

MINUTES ON THIRD DISTRICT LEVEL WORK SHOP OF THE JUDICIAL OFFICERS IN THE UNT OF WEST GODAVARI ON THE SUBJECT OF:

“OFFENCES UNDER SPECIAL ENACTMENTS”
HELD ON 21.09.2024 (3rd SATURDAY) AT PRINCIPAL DISTRICT
COMPLEX, WEST GODAVARI, ELURU.

PRESIDE OVER BY

SRI PURUSHOTTAM KUMAR CHINTALAPUDI,
PRINCIPAL DISTRICT JUDGE,
WEST GODAVARI, ELURU.

RESOURCE PERSONS FOR WORKSHOP:

1. HON'BLE SRI JUSTICE B. SYAM SUNDAR GARU,
JUDGE (RETIRED), HON'BLE HIGH COURT OF ANDHRA
PRADESH.
2. SRI G.V. KRISHNAIAH GARU, HON'BLE DISTRICT JUDGE
(RETIRED).
3. Ms.SRIDEVI JAMPANI, ADVOCATE, HON'BLE HIGH COURT OF
ANDHRA PRADESH.

CHAIR PERSON OF THE WORKSHOP:

SRI PURUSHOTTAM KUMAR CHINTALAPUDI,
PRINCIPAL DISTRICT JUDGE,
WEST GODAVARI, ELURU.

Number of Courts	:	50 (Including DLSA)
Number of Officers present	:	35
Number of Courts vacant	:	05
Number of Officers on Training	:	06.
Number of Officers on Leave	:	04.
Absent Officers	:	--

TOPICS DISCUSSED: -**I. Offences under Section 138 of Negotiable Instruments Act:**

- a) Offences under Section 138 Negotiable Instruments Act, Ingredients and Case Law;
- b) Cognizance, Limitation, Jurisdiction – a study;
- c) Interim Compensation and its recovery; and
- d) Compounding of offences & Execution of Lok Adalat Adalat Awards.

II. Protection of Children from Sexual Offences Act, 2012 – An overview:

- a) Nature of offences;
- b) Presumptions; and
- c) Compensation.

III. Domestic Violence Act, 2005:

- a) Parties by whom and against whom reliefs can be sought;
- b) Types of reliefs; and
- c) Execution of Orders.

1. It is submitted that Third District Level Workshop of the Judicial Officers has been convened at the District Court Complex, West Godavari, Eluru, under the able guidance of Hon'ble High Court of Andhra Pradesh and as per the instructions issued by the Hon'ble Sri Justice K.Suresh Reddy Garu, Judge, High Court of Andhra Pradesh and Administrative Judge of West Godavari District. The programme has been structured in four sessions. The Sessions I & II was regarding Offences under Section 138 of N.I Act, the Resource Person was Ms.Sridevi Jampani, Advocate, Hon'ble High Court of Andhra Pradesh, III Session was regarding Protection of Children from Sexual Offences Act, 2012, the Resource Person was Hon'ble Sri Justice B.Syam Sundar Garu, Judge (Retired), High Court of

Andhra Pradesh and IV Session was with regard to Domestic Violence Act, 2005, and the Resource Person was Sri G.V.Krishnaiah Garu, Hon'ble District Judge (Retired). At the conclusion of IV Session, the workshop was ended.

2. It is submitted that before commencement of Workshop, Hon'ble Sri Justice B.Syam Sundar Garu, Judge (Retired), High Court of Andhra Pradesh, Sri G.V.Krishnaiah Garu, Hon'ble District Judge (Retired) and Ms.Sridevi Jampani, Advocate, Hon'ble High Court of Andhra Pradesh, were received at District Guest House, Eluru, by the Principal District Judge and local Judicial Officers. All the Judicial Officers of the Unit of West Godavari are invited to Third District Level Workshop. Group Photo of all the Judicial Officer in the District also taken.

3. It is submitted that the Workshop commenced at 10.30 A.M. The Civil Judge (Senior Division), Eluru, has invited the Chairperson of the Workshop Sri Pushottam Kumar, Chintalapudi, Principal District Judge, West Godavari, Eluru. The Civil Judge (Senior Division), Eluru, also invited the esteemed Resource Persons Hon'ble Sri Justice B.Syam Sundar Garu, Judge (Retired), High Court of Andhra Pradesh, Sri G.V.Krishnaiah Garu, Hon'ble District Judge (Retired) and Ms.Sridevi Jampani, Advocate, Hon'ble High Court of Andhra Pradesh, on to the Dais.

