

(2026) 02 GAU CK 1616
In the Gauhati High Court
Case No : Criminal Petition No.701 Of 2024

Nandan Mazumder

APPELLANT

Vs

Shilpi Mazumder

RESPONDENT

Date of Decision : 16-02-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Domestic Violence Act, 2005 — Section 2(b), 20, 29, 29(2)
Limitation Act, 1963 — Section 5, 14

Citation : (2026) 02 GAU CK 1616

Hon'ble Judges : Pranjal Das, J

Bench : Single Bench

Advocate : F.Z. Mazumdar

Final Decision : Disposed Of

Judgement

Pranjal Das, J

1. Heard Mr. F. Z. Mazumdar, learned counsel appearing for the petitioner. None appears for the respondent.

2. The petitioner, namely, Nandan Mazumdar has invoked the provisions of Section 482 Cr.P.C (as it existed then), seeking quashing of order dated 22.04.2024 passed by the Court of the learned JMFC Kamrup (M) in D.V. Case No. 110/2023, whereby, the learned Magistrate has directed the petitioner to pay a monthly interim maintenance of Rs.3,000/- to the aggrieved person who is stated to be his wife and Rs. 4,000/- per month to his daughter Sudeshna Mazumdar totaling Rs. 7,000/-.

3. Thought notice was issued upon the respondent and learned counsel also entered appearance on behalf of the respondent but subsequently stopped prosecuting this lis. None appears today also at the time of hearing.

4. The primary contention of the petitioner is that though he is agreeable to pay maintenance to his daughter, but it is contended that he wishes to pay directly to

his daughter and that he does not want to pay the maintenance for his daughter to his wife.

5. It is further contended by the petitioner side that as his daughter is a major - as reflected in the impugned order dated 22.04.2024, noting her date of birth as 24.04.2003 - no such maintenance can be paid under the provisions of the Protection of women from Domestic Violence Act, 2005 {herein after the DV Act}.

6. Before proceeding further, an issue of maintainability has also to be looked at. Section 29 of the D.V. Act, provides for filing appeals against the judgments and orders made by the Magistrate and the same has to be filed within a period of 30 days from the date on which the order is served on the aggrieved person or the respondent.

6. In this context, the learned counsel for the petitioner submits that though from the date of the order, his appeal might be time barred, but from the date of on which, he received notice of the order, there is no delay.

7. Monetary reliefs, including maintenance, can be provided under Section 20 of the D.V. Act, which may be reproduced here in below:-

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

(a) the loss of earnings;

(b) the medical expenses;

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

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

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

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

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

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

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent."

8. Thus, I find from the statutory provisions that such monetary reliefs can be given to the aggrieved person and her child.

9. In this context, "child" is defined in Section 2(b) of the DV Act, as a person aged below 18 years and includes any adopted step or foster child. As regards the question of limitation, Section 29 of the D.V. Act providing for filing appeal within 30(thirty) days is silent on the question of delay condonation. Therefore, it remains to be seen whether Section 29 (2) of the Limitation Act, would apply in such a situation. The said provision of the Limitation Act, 1963 may be reproduced here in below:-

"29. Savings.—(1) Nothing in this Act shall affect section 25 of the Indian Contract Act, 1872 (9 of 1872).

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.

(4) Sections 25 and 26 and the definition of "easement" in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend."

10. Thus, when a different period of limitation is prescribed by special or local law, the said limitation period will prevail and for this purpose, the provisions of Section 4 to 24 of the Limitation Act will be substituted, unless the applicability of those provisions of the Limitation Act are expressly excluded by the local or special law. Now, with regard to the DV Act - though Section 29 of the DV Act prescribing a period of 30 days for preferring an appeal against order passed by the Magistrate - is silent on the question of limitation, it also does not expressly exclude the provisions of the Limitation Act.

11. In this regard I refer to a judgment of the Karnataka High Court, rendered in the case of Sri K.M. Revanasiddeshwar Vs. Smt. K.M. Shylaja reported in (2012) SCC OnLine Kar 1733. The relevant paragraphs of the said judgment are reproduced here in below:-

" 12. it is clear from sub-Section (2) of Section 29 of the above that the provisions contained in Sections 4 to 24 of the Limitation Act shall apply in so far as to the extent to which they are not expressly excluded by such special or local law. Therefore, in the absence of any specific provision in the Domestic Violence Act, 2005, the application of Sub-section (2) of Section 29 therefore cannot be prevented. In other words, the provisions to Sections 4 to 24 will also apply, as the said provisions have not been expressly excluded by the Domestic Violence Act 2005.

13. However, a reading of sub-Section (3), gives an impression that nothing in the Act shall apply save as otherwise provided in respect of marriage and divorce. Submission of Learned Counsel for the respondent is that, as the Protection of Women from Domestic Violence Act, 2005 has been enacted to protect the women being the victims of domestic violence, it is therefore contended that the reference to the statement of objects and reasons that the provisions contained in sub-Section (3) of Section 29 will be applicable even to the Domestic Violence Act and it is not restricted only to the law relating to marriage and divorce.

