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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: 13.07.2020***
Pronounced on: 20.07.2020

\+ CRL. M.C. 1554/2020 and Crl. M.A. 8821/2020 (stay)

SIRISHA DINAVAHI BANSAL ..... Petitioner

Through Ms. Malavika Rajkotia and
Mr. Mayank Grover, Advocates

versus

RAJIV BANSAL ..... Respondent

Through Ms. Bobby Anand, Advocate with
Respondent in person

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

1. Present petition has been filed under Section 482 Cr.PC seeking directions to set aside the Order dated 01.06.2020 passed in Complaint Case No. 2248/2020 under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act') by the Learned Metropolitan Magistrate.

2. At the threshold, an objection has been raised by Learned Counsel for the Respondent against the maintainability of the present Petition before this Court and, therefore, the narrative of the facts is only to the extent of deciding the maintainability.

3. The sequential narration, shorn of unnecessary details is that the marriage between the Petitioner and Respondent was solemnized on 09.03.2003 and after marriage the parties continued to stay in the United States of America. Over a period of time, Parties were blessed with three daughters aged 11 years, 7 years and 3 years, respectively, at present. After the birth of third child in 2017, parties shifted to India and the Respondent started working with a renowned Media house on a Senior Post. As the averments in the Petition go, in 2018, Respondent quit his job and started his own business in partnership with an erstwhile colleague. A couple of months later, there was a rift in their relationship, which eventually resulted in the Respondent taking away the three children to live with him under a separate roof.

4. On 04.03.2020, Petitioner filed a complaint under the Act and Notice was issued on 16.03.2020. By way of this complaint, Petitioner sought various Reliefs such as Protection Order under Section 18 of the Act, order restraining the Respondent from dispossessing the Petitioner from the shared household, and monetary reliefs such as medical expenses and rentals including household expenses. Custody orders with respect to the three minor children were also sought under Section 21 of the Act. Along with the complaint, Petitioner also filed an Application under Section 23 of the Act for grant of various interim reliefs, one amongst them being a direction to the Respondent to grant temporary custody of the children to the Petitioner. Reliefs sought were as under:-

"a. Direct the Respondent to bring the three minor children back home and grant temporary custody of the children to the applicant.

b. Direct the respondent not to take the children out of Delhi without her knowledge and permission.

c. Direct the respondent not to threaten, abuse the applicant in any manner whatsoever.

d. Direct the respondent from creating any third party access/interference/trouble/hurdles in the peaceful life of the applicant in the shared household.

e. Direct the respondent to restrain from trying to remove any household articles from the shared household.

f. Direct the respondent to pay monthly maintenance of Rs 5 lacs as interim maintenance in the present application from the date of filing of complaint.

g. Restrain the respondent from transferring the funds from the joint accounts, alienating or creating any charge over their jointly held properties.

h. Pass such order or further orders which this Hon'ble Court may deem fit and proper in the above said facts and circumstances and in the interest of justice."

5. On 16.03.2020, Respondent entered appearance and with the consent of the parties, matter was referred to the Delhi High Court Mediation and Conciliation Centre for 17.03.2020. On account of the Pandemic Covid-19, Mediation could not take place and it was adjourned for 21.03.2020 and thereafter for 03.04.2020.

6. On 20.04.2020, Petitioner filed a Petition under Section 482 Cr.PC, being CRL.M.C. 1466/2020 before this Court seeking directions as under:-

> *"A. Direct the respondent to furnish the address where he is presently residing with the children,*
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> *B. Direct the respondent to facilitate meeting by way of video conferencing with the children everyday till they remain in his care and custody.*
>
> *C. To grant the interim custody of the three minor children namely Baby Riddhi aged 10 yrs, Baby Radhika aged 7 yrs and Baby Ratna aged 3 yrs to the petitioner till the issues are resolved in Mediation And/or*
>
> *D. Pass such other or further orders as this Hon'ble Court may deem fit in the facts and circumstances of the case."*

7. For the sake of completion of the sequence of events, it needs to be mentioned that on 24.04.2020, Court noted that for the sake of emotional quotient and robust psychological health, the mother should be provided unhindered access, if not physically, then through video conferencing in the prevailing circumstances. Order was accordingly passed in the said Petition, whereby an interim arrangement was arrived at, giving the Petitioner the right to interact with the children through skype, etc. This order was subsequently continued keeping in view the fact that the Petitioner was in a self-quarantine, having visited a Police Station on 18.04.2020.