4. It is submitted that the Chairperson of the Workshop Sri Purushottam Kumar Chintalapudi, Principal District Judge, Eluru, addressed the Judicial Officers that the main aim of the Workshop is to equip themselves with sound knowledge in substantive and procedural Laws to enable them to discharge their functions confidently and efficiently with high degree of decency and anticipated that the Third Workshop would be of great benefit to all the Judicial Officers while discharging their official duties.

5. It is submitted that Ms.K.S.Raja Rajeswari, Judicial Magistrate of I

Class, Jangareddigudem, read over the profile of Hon'ble Sri Justice B.Syam Sundar Garu, Judge (Retired), High Court of Andhra Pradesh, Sri G.Ganga Raju, Civil Judge (Senior Division), Narsapur, read over the profile of Sri G.V.Krishnaiah Garu, Hon'ble District Judge (Retired) and Sri Ch.Kishore Kumar, Civil Judge (Junior Division), Jangareddigudem, read over the profile of Ms.Sridevi Jampani, Advocate, Hon'ble High Court of Andhra Pradesh. Sri K.K.V.Buli Krishna, Additional Civil Judge (Senior Division), Eluru, acted as anchor throughout the proceedings.

6. It is submitted that the Chairperson invited the under mentioned Judicial Officers to submit their respective papers on the topics of the Workshop as mentioned hereunder:

Sl. No.	Name of the Officer	Topics
1.	Ms.Rachana Bandi, II Additional Civil Judge (Junior Division), Eluru.	<u>Offences under Section 138 of Negotiable Instruments Act:</u> <ol style="list-style-type: none"> a) Offences under Section 138 Negotiable Instruments Act, Ingredients and Case Law; b) Cognizance, Limitation, Jurisdiction – a study; c) Interim Compensation and its recovery; and d) Compounding of offences & Execution of Lok Adalat Adalat Awards.
2.	Sri M.A.Soma Sekhar, Special Judge for Speedy Trial of Offences under the Protection of Children from Sexual Offences Act, 2012, Bhimavaram.	<u>Protection of Children from Sexual Offences Act, 2012:</u> <ol style="list-style-type: none"> a) Nature of offences; b) Presumptions; and c) Compensation.

Sl. No.	Name of the Officer	Topics
3.	Sri D.Dhana Raju, II Additional Civil Judge (Junior Division), Bhimavaram.	<u>Domestic Violence Act, 2005:</u> a) Parties by whom and against whom reliefs can be sought; b) Types of reliefs; and c) Execution of Orders.

SESSIONS - I & II

7. It is submitted that Ms.Rachana Bandi, II Additional Civil Judge (Junior Division), Eluru, has presented her paper on the subject of Offences under Section 138 of Negotiable Instruments Act, along with relevant Case Laws.

8. It is submitted that the Resource Person Ms.Sridevi Jampani, Advocate, Hon'ble High Court of Andhra Pradesh, highlighted on the subject of **Offences under Section 138 of Negotiable Instruments Act** along with relevant Case Laws.

9. It is submitted that the Resource Person explained the scope of Section 6 of the N.I. Act. The ingredients of Section 138 of N.I. Act, such as (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Return of the cheque unpaid by the drawee bank, (4) Issuance of notice in writing to the drawer of the cheque demanding payment of the cheque amount.

SUCCESSIVE PRESENTATION OF CHEQUES:

10. It is submitted that the Resource Person brought to the notice that the cheque has to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier. As of now, the cheque has to be presented within three months from the date on which it was drawn. The payee or holder in due course of the

cheque has to make a demand for payment of the amount due by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding dishonour of the cheque. The drawer of the cheque has to fail to make the payment of the amount to the payee or holder in due course within 15 days of the receipt of the said notice, the complaint has to be filed within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138 N.I. Act.

11. It is submitted that the Resource Person discussed the relevant Case Laws in ***Saketh India Limited Vs. Indian Securities Limited***, reported in **(1999) 3 SCC 1** and another decision of Hon'ble Apex Court in ***Indra Kr. Patodia Vs. Reliance Industries Limited*** reported in **AIR 2013 SC 426** and enlightened that for computing the period of limitation, one has to consider the date of filing of the complaint or initiation of criminal proceedings and not the date of taking cognizance by the Magistrate.