14. Learned Counsel for the respondent also contended that the provisions contained in sub-Section (3) of Section 29 will have to be construed in the literal sense and the Courts have no power to read what is not there in the law. In other words, the Legislation alone is constrained to make the law and the task of the judiciary is only to interpret the law as laid down by the Legislation. In this connection, Learned Counsel referred to several decisions.

15. The aforesaid argument of the respondent's Counsel that sub-Section (3) of Section 29 of the Limitation Act bars the application of Section 5 of the Limitation Act and the proceedings before the lower Appellate Court in respect of the order passed under the Domestic Violence Act cannot be accepted for the following reasons;

Sub-Section (2) of Section 29 of the Limitation Act makes it clear that the provisions contained in Sections 4 to 24 shall apply even in respect of special law or local law unless the said provisions are expressly excluded by the special or local law. The provisions contained In the Protection of Women from Domestic Violence Act, 2005 do not expressly exclude the application of Sections 4 to 24 of the Limitation Act. This is clear from a reading of Section 36 of the Domestic Violence Act, 2005, which Section reads as under: -

36. Act not in derogation of any other law. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

Limitation Act is often referred to as an adjective or procedural law.

16. Now coming to sub-Section (3) of Section 29 of the Limitation Act plain reading of the provisions contained therein, makes it clear that it is only in respect of the marriage and divorce that the said sub-Section provides that the provisions of the Limitation Act shall not apply to any suit or other proceedings under any such law. What is contemplated therefore is in respect of the law relating to marriage and law relating to divorce and there is no scope for reading into sub-Section (3) and the provisions relating to Protection of Women from Domestic Violence Act, 2005. In this connection, it will be useful to refer to the decision touching upon sub-Section (3) of Section 29 of the Limitation Act. While commenting sub-Section (3) of Section 29 of the Limitation Act, Learned Author BASU In his commentary on Law on Limitation Act, 1963 (7th Edition), has observed thus:-

5. Sub-Section (3).- Sub-Section (3) of Sec. 29, Limitation Act, 1908, makes the Limitation Act inapplicable to suits under the Divorce Act, 1869. There are other Acts, like the Parsi Marriage and Divorce Act and the Special Marriage Act, dealing with marriage and divorce. The reasons for excluding proceedings under the Divorce Act, 1969, are equally applicable to proceeding, under those other Acts. Sub-Clause (3) of the present Section amplifies Section 29(3) of the repealed Act, so as to exclude the application of this law to suits under any law, dealing with marriage or divorce.

18. Therefore, it is clear that sub-Section (3) of Section 29 only bars the application of the provisions of the said Act in respect of any law relating to marriage and divorce. Since the matter relating to Protection of Women from Domestic Violence Act, has not been included in sub-Section (3) of the said Act, the question of provisions of the Limitation Act not being applicable to the proceedings before the lower Appellate Court and the question of the application under Section 5 of the Limitation Act also not being maintainable in respect of the appeal preferred under the Domestic Violence Act therefore cannot arise.

19. The lower Appellate Court committed serious error in rejecting the application filed under Section 5 of the Limitation Act for condonation of delay. It is a different matter, whether the petitioner has made out a case for condonation of delay or not, but i.e., not a ground to hold that the application filed under Section 5 of the Limitation Act itself is not maintainable. Since, a reading of the provisions contained in the Domestic Violence Act does not bar the application of the provisions of the Limitation Act in respect of the appeal, the view taken by the Court below cannot be sustained in law."

12. No decision of the Hon'ble Supreme Court has come to notice laying down any proposition that the provisions of Section 5 of the Limitation Act, empowering delay condonation would not be applicable to Section 29 of the D.V. Act.

13. Section 29 of the D.V. Act, prescribes a specific remedy against orders

passed by the Magistrate by way of an appeal, which has to be preferred within 30 days - with the statutory provision being silent on the question of delay condonation. Therefore, in terms of Section 29(2) of the Limitation Act, the provisions of the Limitation Act, including those pertaining to delay condonation—would be applicable to Section 29 of the DV Act.

14. On the issue of maintainability, I am of the considered opinion that when a specific remedy is provided by the DV Act itself, against any order of the Magistrate, the same cannot be bypassed by invoking the inherent powers of this Court under Section 528 BNSS {earlier Section 482 Cr.P.C}.

15. In this situation, the petitioner should be left with the option of invoking the jurisdiction of the Appellate Court to ventilate his grievance with regard to the impugned order dated 22.04.2024 passed by the learned JMFC in D.V. Case No. 110/2023.

16. If his appeal against the impugned order of the Magistrate is found to be time barred, the petitioner is at liberty to prefer a delay condonation application under Section 5 of the Limitation Act in terms of the principles discussed and laid down above. He can also take recourse to Section 14 of the Limitation Act, pertaining to time spent in wrong forum.

17. Thus, in the backdrop of the above discussion, the instant criminal petition would not be maintainable and is dismissed accordingly - giving however, the liberty to the petitioner to invoke the statutory remedy of appeal under Section 29 of the DV Act and also ventilate the aspect of delay condonation.

18. The instant criminal petition stands disposed of, on the aforesaid terms.