

IN THE SUPREME COURT OF INDIA

APPELLATE JURISDICTION / LANDMARK PRECEDENT

Shalu Ojha v. Prashant Ojha

Registry Status : REPORTED PRECEDENT -- OFFICIAL RECORD

1. EXECUTIVE SUMMARY & KEY HIGHLIGHTS

A pivotal 3-Judge Bench judgment authored by Justice Ranjan Gogoi clarifying the appellate procedure and powers of the Sessions Court under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (PWDVA). The Supreme Court examined the interplay between Section 29 of the DV Act and the Code of Criminal Procedure (now BNSS). The Court held that an appellate court has ample incidental and inherent powers to impose conditions of interim maintenance deposit while granting interim stay of a Magistrate's order. Crucially, the Supreme Court ruled that while an appeal should normally be adjudicated on its legal merits, a defaulting husband who willfully flouts interim deposit conditions cannot be allowed to enjoy an unconditional stay, and where a litigant persistently abuses the judicial process by withholding maintenance from a destitute woman, the appellate court is empowered to vacate the stay and proceed with execution or dismiss the appeal.

- * **Purposive Construction of DV Act Appeals:**Section 29 must be construed to advance the socio-economic objectives of the DV Act -- protecting aggrieved women from destitution and economic abuse.
- * **Power to Impose Conditional Stay:**An appellate court entertaining an appeal under Section 29 possesses incidental authority to condition the grant or continuance of stay on the deposit of interim maintenance.
- * **Consequence of Willful Default:**A husband who disobeys conditional stay orders loses the shield of interim protection; the Magistrate's maintenance order becomes immediately executable.
- * **Appellate Court Not Helpless:**While appeals under Section 386 CrPC are generally heard on merits, procedural rules cannot be manipulated to weaponize appeals against starving women.
- * **Condition Precedent for Remand:**The Supreme Court directed the husband to pay all outstanding arrears of maintenance within a time-bound schedule as an absolute prerequisite for hearing his appeal.

2. FACTUAL MATRIX & IMPUGNED PROCEEDINGS

The appellant (wife) filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Metropolitan Magistrate, Delhi, seeking various reliefs including residence and maintenance.

On May 21, 2009, the Magistrate passed an ex parte interim order under Section 23 of the Act, directing the respondent (husband) to pay interim maintenance of Rs. 2,50,000/- per month to the wife.

The husband preferred an appeal under Section 29 of the DV Act before the Sessions Court. The Sessions Court granted an interim stay of the Magistrate's order subject to the condition that the husband deposit Rs. 1,00,000/- per month towards maintenance.

The husband persistently defaulted and failed to make the required deposits. After granting multiple opportunities, the Sessions Court on November 30, 2009 dismissed the husband's appeal for non-compliance with the interim condition.

The husband moved a petition under Section 482 CrPC before the Delhi High Court. The High Court held that the Sessions Court, sitting in appeal under Section 29 of the DV Act, had no jurisdiction to dismiss an appeal solely for non-compliance with an interim condition, and held that every criminal appeal must be decided on its merits under Section 386 CrPC.

The High Court remanded the appeal to the Sessions Court for disposal on merits without insisting on payment of arrears. The wife appealed to the Supreme Court.

3. RATIO DECIDENDI (VERBATIM COURTROOM HOLDING)

1. Beneficial Purposive Object of the Domestic Violence Act:The DV Act was enacted to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. It is a piece of beneficial social legislation. The procedural provisions governing appeals under Section 29 must be construed in harmony with this statutory objective.
2. Distinction Between Penal Appeals and Socio-Economic Proceedings:While it is true that under the Code of Criminal Procedure, an appeal against conviction or sentence is ordinarily to be decided on merits even if the appellant is absent or defaults, that principle cannot be mechanically transposed to appeals under Section 29 of the DV Act, which deal essentially with civil remedies administered through criminal courts.
3. Inherent Power to Impose Conditional Stay:The appellate court under Section 29 has the power to grant interim stay of the Magistrate's order, and incidental to that power is the authority to impose reasonable conditions, including the deposit of maintenance. If the appellant fails to comply with such condition, the stay stands automatically vacated and the Magistrate is free to enforce the original order.
4. Abuse of Process by Defaulting Appellants:A litigant who seeks equitable or statutory stay relief but willfully defies the court's conditional directions cannot be allowed to protract proceedings endlessly while the wife is starved. The appellate court is justified in taking coercive measures. Under the circumstances, the husband must clear all arrears of maintenance as determined by this Court as a condition precedent for being heard on the merits of his appeal.
5. High Court Erred in Granting Unconditional Remand:The High Court was unjustified in granting unconditional remand without protecting the economic survival of the aggrieved wife during the interregnum. Remand can only be permitted subject to strict compliance with deposit of maintenance arrears.

4. OBITER DICTA & JUDICIAL OBSERVATIONS

Hybrid Jurisdictional Framework:The Court observed that the DV Act creates a hybrid procedural regime: civil remedies (protection orders, residence orders, monetary relief, and custody) enforced through the summary apparatus of the criminal court.