DEMAND NOTICE:

12. It is submitted that the Resource Person explained that notice must be in writing and it must be issued within 30 days of receipt of information from the bank, regarding return of the cheque as unpaid. While calculating the period of 30 days, the date of receipt of information from the bank has to be excluded. Relevant case Laws discussed in ***K. Bhaskaran Vs. Sankaran*** reported in **(1999) 7 SCC 510**, and ***Dalmia Cement (Bharat) Limited Vs. M/s. Galaxy Traders*** reported in **AIR 2001 SC 676**. It is explained that in ***State of M. P. Vs. Hira Lal*** reported in **(1996) 7 SCC 523** and another decision reported in ***Jagdish Singh Vs. Nathu Singh*** reported in **AIR 1992 SC 1604**, the Hon'ble Supreme Court held that where the addressee manages to have the notices returned with postal remarks such as 'refused', 'not available in the house', 'house locked' and 'shop closed'

etc., it must be deemed that the notices have been served on the addressee. Section 114 enables the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases. But the presumption that is raised under Section 27 of the General Clause Act 1897 Act, is a far stronger presumption.

ISSUANCE OF SECOND DEMAND NOTICE:

13. It is submitted that the Resource Person clarified that after the notice issued under clause (b) of Section 138 of N.I. Act is received by the drawer of the cheque, the payee or holder of the cheque, who does not take any action on the basis of such notice within the period prescribed under section 138, N.I. Act, is not entitled to send a fresh notice in respect of the same cheque and, thereafter, proceed to file a complaint. Relevant case Law discussed in *Tameeshwar Vaishnav Vs. Ramvishal Gupta* reported in **2010(1) LCR 86(SC)**.

CONTENTS OF DEMAND NOTICE:

14. It is submitted that the Resource Person discussed that in the notice, demand has to be made for the cheque amount. If no such demand is made, the notice no doubt would fall short of its legal requirement. The Resource Person referred the case Law in *Suman Sethi Vs. Ajay K. Churiwal and Another* reported in **(2000) 2 SCC 380**.

THE PLEA OF SECURITY CHEQUE:

15. It is submitted that the Resource Person brought to the notice that the expression 'security cheque' is not a statutorily defined expression in the

Act. Relevant Case Law discussed in ***I.C.D.S. Limited Vs. Beena Shabbir*** reported in **AIR 2002 SC 3014**. It is explained that even if the dishonoured cheque in question was issued as a security cheque, it will still come under the ambit of Section 138 of the Act.

CHEQUE ISSUED AS ADVANCE PAYMENT WILL NOT ATTRACT CULPABILITY UNDER SECTION 138 OF N.I. ACT.:

16. It is submitted that the Resource Person described that where payment was made by cheque in the nature of advance payment, it indicates that at the time of drawal of cheque, there was no existing liability and as such no offence was made out. Relevant Case Law discussed in ***Indus Airways Private Limited Vs. Magnum Aviation Private Limited***, reported in **2014 (2) Crimes (SC) 105** and another decision reported in ***Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Limited*** reported in **(2016) 10 SCC 458**.

APPLICABILITY OF LIABILITY UNDER SECTION 138, N.I. ACT FOR A TIME BARRED DEBT:

17. It is submitted that the Resource Person enlightened that a time barred debt, however, is a not a legally enforceable debt as held by the Hon'ble Apex Court in ***Sasseriyl Joseph Vs. Devassia*** reported in **2001 Cri.L.J.24**.

WHO CAN FILE THE COMPLAINT?

18. It is submitted that the Resource Person taught that the complaint under section 138 of the Act can be filed by the payee through his power of attorney holder/duly authorized representative. Relevant Case Law discussed in the case of ***Sankar Finance and Investment Vs. State of A.P.*** reported in **(2008) 8 SCC 536**. Therefore, whenever a complaint is filed by a firm or company or a juristic person, it must be represented by a natural person who would be the defacto complainant for the purpose of the trial.

WHETHER A PARTNER OF AN UNREGISTERED FIRM CAN FILE A COMPLAINT UNDER SECTION 138 OF N.I. ACT:

19. It is submitted that the Resource Person described that Negotiable Instruments Acts specifically laid down that the debt or other liability means Legally enforceable of Legal liability has to be in the nature of Civil Suit because the debt or other liability cannot be recovered by filing a criminal case and when there is a bar of filing a suit by unregistered firm, the bar equally applies to criminal case as laid down in explanation to of 138 NI Act. Case Law discussed in ***M/s Sri Sai Karuna Finance and Enterprises represented by its Manager Vs. N. Sandhya Rani and another*** (Cr.M.P.No.452/2006, dated 24.10.2018) of Hon'ble High Court of Telangana and State of Andhra Pradesh.