8. On 06.05.2020, Court on being informed that the Application for deciding interim custody, was coming up for hearing on 15.05.2020, before the Learned Metropolitan Magistrate, directed that in case the hearing did not take place on 15.05.2020, on account of the Covid-19 Pandemic, subject to the conditions prevailing, an endeavour shall be made to take up the matter on 18.05.2020, on which date the parties shall make their submissions. The undertaking of the Respondent that the arrangement of the children meeting their mother through skype/any other electronic mode, everyday, was to continue. On 11.06.2020, Counsels informed the Court that the Learned Magistrate had decided the Application of the Petitioner seeking interim custody of the children on 01.06.2020. In view thereof, the Petitioner sought to withdraw the Petition with a limited prayer that the interim arrangement arrived at on 24.04.2020, be continued till further orders are passed on a challenge being made to the order dated 01.06.2020, passed by the Learned Magistrate. Respondent conceded to this prayer, as is recorded in the order. The Court disposed of the petition directing that the interim arrangement of video conferencing shall continue, as prayed for.

9. Learned Magistrate vide order dated 01.06.2020, decided the Application only with respect to prayer (a) regarding temporary custody of the children, as at that stage, Petitioner had pressed only the said relief and this is so reflected in the impugned order. Prayer (a) is as follows:

> *"a. Direct the Respondent to bring the three minor children back home and grant temporary custody of the children to the applicant."*

10. Learned Magistrate directed that the custody of the children would continue to remain with the father/Respondent herein and as an interim measure visitation rights have been granted to the Petitioner as under:-

> "*(a) that on every Sunday, the respondent/non-applicant/father shall take the three minor children to the residence of the complainant/applicant/mother i.e. C-363, Third Floor, Defence Colony, New Delhi and hand them over to the complainant/applicant/mother at 10:30 AM and thereafter pick up the three minor children from the residence of the complainant/applicant/mother i.e. C-363, Third Floor, Defence Colony, New Delhi at 1.30 PM;*
>
> *(b) the respondent/non-applicant/father shall ensure that before the children are taken to meet/visit the complainant/applicant/mother, they are fed breakfast; and*
>
> *(c) the respondent/non-applicant/father shall be responsible for feeding lunch to the three minor children after picking them up from the residence of the complainant/applicant/mother as above."*

11. Ms. Anand Learned Counsel for the Respondent submits that against the Impugned Order, Petitioner has remedy of an Appeal under Section 29 of the Act and therefore the present Petition is not maintainable under Section 482 Cr.PC. She argues that Courts have repeatedly held that when an alternate and efficacious remedy of Appeal under Section 29 of the Act is available, Petition under Section 482 Cr.PC would not lie. It is not open to the aggrieved party to bypass the remedy of Appeal under the Act, which is a complete Code in itself. Learned Counsel has relied on the following judgements in this regard delivered by various High Courts:-

1. ***Jarpula Radha vs. Jarpula Padma, 2020 SCC OnLine TS 328;***

2. ***Sathish Raja vs. Santhini, 2014 SCC OnLine Mad 10068;***

3. ***Manish Tandon vs. Richa Tandon & Others, C 482 No. 919/2017;***

4. ***Sujoy Kumar Sanyal vs. Shakutala Sanyal (Haider) & Anr., 2010 SCC OnLine Cal 2220;***

5. ***Om Prakash Awasthi vs. Nidhi Awasthi, 2012 SCC OnLine HO 6851;***

6. ***Smt. Smita Singh vs. Smt. Bishnu Priya Singh & others, 2013 SCC OnLine ORI 578;***

7. ***Sasi vs. Sreerjith, 2015 SCC OnLine Ker 22261.***

12. Without prejudice to the preliminary objection, Learned Counsel for the Respondent further submits that Petitioner had earlier also approached this Court under Section 482 Cr.PC with identical prayers and attention of the Court was drawn to the prayers made in the said Petition. She submits that once the Court was informed that order on the Application under Section 23 of the Act qua the interim relief of custody of the children has been passed, the petition was disposed of as withdrawn. It is thus not open to the Petitioner to seek the same relief and that too, without availing the remedy of Appeal.