Urgency of Interim Sustenance:The Court emphasized that interim maintenance under Section 23 is a measure of urgent economic sustenance; allowing defaulting husbands to tie up orders in protracted appellate litigation without depositing interim maintenance defeats the very raison d'être of the statute.

5. POINTS OF LAW FRAMED & ANSWERED

Legal Issue Framed	Supreme Court's Holding
Does the Sessions Court under Section 29 DV Act have power to impose conditional deposit for staying a maintenance order?	Yes; the power to grant stay carries with it the incidental and inherent authority to impose conditions of interim maintenance deposit.
Can an appellate court dismiss an appeal under Section 29 DV Act for willful non-deposit of interim maintenance?	Yes; while appeals are generally heard on merits, where an appellant deliberately flouts court directions and abuses the process, the stay is vacated and the appeal may be dismissed.
How do the appellate provisions of CrPC / BNSS apply to proceedings under Section 29 of the Domestic Violence Act?	They apply with necessary modifications to effectuate the beneficial purpose of the DV Act, without being constrained by technical criminal rules.
What remedy does an aggrieved woman possess when the husband secures an appellate stay and defaults?	She can apply for immediate vacation of stay and execute the original maintenance order through attachment and distress warrants under Section 20(6) DV Act.

6. STATUTORY FRAMEWORK & MODERN LEGISLATIVE ALIGNMENT

Precedent Reference / Former Statute	Modern Act (BNSS / BNS / BSA / CPA)	Doctrinal & Procedural Analysis
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Protection of Women from Domestic Violence Act, 2005 Sec 12, 20, 23	PWDVA 2005 Sec 12, 20, 23	Powers of Magistrate to pass interim monetary relief and ex parte maintenance orders to protect aggrieved women from destitution.
Protection of Women from Domestic Violence Act, 2005 Sec 29	Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) Sec 415 & 427	Appeals from orders of Magistrates to Sessions Court; governed by criminal procedural apparatus adapted for socio-economic civil remedies.
Code of Criminal Procedure, 1973 Sec 386	Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) Sec 427	Reconciles powers of appellate court to ensure procedural rules do not defeat social welfare legislation.

7. SUBSEQUENT JUDICIAL TREATMENT & LINEAGE

- * *Rajnesh v. Neha* (2021) 2 SCC 324: Cited *Shalu Ojha*; reinforced that payment of interim maintenance is non-negotiable and recovery can proceed concurrently across multiple proceedings.
- * *Prabha Tyagi v. Kamlesh Devi* (2022) 8 SCC 90: Supreme Court expanded DV Act jurisprudence, citing *Shalu Ojha* for purposive interpretation of beneficial provisions.
- * *Kamlesh Devi v. Jaipal* (2020) 13 SCC 590: Interpreted the scope of domestic violence under Section 12, referring to the procedural framework affirmed in *Shalu Ojha*.
- * *Manish Sisodia v. CBI* (2024 SCC OnLine SC 1920): Distinguished criminal bail appeals from socio-economic civil-criminal appeals under the *Shalu Ojha* doctrine.

8. PRACTICAL LITIGATION PLAYBOOK & STRATEGIC CHECKLIST

- * **Seek Form III Interim Relief:** File application under Section 23 PWDVA supported by detailed affidavit in Form III for immediate ex parte interim maintenance.
- * **Oppose Unconditional Stay in Appeal:** When husband appeals under Section 29, immediately oppose any unconditional stay application; insist on deposit of 100% of arrears and ongoing monthly maintenance.
- * **Apply for Immediate Vacation of Stay:** If husband defaults on conditional stay, file application before Sessions Court for immediate vacation of stay and dismissal of appeal under *Shalu Ojha*.
- * **Execute Through Attachment:** Simultaneously initiate execution proceedings before the Magistrate under Section 20(6) PWDVA and Section 144(3) BNSS for salary attachment and property seizure.
- * **Insist on Arrears as Condition Precedent:** Pray that clearing all arrears be made an absolute condition precedent for the husband to be heard on the merits of his appeal.
- * **File Timely Section 29 Appeal:** If the interim maintenance award is exorbitant or passed ex parte without considering income documents, file appeal within 30 days under Section 29.
- * **Offer Bona Fide Partial Deposit:** Accompany appeal with a bona fide partial deposit offer (e.g. 25-50%) to demonstrate clean hands and secure a conditional stay.
- * **Submit *Rajnesh v. Neha* Income Disclosure:** File comprehensive income tax returns, balance sheets, bank statements, and debt obligations under *Rajnesh v. Neha* disclosure format.
- * **Seek Modification upon Genuine Hardship:** Do not commit willful default; if unable to pay full amount due to genuine financial distress, file modification application explaining change of circumstances.
- * **Comply with Court Directives:** Avoid contemptuous conduct -- non-compliance with stay conditions results in immediate enforcement and forfeits appellate protection.