LACK OF AUTHORIZATION IS A CURABLE DEFECT:

20. It is submitted that the Resource Person has clarified that in case of a company, if the de facto complainant did not have authority in the initial stage, still the company can, at any stage, rectify that defect at a subsequent stage, and the company can send a person who is competent to represent it. Case Laws discussed in in ***M.M.T.C. Limited and Another Vs. Medchl Chemicals and Pharma (P) Limited*** reported in (2002) 1 SCC 234, and in the case of ***Samrat Shipping Company Private Limited Vs. Dolly George*** reported in (2002) 9 SCC 455. It is enlightened that a three Judge Bench of the Hon'ble Supreme Court in ***M/s. Haryana State Cooperative Supply and Marketing Federation Limited Vs. M/s Jayam Textiles*** reported in AIR 2014 SC 1926, wherein it was held that the dismissal of the complaint for mere failure to produce authorization would not be proper and an opportunity ought to be granted to produce and prove the authorization.

WHEN CAN THE FUNCTIONS OF A POWER OF ATTORNEY HOLDER BE FURTHER DELEGATED?

21. It is submitted that the Resource Person elucidated that sub delegation of functions *vis a vis* filing of a complaint is only permissible when the same is duly and explicitly mentioned in the authority granted to the delegator. Power of Attorney Holder must have personal knowledge of the transaction. Relevant Case Law discussed in ***A.C. Narayanan and another Vs. State of Maharashtra*** reported in **AIR 2014 SC 630**.

TERRITORIAL JURISDICTION:

22. It is submitted that the Resource Person brought to the notice that the Amendment Act of 2015 amended Section 142 to decisively lay down the territorial jurisdiction of Courts deciding cases under section 138, N.I. Act. Case Laws discussed in ***K. Bhaskaran Vs. Sankaran*** reported in **(1999) 7 SCC 510**, and another decision in ***Dashrath Rupsingh Rathod Vs. State of Maharashtra*** reported in **AIR 2014 SC 3519**.

OFFENCES UNDER SECTION 138 OF N.I. ACT TO BE TRIED SUMMARILY:

23. It is submitted that the Resource Person explained that Sub-section (1) of Section 143 of the N.I. Act makes it clear that all offences under Chapter XVII of the N.I. Act shall be tried by the Magistrate 'summarily' applying, as far as may be, provisions of Sections 262 to 265 of Code of Criminal Procedure. Case Laws discussed in ***J.V. Bahurani Vs. State of Gujarat*** reported in **(2014) 10 SCC 494**.

CAN THE ACCUSED ADDUCE EVIDENCE ON AFFIDAVIT?

24. It is submitted that it is explained by the Resource Person that Section 145 of the N.I. Act provides for adducing of evidence on affidavit of the complainant. Case Law discussed in ***Mandvi Cooperative Bank***

Limited Vs. Nimesh B. Thakore reported in **(2010) 3 SCC 83**. It is brought to the notice that the Hon'ble Apex Court in **Indian Bank Association Vs Union of India** reported in **(2014) 5 SCC 590**, and another decision reported in **John K. Abraham Vs. Simon C. Abraham** reported in **(2014) 2 SCC 236**, the Hon'ble Supreme Court has observed that in order to draw the presumption under sections 118 and 139 of the Act, the burden is cast heavily upon the complainant to show that he had the requisite funds for advancing the money to the accused. Further discussed that in **Basalingappa Vs. Muudibasappa** reported in **Criminal Appeal No. 636 of 2019** the Hon'ble Supreme Court observed that a complainant in a cheque bounce case is bound to explain his financial capacity, when the same is questioned by the accused, by leading evidence to that effect. If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. Relevant Case Law discussed of Hon'ble Apex Court in **Bir Singh vs. Mukesh Kumar** reported in **Criminal Appeal No. 230231 of 2019**.

25. It is submitted that the Resource Person explained that the Hon'ble Apex Court in **Hiten P Dalal Vs. Bratindranath Banerjee** reported in **(2001) 6 SCC 16** held that a mere plausible explanation given by the accused is not enough to rebut the presumption and the accused has to necessarily disprove the prosecution case by leading cogent evidence that he had no debt or liability to issue the said cheque.