13. Learned Counsel further argues that the Court had, after hearing the parties, arrived at an interim arrangement, whereby the Petitioner was to interact with the children through skype and other electronic modes

and this was only after the Court was satisfied that the children were happy, safe and in a conducive environment in the custody of their father. Any contra submission regarding the well-being of the children in the company of their father is, thus false.

14. Ms. Malavika Rajkotia, on the other hand, vehemently opposes the preliminary objection raised by the Respondent. Learned Counsel submits that the Learned Magistrate has acted beyond the jurisdiction and scope of the very provisions of the Act, while granting custody of the minor daughters to the father and only visitation rights to the mother. As per the mandate of the Act, the Learned Magistrate should have restored the custody to the Petitioner, keeping in mind the fact that the children are girls and the youngest one is only three years old. A mother is best suited to look after the needs of growing daughters, particularly, the sensitivities of their emotional needs and biological requirements. She also submits that youngest daughter is under 5 years of age and it is a mandate under Section 6 of the Hindu Minority and Guardianship Act, 1956 that the child should be in care and custody of the mother. She further submits that the Learned Magistrate has premised the impugned decision on a foundation that the Petitioner is suffering from a psychiatric problem and continues to be on medication for the said illness and thus would be unable to take care of the children. She submits that this presumption is without any basis. The parties have been married for nearly two decades and the Petitioner has given birth to three healthy children, the last one being in 2017. There have been no issues in so many years, in bringing up the children on account of the alleged ill-health of the Petitioner.

15. Ms. Rajkotia further submits that the present Petition is maintainable in this Court as mere availability of alternate remedy cannot be a ground to disentitle the relief under Section 482 Cr.PC, more so, when the Impugned Order is without jurisdiction and the interest and welfare of three minor children is involved. Learned Counsel relies on the judgement of the Supreme Court in ***Vijay and Ors. vs. State of Maharashtra and Ors., AIR 2017 SC 397***, where the Supreme Court set aside an Order of the High Court, declining to interfere in an order passed by the Learned Magistrate, on the ground that there was an alternative remedy available by way of Revision under Section 156(3) Cr.PC. Supreme Court remanded the matter back to the High Court for reconsideration relying on the judgement of the Supreme Court in ***Prabhu Chawla vs. State of Rajasthan and Ors., AIR 2016 SC 4245***, where the Court had held that Section 482 Cr.PC begins with Non-Obstante Clause that 'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice' and, therefore, mere availability of an alternative remedy cannot disentitle the Petitioner from claiming relief.

16. Reliance is also placed on the judgement in the case of ***Dhariwal Tobaco Products Ltd. and Ors. vs. State of Maharashtra and Ors., AIR 2009 SC 1032***, where the Supreme Court held that it is difficult to curtail discretionary remedy only because a Revisional remedy is available. Court can exercise discretionary power under Section 482 Cr.PC in

deserving cases and that inherent powers of the High Court are not conferred by the Statute, but have been merely saved thereunder.

17. Learned counsel also relies on judgment in the case of ***Pepsi Foods Ltd. and Ors. vs. Special Judicial Magistrate and Ors., AIR 1998 SC 128***, where the question which arose for consideration was whether the High Courts under Articles 226/227 of the Constitution of India have the power to interfere in a petition seeking quashing of complaint filed under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954. On the complaint being filed, the learned Metropolitan Magistrate had passed an order summoning the Appellant and on receipt of the summons, the Appellant approached the High Court. The High Court refused to entertain the Petition on the ground the Appellant should first approach the appropriate Court seeking discharge under Section 245 Cr.PC and that sufficient remedy was available under the Code. Ms. Rajkotia draws the attention of the Court to paragraphs 20, 21 and more particularly, paras 25 and 26 of the said judgement, where the Supreme Court held that provisions do exist in the Code for Revision and Appeal but, some time for immediate relief, Section 482 of the Code or Articles 226/227 of the Constitution of India may have to be resorted to, for correcting grave errors committed by the Subordinate Courts.

