the Code of Criminal  
Procedure, 1973.**

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**Appearance:**

Ms. Gita Bista, Ms. Pratiksha Gurung and Ms. Anusha  
Basent, Advocates for the Petitioner.

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**21<sup>st</sup> of December, 2021**

**J U D G M E N T ( O R A L )**

**Bhaskar Raj Pradhan, J.**

**1.** This is an application under Section 482 of the Code of Criminal Procedure, 1973 (*in short* Cr.P.C) for quashing of private complaint case no. 06 of 2021 pending before the Court

of learned Chief Judicial Magistrate, East Sikkim (*for short* learned CJM) and all order passed by the learned CJM in it.

**2.** Heard Ms. Gita Bista, learned counsel for the petitioner.

**3.** An application under section 31 of the Protection of Women from Domestic Violence Act, 2005 (*for short* DV Act) was filed by the respondent on 08.04.2021. It complained that despite the interim order dated 24.09.2019 the petitioner had failed to make payment of the interim monetary relief and had made payments only on three occasions. The application also complained about the petitioner having not wilfully complied with the order dated 24.09.2019 and handing over the birth certificate of their minor daughter to the respondent. It was stated that a total amount of Rs.4,25,000/- was payable but the petitioner had paid Rs.60,000/- only. It was submitted that the failure to make the payment was wilful and tantamount to violation of the protection order passed by the learned CJM.

**4.** The learned CJM passed an order dated 08.04.2021 on the said application. The learned CJM noted that no compliance report had been filed to evidence payment of the interim relief granted by the order dated 24.09.2019. Relying upon the judgment of the Madhya Pradesh High Court in **Surya Prakash vs. Smt. Rachna**<sup>1</sup>, the learned CJM was of the view, *prima facie*, that non-payment of maintenance as complained by the respondent was a breach of protection order and section 31 of

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<sup>1</sup> 2018 CRI. L. J. 2545

the DV Act could be invoked. Thus, the learned CJM listed the matter on 13.04.2021 for initiating proceedings under section 31 of the DV Act.

**5.** On 13.04.2021 the learned CJM heard the parties, noted that despite several reminders the petitioner had failed to comply with the order passed more than a year ago. The affirmation of the respondent on affidavit was sufficient to make out an offence under section 31(1) of the DV Act. The learned CJM thereafter directed respondent to take necessary steps for institution of a fresh case for trial of the petitioner for the offence under section 31(1) of the DV Act.

**6.** On 22.04.2021, the learned CJM registered private complaint case no. 06 of 2021, examined the complaint and found sufficient materials to proceed further and took cognizance of the offence. Thereafter, non-bailable warrant of arrest was issued. The subsequent order records the failure to execute the non-bailable warrant and re-issuance of non-bailable warrant against the petitioner.

**7.** The learned counsel for the petitioner submits that the orders of the learned CJM directing the respondent to file a private complaint and thereafter issuing non-bailable warrant against the petitioner is wrong in view of the judgment of Supreme Court in **Rajnish vs. Neha & Anr.**<sup>2</sup> as well as the judgment of the High of Judicature at Allahabad in **Manoj**

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<sup>2</sup> (2021) 2 SCC 324

**Anand vs. State of U.P & Anr.**<sup>3</sup> and the Madras High Court in **S. Jeeva Ashok vs. Kalarani**<sup>4</sup>.

**8.** The Supreme Court in **Rajnesh** (supra) was examining the case in which an application for interim maintenance was filed under section 125 of the Cr. P.C. The Supreme Court in the facts of the said case decided to lay down certain guidelines. Attention was drawn by the learned counsel to the final directions issued i.e., direction (e) regarding enforcement/execution of order of maintenance. The direction of the Supreme Court was for enforcement/execution of orders of maintenance. It was directed that an order or decree of maintenance may be enforced under section 28 (A) of the Hindu Marriage Act, 1956; section 20(6) of the DV Act; and section 128 of Cr.P.C as may be applicable. The order of maintenance may be enforced as a money decree, including civil detention, attachment of property, etc. as per the provisions of the Code of Civil Procedure (*for short* CPC), more particularly sections 51, 55, 58, 60 read with Order 21 CPC.