WITHDRAWAL OF THE COMPLAINT:

26. It is submitted that the Resource Person conferred that as per Section 257 of Criminal Procedure Code if a complaint, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that they are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all any

of them, magistrate may permit him to withdraw the same and shall there upon acquit the accused against whom complaint is so withdrawn.

OFFENCES BY COMPANIES:

27. It is submitted that the Resource Person has taught that Subsection (1) of Section 141 of the N.I. Act provides that if a person committing an offence under the section is a company, every person who, at the time offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

28. It is submitted that the Resource Person brought to the notice of the Circular issued by the Hon'ble High Court of State of Telangana vide Circular No.11/2021, Dated 21.06.2021 as per Orders dated 16.04.2021 of Hon'ble Hon'ble Supreme Court of India in Suo Motu Writ Petition (Crl.) No.2 of 2020 titled In Re: Expeditious Trial of Cases Under Section 138 Negotiable Instruments Act, and suggested to follow the guidelines.

INTERACTIVE SESSION:

29. The Judicial Officers participated in the Workshop interacted with the Resource Person and clarified their doubts on the above topics.

SESSION – III

30. Sri M.A.Soma Sekhar, Special Judge for Speedy Trial of Offences under the Protection of Children from Sexual Offences Act, 2012, Bhimavaram, presented his paper on the subjects of : Protection of Children from Sexual Offences Act, 2012 along with relevant case Laws.

31. The Resource Person Hon'ble Sri Justice B.Syam Sundar Garu,

Judge (Retired), High Court of Andhra Pradesh, gave lecture on the subject of **Protection of Children from Sexual Offences Act, 2012** with relevant Case Laws.

32. It is submitted that His Lordship enlightened that the POCSO Act enacted in the year 2012. The main object of POCSO Act for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well-being of the child at early stage of judicial process incorporating child friendly the procedure for reporting, recording of offence, investigation and trial of offences and the provisions of establishment of special courts for speedy trial of such offences.

DESIGNATION OF SPECIAL COURTS:

33. It is submitted that His Lordship brought to the notice that for the purpose of speedy trial, State Government shall in consultation with the Hon'ble Chief Justice of the High Court, by notification in the Official Gazette, appoint a Special Court, i.e., Sessions Court in each District. If any person attempts to commit an offence under the POCSO Act during the provision of Sessions Court, protection of Child Rights Act, 2005 or any rule applicable at that time, then such Court shall be deemed to be a Special Court under this section. Special Court formed under this Act has the right to decide on cases which involves online exploitation of a child through any act, or conduct or manner.

PROCEDURE AND POWERS OF SPECIAL COURTS:

34. It is submitted that His Lordship taught that any Special Court can take the cognizance of any offence, upon receiving a complaint of facts which constitute such offence, or on police report. The Special Public Prosecutor or any advocate appointed by accused, shall submit the

questions to the Special Court that need to be asked to the child during examination-in-chief, cross-examination or re-examination, which the Special Court shall in turn put those questions to the child.

35. It is submitted that His Lordship clarified that in all POCSO cases, victim must be child below the age of 18 Years and the same is defined as per Section 2(d) of POCSO Act. The word 'Victim' is not defined in POCSO Act, since Cr.P.C / B.N.S.S., 2023 procedure is to be followed along with I.P.C/B.N.S, Juvenile Justice Care and Protection Act, 2015 and I.T. Act, 2020, since as per Section 2(2) of POCSO Act clearly speaks that the words and expressions used in the aforesaid acts and procedural laws shall being the same meaning and as such, the same is not defined in POCSO Act.

36. It is further explained by His Lordship that in ***Jarnail Singh Vs. State of Haryana***, reported in **AIR 2013 SC 3467** the Honorable Supreme Court held that Rule 12 of the erstwhile Juvenile Justice (Care and Protection of Children) Rules, 2007, which detailed the age determination process for children in conflict with the law should be applied to determine the age of a child victim.

37. It is submitted that His Lordship brought to the notice that as per Section 31 of POCSO Act, it is clearly held that Cr.P.C, 1973 shall apply to the proceedings before Special Court. So, the Special Judges who are dealing with POCSO cases are adopting the procedure of Cr.P.C for the cases registered before 01.07.2024 and now for the cases registered after 01.07.2024, shall apply BNSS, 2023.