18. Distinguishing the judgements relied upon by the Respondent, Ms. Rajkotia submits that while all the judgements deal with the issue of the remedy of an Appeal under Section 29 of the Act, but those were the cases where the Impugned Orders passed under Section 23 of the Act were with respect to interim maintenance and none of the judgements

deal with the issue of the custody of the children. The present Petition seeks a relief for custody of minor female children, who can be best looked after by their mother and, therefore, the sensitivity and concerns involved in the present case, are different from the issue of maintenance or other aspects with which those cases were concerned.

19. Responding to the contentions of Ms. Rajkotia, Ms. Anand submits that none of the judgements relied upon by the Learned Counsel for the Petitioner deal with the exact controversy in the present case, which is that the remedy of Statutory Appeal under Section 29 of the Act has not been exhausted by the Petitioner. She submits that in the several judgements relied upon by the Respondent, it has been clearly held that a Petition under Section 482 Cr.PC cannot lie before High Court, as the only remedy available is by way of Appeal under Section 29 of the Act. She further counters the argument by submitting that the Petitioner has not given a single reason why she cannot resort to the remedy of an Appeal.

20. I have heard Learned Counsels for the parties and examined their contentions.

21. Legality of the Interim Order passed by the Learned Magistrate continuing the custody of the three minor children with the Respondent, with visitation rights to the Petitioner, is the gravamen of the Petition before this Court.

22. Preliminary objection of the Respondent has given rise to a neat legal nodus before this Court being the maintainability of a Petition under Section 482 Cr.PC, when an alternate remedy of a Statutory Appeal under

Section 29 of the Act is available to the Petitioner. Reading the provisions of the Act shows that under the Scheme of the Act, Section 29 provides for an Appeal to the Court of Sessions within 30 days from the date on which the Order made by the Learned Metropolitan Magistrate is served on the aggrieved person or the Respondent, as the case may be, whichever is later.

23. In ***Manish Tandon (supra)***, challenge before the High Court was to an ex-parte order granting interim maintenance to the wife under Section 23(2) of the Act. Bypassing the remedy of Section 29 of the Act, a Petition was filed under Section 482 Cr.PC. Court held as under:-

> *"I totally and absolutely disagree with the aforesaid contention of Mr. Sharma. The word 'order' used in Section 29 connotes all types of orders passed by the Magistrates under the 2005 Act including orders granting interim maintenance under Sub Section (1) of Section 23 as well as ex-parte interim maintenance granted under Sub-Section (2) of Section 23. Since the word 'order' has not been qualified by any suffix or prefix in Section 29, the clear legislative intent is that each and every type of order, irrespective of its description and nature, passed by a Magistrate has been made appealable to the court of Session Judge under Section 29. The remedy of filing an appeal under Section 29, therefore, being an attentive and equally efficacious remedy, this petition under Section 482 Cr. P.C. was not at all maintainable. It was not open to the Petitioner to have bypassed the appeal forum by straightway approaching this Court under Section 482 Cr.P.C.*
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> *I have, therefore, no hesitation in holding that on the ground of availability of an alternative and efficacious remedy of appeal under Section 29 (supra), this petition is not maintainable in this Court under Section 482 Cr.P.C."*

24. The Calcutta High Court in ***Sujoy Kumar (supra)*** held that the Act of 2005 is a special beneficial Legislation containing specific provision of an Appeal. Where such Special Law provides for an Appeal with period of limitation under Section 29 of the Act, no external aid is permissible to interpret such an express provision, in terms of general inherent powers under Section 482 Cr.PC and the Petition would not be maintainable.

25. The Bombay High Court in ***Siddharth Sabharwal vs. State of Maharashtra***, ***2019 SCC Online Bom 3106***, reiterating the said principle held that the Petitioner ought to have availed the appropriate remedy of an Appeal under Section 29 of the Act and, on this ground alone, declined to entertain the Writ Petition.

26. In the catena of judgements referred to above, it has been clearly held that in view of the provision of Statutory Appeal under Section 29 of the Act, Petition under Section 482 Cr.PC would not be maintainable.