**9.** The High Court of Judicature at Allahabad in **Manoj Anand** (supra) examined the criminal revision against the order passed by the learned Magistrate under section 31 of the DV Act. By the said order dated 22.01.2011, the learned Magistrate had proceeded to punish the revisionist under section 31 of the DV Act for failure to pay the interim maintenance ordered on

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<sup>3</sup> Criminal Revision No. 635 of 2011

<sup>4</sup> Criminal Revision Case (MD) No. 291 of 2014

20.03.2010, which order had been upheld. The High Court of Judicature at Allahabad on a perusal of section 18 held that the order passed for the maintenance or interim maintenance is not included or covered by section 18 of the DV Act; that there was no substance in the contention of revisionist that power under section 31 was not available to the Magistrate to implement the order of interim maintenance passed under section 23 of the DV Act and proceed to punish him for the breach thereof. Even clause (g) of section 18 which includes, any other act as specified in protection order would not include the order of interim maintenance.

**10.** The Madras High Court in **S. Jeeva Ashok** (supra) was also of the view, on examination and the decision rendered by the Rajasthan High Court in **Kanchan vs. Vikramjeet Setiya**<sup>5</sup> and the Kerala High Court in **Kanaka Raj vs. State of Kerala & Anr.**<sup>6</sup>, that the order passed under section 23 of the DV Act cannot be construed as the protection order and therefore it is not enforceable under section 31 of the DV Act.

**11.** The High Court of Madhya Pradesh in **Surya Prakash** (supra) also examined the judgment passed in **Kanchan** (supra) and **Manoj** (supra). It noted that in **Kanchan** (supra) it was held that maintenance is provided under section 20 of the DV Act dealing with monetary relief, therefore, the said order can be executed in the manner provided under section 125 of Cr.P.C.

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<sup>5</sup> Crl. L. J. 85 (Rajasthan High Court)

<sup>6</sup> Crl. L. J. (NOC) 447 (Ker.)

The High Court of Madhya Pradesh also examined the phrase “domestic violence”, “economic abuse” and various other provision including section 31 of the DV Act and concluded that section 18 of the Act empowers the Magistrate to pass the protection order in affirmative in favour of the aggrieved person when he is satisfied that domestic violence has taken place or is likely to take place. The Magistrate is also competent to prohibit the respondent from committing any act of domestic violence or such other acts as mentioned in the said section. The domestic violence has been defined in section 3 of the Act which includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. “Economic abuse” has been explained in clause (iv) of Explanation 1 of section 3 of the Act wherein deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a Court or otherwise or which the aggrieved person requires out of necessity is an expression of domestic violence. The amount of maintenance awarded by the Magistrate is an amount which an aggrieved person requires to meet necessities of life and for survival. Such amount is not limited to household necessities but also includes payment of rental related to the shared household. It includes maintenance as well. Therefore, the order passed by the Magistrate granting maintenance is an affirmative order of protection in relation to domestic violence as defined in

section 3 of the Act. For such violation, the penalty is provided in section 31 of the Act. It was held that non-payment of maintenance is a breach of protection order and therefore, section 31 of the Act can be invoked. It was also held that in view of the definition of domestic violence, proceedings under section 31 of the Act would be maintainable.

**12.** Admittedly, the interim order on maintenance passed by the learned CJM has not been complied with. On a query, the learned counsel for the petitioner submits that till date an approximate amount of Rs. 60,000/- only was paid. It is admitted that if the interim order passed by the learned CJM was to be complied with an amount of more than Rs.4,00,000/- approximately would be payable.

**13.** The ground for quashing the complaint under inherent powers of the Court is well settled. Where the uncontroverted allegations made in the complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused the complaint may be quashed. It is settled that the jurisdiction under section 482 has to be exercised sparingly, carefully and with caution and only when such exercise is justified. It should not be resorted to like remedy of appeal or revision. It can be exercised to prevent abuse of the process of the Court and only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute.