RELEVANT SECTIONS OF POCSO ACT:

38. It is submitted that His Lordship enlightened that the Section defines penetrative sexual assault and Section 4 lays down the punishment which was made more stringent by the 2019 amendment. It is explained that

Section 5 of the POCSO Act lays down the cases in which penetrative sexual assault amounts to aggravated penetrative sexual assault punishable Section 6 of the POCSO Act.

39. It is submitted that His Lordship further explained that Section 7 of the POCSO Act defines sexual assault and the conviction Sections are 8 and 12 of the POCSO Act. Sections 9 and 10 of the POCSO Act contain provisions regarding aggravated sexual assault on a child.

40. It is submitted that His Lordship reiterated that Section 13 of the POCSO Act states that anyone who uses a child for pornographic purposes by either representing the sexual organs of the child or using a child in real or simulated sexual acts or representing a child indecently or obscenely in programmes or advertisements on television or on internet, commits the offence under this section and is liable in accordance with Sections 14 and 15 of the POCSO Act. His Lordship discussed the relevant Case Law discussed in the case of ***Fatima A.S. Vs. State of Kerala*** reported in **(2020) 4 KLT 617**.

41. It is submitted that His Lordship explicated that Section 22 of the POCSO Act prohibits any person from making a false complaint or providing false information against a person in respect of an offence committed under section 3, 5, 7, and 9 of the Act. Relevant case Law discussed in ***Tuka Ram and another Vs State of Maharashtra***, reported in **AIR 1979 SC**.

42. It is submitted that His Lordship brought to the notice that Section 23 of the POCSO Act provides for the procedure of media and imposes the duty to maintain the child victim identity unless the Special Court has allowed the disclosure. The landmark case of ***Bijoy @ Guddu Das Vs. The State of West Bengal*** reported in **(2017)**, of Hon'ble Calcutta High Court discussed.

COGNIZANCE AND DISPOSAL:

43. It is submitted that His Lordship enlightened that Special Courts can take cognizance directly without committal vide Section 33(1) of POCSO Act. The police should thus submit the Charge Sheet to the Special Court under the POCSO Act. They must record the evidence of the child within 30 days of taking cognizance and record reasons for the delay and they must complete the trial within one year of taking cognizance, as far as possible vide Section 35(2) of the Act.

44. It is submitted that His Lordship elucidated that Sections 29 and 30 of the Act are important Sections. It is further explained that presumptions available in POCSO Act are Section 29 and 30 of POCSO Act Section 29 of POCSO Act defines, where a person is prosecuted for committing or abetting or attempting to commit any offence under Section 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence as the case may be, unless the contrary is proved. Presumptions are obligatory. Court shall presume that unless and until it is disproved.

PROCESS OF RECORDING THE STATEMENT:

45. It is submitted that His Lordship explained that Section 24 of the Act denotes about recording of statement of child by Police. It is clarified that child's statement shall be recorded at the residence of child or at place where child is comfortable in presence of a woman officer not below the rank of sub-inspector. While recording the statement of child, police officer shall not be in uniform. The Police Officer investigating the case shall make sure that the child at no point comes in contact with the accused. Under no circumstances the child shall be detained in police station in the night.

Police officer shall ensure that child's identity is protected from public and media, unless otherwise directed by the Special Court in the interest of child.

RECORDING OF STATEMENT BY MAGISTRATE:

46. His Lordship further explained that Section 25 of the Act specifies about the recording of a statement of child by Magistrate. It is stated that the Magistrate shall record the statement as spoken by the child. As per Section 26 of the Act additional provisions regarding statement to be recorded. The Magistrate or Police Officer shall record the statement of child in presence of his/her father or mother or any other person in whom the child has trust or confidence. Wherever necessary, Magistrate or Police Officer may take the assistance of a translator or an interpreter. If the child has mental or physical disability then the assistance of special educator or person familiar with the manner of communication of child may be taken to record the statement. Wherever possible, Magistrate or Police officer shall ensure that the statement of child is also recorded by audio-visual means.

CONDUCT OF TRIAL:

47. It is submitted that His Lordship explained that Section 33 specifies that the Special Court can take cognizance of the offence without the accused being committed to the trial. Section 36 mentions that the child should not be exposed to the accused at the time of giving evidence. His Lordship suggested to use curtains to the witness box of the victim while recording her evidence and suggested to POCSO Courts to implement the same. It is explained that Section 35 of the Act stipulates that for recording the evidence of the child is 30 days from the date of taking cognizance of the offence.