27. In ***Avadh Narain Lal vs. State of Uttar Pradesh, 1986 CriLJ 1233***, it was held that inherent power under Section 482 Cr.PC, being an extra ordinary and residuary power, is not available with regard to matters which have been specifically provided for under other provisions of the Court. As a general rule, the High Court would not exercise power where any party could have, but did not, avail of the remedy.

28. In ***Gian Singh vs. State of Punjab and Another, (2012) 10 SCC 303***, Supreme Court held as under:

> *"29. In Arun Shankar Shukla v. State of U.P. [(1999) 6 SCC 146 : 1999 SCC (Cri) 1076 : AIR 1999 SC 2554] a two-Judge Bench of this Court held as under: (SCC pp. 147-48, para 2)*

"2. ... It is true that under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions 'abuse of the process of law' or 'to secure the ends of justice' do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice could only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the object mentioned in Section 482 of the Code in cases where there is no express provision empowering the High Court to achieve the said object. It is well-nigh settled that inherent power is not to be invoked in respect of any matter covered by specific provisions of the Code or if its exercise would infringe any specific provision of the Code. In the present case, the High Court overlooked the procedural law which empowered the convicted accused to prefer statutory appeal against conviction of the offence. The High Court has intervened at an uncalled for stage and soft-pedalled the course of justice at a very crucial stage of the trial."

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41. In Shiji v. Radhika [(2011) 10 SCC 705 : (2012) 1 SCC (Cri) 101] this Court considered the exercise of inherent power by the High Court under Section 482 in a matter where the offence was not compoundable as the accused was already involved in commission of the offences punishable under Sections 354 and 394 IPC. The High Court rejected the prayer by holding that the offences with which the appellants were charged are not "personal in nature" to justify quashing the criminal proceedings on the basis of a compromise arrived at between the complainant and the

appellants. This Court considered the earlier decisions of this Court, the provisions contained in Sections 320 and 394 of the Code and in paras 17, 18 and 19 of the Report held as under: (SCC pp. 712-13)

> *"17. It is manifest that simply because an offence is not compoundable under Section 320 CrPC is by itself no reason for the High Court to refuse exercise of its power under Section 482 CrPC. That power can in our opinion be exercised in cases where there is no chance of recording a conviction against the accused and the entire exercise of a trial is destined to be an exercise in futility. There is a subtle distinction between compounding of offences by the parties before the trial court or in appeal on the one hand and the exercise of power by the High Court to quash the prosecution under Section 482 CrPC on the other. While a court trying an accused or hearing an appeal against conviction, may not be competent to permit compounding of an offence based on a settlement arrived at between the parties in cases where the offences are not compoundable under Section 320, the High Court may quash the prosecution even in cases where the offences with which the accused stand charged are non-compoundable. The inherent powers of the High Court under Section 482 CrPC are not for that purpose controlled by Section 320 CrPC.*
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> *18. Having said so, we must hasten to add that the plenitude of the power under Section 482 CrPC by itself, makes it obligatory for the High Court to exercise the same with utmost care and caution. The width and the nature of the power itself demands that its exercise is sparing and only in cases where the High Court is, for reasons to be recorded, of the clear view that continuance of the prosecution would be nothing but an abuse of the process of law. It is*

neither necessary nor proper for us to enumerate the situations in which the exercise of power under Section 482 may be justified. All that we need to say is that the exercise of power must be for securing the ends of justice and only in cases where refusal to exercise that power may result in the abuse of the process of law. The High Court may be justified in declining interference if it is called upon to appreciate evidence for it cannot assume the role of an appellate court while dealing with a petition under Section 482 of the Criminal Procedure Code. Subject to the above, the High Court will have to consider the facts and circumstances of each case to determine whether it is a fit case in which the inherent powers may be invoked.

19. Coming to the case at hand, we are of the view that the incident in question had its genesis in a dispute relating to the access to the two plots which are adjacent to each other. It was not a case of broad daylight robbery for gain. It was a case which has its origin in the civil dispute between the parties, which dispute has, it appears, been resolved by them. That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some 'misunderstanding and misconception' will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eyewitnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. The continuance of the proceedings is thus nothing but an empty formality. Section 482 CrPC could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the courts below."