SECTION 38 OF THE ACT :

48. It is submitted that His Lordship clarified that as per Section 38 of the Act if a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any other person who can understand the language of child while recording the words of child.

IN-CAMERA PROCEEDINGS:

49. It is submitted that His Lordship explained that as per Section 33 of the Act, the trial of offenses shall be conducted in-camera and the child should not be exposed to the accused at the time of giving evidence.

50. It is submitted that His Lordship taught that Section 27 of the Act lays down certain laws regarding the conduct of medical examinations. The medical examination has to be conducted in accordance with Section 164-A of the Criminal Procedure Code, 1973. A medical examination of a girl is to be conducted by a woman practitioner. It should be conducted in the presence of a person in whom the child has trust, for example, his/ her parents, otherwise in the presence of a woman nominated by the head of the medical institution. Relevant Case Law discussed in the case of ***Santhosh Prasad @ Santhosh Kumar Vs. The state of Bihar*** reported in **Criminal Appeal No.264/2020** arising out of **SLP (Criminal) No.3780/2018**.

51. It is submitted that His Lordship clarified that sole testimony of prosecutrix is sufficient when the same is reliable and trustworthy even if medical report is in conclusion. No presence of accused can be drawn as no self-respecting woman will come to the Court just to make humiliating statement against her honour such as is involved in the commission of rape on her.

COMPENSATION:

52. It is submitted that His Lordship taught that the Special Court may, in appropriate cases, on its own or on an application filed by or on behalf of the child, pass an order for interim compensation to meet the needs of the child for relief or rehabilitation at any stage after registration of the First Information Report, such interim compensation paid to the child shall be adjusted against the final compensation.

53. It is submitted that His Lordship brought to the notice that in ***Ankush Shivaji Gaikwad Vs. State of Maharashtra*** reported in **2013 AIR SCW 3152** wherein the Hon'ble Supreme Court issued some guidelines about the victim compensation. It is also explained that the Government of Andhra Pradesh issued G.O.Ms.No.43 dated 15.4.2015 by issuing Notification preparing the A.P. Victim Compensation Scheme, 2015, to pay compensation as awarded by the DLSAs., and SLSAs., by specifically mentioning that who are eligible for compensation and also about victim compensation fund. The Protection Officer who is Head of District Protection Child Unit is to monitor the compensation to be paid to the victims of POCSO cases.

SOCIAL MEDIA:

54. It is submitted that His Lordship explained that according to section 74 of The Juvenile Justice (Care and Protection) Act, 2015, no report in any newspaper, magazine, news, audio visuals or other forms of communication regarding any inquiry or investigation or judicial procedure, shall disclose the name, address or school or any other particular, which may lead to the identification of a child in conflict with law or a child in need of care and protection or a child victim or witness of a crime, involved in such matter, under any other law for the time being in force, nor shall the picture of any such child be published.

INTERACTIVE SESSION:

55. The Judicial Officers participated in the Workshop interacted with the Resource Person His Lordship Hon'ble Sri Justice B.Syam Sundar Garu, Judge (Retired), High Court of Andhra Pradesh clarified their doubts on the above subject.

SESSION – IV

56. Sri D.Dhana Raju, II Additional Civil Judge (Junior Division), Bhimavaram, presented his paper on the subject of Domestic Violence Act, 2005 along with relevant case Laws.

57. The Resource Person Sri G.V.Krishnaiah Garu, Hon'ble District Judge (Retired) taught on the subject of Domestic Violence Act, 2005 and its parameters.

INGREDIENTS:

58. It is submitted that the Resource Person explained that the Hon'ble Supreme Court in the case of *D.Velusamy Vs. D.Patchaimmal* reported in **AIR 2011 SC 479** enumerated five ingredients of a live in relationship as : (1) Both the parties must behave as husband and wife and are recognized as husband and wife in front of society; (2) They must be of a valid legal age of marriage; (3) They should qualify to enter into marriage; (4) They must have voluntarily cohabited for a significant period of time; and (5) They must have lived together in a shared household. D.V.C.Act was enacted for effective protection of women rights as, though the violence against women is made punishable no remedies were attributed to the women/victim who suffered the violence. Hence, the implementation of orders granted by the Court plays pivotal role in granting the object of the enactment. Relevant Case Law discussed in *Indra Sarma Vs. V.K.V.Sarma*, reported in **(2013) 15 SCC 755**.

59. It is submitted that the Resource Person explained about the types of relief which can be granted by Magistrate under the DVC Act are dealt from Sections 18 to 23, such as, Section 18 - Protection Orders, Section 19 - Residence Orders, Section 20 - Monetary relief, Section 21- Custody order, Section 22 - Compensation orders, Section 23 - Power to grant interim and ex-parte orders.

TYPES OF ABUSE UNDER THE DOMESTIC VIOLENCE ACT:

60. It is submitted that the Resource Person brought to the notice about the types of abuse, such as: Physical abuse; bodily injury or hurt; Physical assault; Sexual Abuse; Verbal and emotional abuse and Economic abuse. In the case of ***Krishna Bhattacharjee Vs. Sarathi Choudhury*** reported in **(2016) 2 SCC 705** the Apex Court elucidated the duty of Courts while deciding complaints under the Domestic Violence Act.

WHO CAN FILE A COMPLAINT UNDER THE ACT?

61. It is submitted that the Resource Person explained that Section 2(a) of the Domestic Violence Act defines 'aggrieved person' as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the husband. Even those women who are sisters, widows, mothers, single women, or living in any other their relationship with the abuser are entitled to legal protection under the Act.

PROTECTION ORDERS:

62. It is submitted that the Resource Person enlightened that after giving an opportunity to the aggrieved person and respondent of being heard and the Magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person prohibiting the respondent from the following acts such as

committing any acts of domestic violence.

MONETARY RELIEF:

63. It is submitted that the Resource Person clarified that the Magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence. Including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law.

CUSTODY ORDERS:

64. It is submitted that the Resource Person explained that the Magistrate can grant temporary custody of any child or children to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

COMPENSATION ORDER:

65. It is submitted that the Resource Person explained that the Magistrate may pass order directing the respondent to pay compensation to the petitioner for injuries including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

SHARED HOUSE HOLD:

66. It is submitted that the Resource Person also explained that Section 2(s) of the Act defines the term shared household is defined under the Domestic Violence Act. Relevant Case Law discussed in the case of **S.R. Batra & Another Vs. Taruna Batra**, reported in **AIR 2007 SC 1118**.

EXECUTION OF ORDERS:

67. It is submitted that the Resource Person clarified that for execution of

the orders granted to the aggrieved person under the Act, the Magistrate shall direct the protection officer as per Rule 10 (1) (e) to assist the Court in enforcement of the orders made in the proceedings under the Act, which includes the orders under Section 12, 18 to 21 or Section 23 in such manner as may be directed by the Court. It is further explained that the Magistrate while passing any residence orders under Section 19 of the Act may pass order directing the officer in-charge of the nearest Police Station to give protection to the aggrieved person and also the Magistrate may require the respondent to execute the bond with or without sureties for preventing the commission of the Domestic Violence.

68. It is submitted that the Resource Person brought to the notice that for every violation of order granted under DVC Act, the aggrieved person shall take shelter under Section 31 of the Act and also as per Rule 15 of D.V.C.Rules. Relevant Case Law discussed in the case of ***Kunapareddy @ Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari*** reported in **2016(11) SCC 774**.

PENALTY FOR BREACH OF PROTECTION ORDER:

69. It is submitted that the Resource Person explicated that Section 31 of the Act states that 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. The Act can be enforced in the same manner as laid down in Section 125 of Cr.P.C. On failure of the respondent to make payment of this order, Magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court

a portion of the salary or wage due to the respondent. Relevant Case Law discussed in *Shalu Ojha Vs. Prashant Ojha*, reported in 2014(4) RCR (Civil) 815 (SC).

INTERACTIVE SESSION:

70. It is submitted that the Judicial Officers participated in the Workshop interacted with the Resource Person, clarified their doubts on the above subject.

71. It is submitted that the Third Workshop immensely benefited to the participant Officers in the Unit of West Godavari District. The topics discussed enabled the Officers to recall and refresh the subjects. New insights have been gained by the Officers with regard to intricacies of the subjects discussed in the Workshop.

72. It is submitted that the Second Workshop was concluded at 5.00 P.M., after felicitation to Resource Persons, followed by votes of thanks by Sri I. Srinivasa Murthy, Principal Civil Judge (Senior Division), Eluru.


PRINCIPAL DISTRICT JUDGE,
WEST GODAVARI, ELURU.