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53. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, "nothing in this Code" which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e. to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on the High Court; it merely safeguards existing inherent powers possessed by the High Court necessary to prevent abuse of the process of any court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

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55. In the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process. This is founded on the legal maxim quando lex aliquid alicui concedit, conceditur et id sine qua res ipsa esse non potest. The full import of which is whenever anything is authorised, and especially if, as a matter of duty, required to be done by law, it is found impossible to do that thing unless something else not authorised in express terms be also done, may also be done, then that something else will be supplied by necessary

intendment. Ex debito justitiae is inbuilt in such exercise; the whole idea is to do real, complete and substantial justice for which it exists. The power possessed by the High Court under Section 482 of the Code is of wide amplitude but requires exercise with great caution and circumspection."

29. In ***State of Punjab vs. Kasturi Lal and Others, (2004) 12 SCC 195***, Supreme Court held as under:-

"10. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist.

Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complainant, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

30. A profound reading of the judgements shows that Supreme Court has time and again spelt out clear restraints on use of extraordinary powers and observed that High Courts should not go beyond those wholesome inhibitions, unless the extraordinary circumstances cry for immediate and timely judicial interdiction or mandate. As the quote goes in one of the judgements "Mentor of law is justice and a potent drug should be judicially administered".

31. From the conspectus of judgements, it is clear that inherent powers of the High Court are not conferred by the Criminal Procedure Code and are only saved by it and nothing can affect its amplitude, yet Courts have imposed self limitations for exercise of the power when there are specific provisions of alternative remedies, and invasion in areas, so set apart, is in exceptional and only in compelling circumstances.

32. This Court is not persuaded in the facts and circumstances of the present case, to entertain the petition in its extraordinary power under Section 482 Cr.PC, given the fact that there is a clear remedy of Appeal under Section 29 of the Act. Different High Courts have subscribed to a common view on this aspect, as is evident from the judgements referred to above. Petitioner has not been able to substantiate any reason put forth compelling this Court to take a divergent view. The judgements relied upon by the Petitioner lay down a general proposition on the unbridled, extraordinary and inherent powers of the High Courts and this proposition is beyond any pale of controversy. But, as learned counsel for Respondent rightly contended, none of them deal with the issue of remedy of an Appeal under Section 29 of the Act, while Respondent has cited judgements on the precise issue. No doubt the facts and circumstances of a given case could be egregious and compelling, demanding immediate judicial intervention by this Court and invasion into domains exercisable by subordinate Courts under Special Statutes, but the present case does not call for exercise of the said mandate. No observation is made by this Court on the merits with respect to which party is entitled to custody lest it prejudices either side. Suffice would it be to note that facts and circumstances do not call for any urgent intervention to permit the Petitioner to bypass the remedy of Statutory Appeal. Petitioner has been unable to make out a case how and why the remedy of Appeal is not efficacious.

33. It was vehemently argued by Ms. Rajkotia that since the matter relates to custody of minor girls, remedy of appeal is not efficacious. I am

afraid that this Court cannot accept this argument for more than one reason. Legislature in its wisdom has provided for Appeal under Section 29 of the Act against all 'orders' and has not made any exception to orders relating to custody. Secondly, it is not shown why the Petitioner cannot resort to the remedy of an Appeal and why the Appellate Court is incapable of or incompetent to exercise its jurisdiction to deal with an impugned order of temporary custody, both in law and facts. As held in ***Manish Tandon (supra)***, the word 'Order' used in Section 29 of the Act connotes all types of Orders passed by the Learned Metropolitan Magistrate irrespective of whether they relate to maintenance, custody, etc.

34. For all the aforesaid reasons, the present petition cannot be entertained. It is open to the Petitioner to avail the remedy of Appeal available to her in law, if so advised. Nothing stated in this judgement is an expression on the merits of the case regarding the custody of the three children and it is open to the competent Court to decide the issue uninfluenced by any observations made herein.

35. The petition is dismissed along with pending application with no order as to costs.

JYOTI SINGH, J

JULY 20th , 2020
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