



GJJN110007952025 	 सत्यमेव जयते	Date of filing the application	23 / 12 / 2025			
		Date of Registration	23 / 12 / 2025			
		Date of Judgment	01 / 06 / 2026			
		Duration	Year s	Months	Days	
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**IN THE COURT OF THE PRINCIPAL CIVIL JUDGE & JUDICIAL
MAGISTRATE FIRST CLASS, BHESAN, DISTRICT JUNAGADH**

Criminal Misc. Application No. 112 of 2025

(Filed independently under Section 21 of the PWDV Act)

Applicant:

[Niraliben Kamleshbhai Borichangar]

Age: 30 Years, Occu:House wife

Residing at: Village-Galath, Bhesan

Versus

Respondents:

[Rahulbhai Yogeshbhai Mehta] Age:36 Years, Occu: Medical Practice, Laboratory Residing at: Puja Park, Joshipura, Junagadh.

//JUDGMENT//

1. Brief facts of this application:

1.1. The Applicant (Mother) has preferred the present standalone application under Section 21 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the DV

Act"), seeking the custody of her 9-year-old minor daughter, Palak.

1.2. The matter was listed for hearing on the merits of custody. However, upon a careful scrutiny of the record and averments of the parties, it appears that this application has been moved as a separate, independent, and distinct main proceeding, registered independently from the main application under Section 12 of the DV Act, which is reportedly pending before this competent Court vide **Cr.M.A. J No.111/2025**

1.3. Before entering into the factual matrix of the custody dispute—including the Respondent's contentions regarding the minor daughter's continuous stay and her academic performance (scoring 99.5% marks)—**this Court must satisfy itself regarding the fundamental threshold of jurisdiction and statutory maintainability.** Consequently, the learned advocates for both parties were heard extensively on the question of whether an independent application solely under Section 21 of the DV Act is maintainable in law.

2. SUBMISSIONS OF BOTH PARTIES:

2.1. The learned Advocate for the Applicant argued that the custody of the minor child is of paramount urgency since the Respondent-husband **obtained custody by deceit.** It was submitted that the technicality of separate registration should not defeat the substantive right of a mother seeking maternal access under a beneficial legislation like the DV Act.

2.2. Conversely, the learned Advocate for the Respondent strongly objected to the maintainability of the present

application. He contended that Section 21 does not provide a standalone cause of action. **He further submitted that any independent dispute regarding custody must be brought under the relevant provisions of the Guardians and Wards Act, 1890, or before a competent Family Court,** and therefore, the present separate application deserves to be dismissed as not maintainable.

3. STATUTORY INTERPRETATION & LEGAL PROVISIONS:

3.1. To resolve this question, it is essential to analyze the literal; bare text of **Section 21 of the DV Act**, which reads as under:

*"21. Custody orders.— Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, **at any stage of the hearing of an application for a protection order or for any other relief under this Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visitation of such child or children by the respondent...**"*

3.2. A plain reading of the statute reveals that the legislature has intentionally qualified the Magistrate's power to grant temporary custody with the phrase: **"at any stage of the hearing of an application for a protection order or for any other relief under this Act."**

3.3. The use of this restrictive clause explicitly demonstrates that an application under Section 21 cannot exist in a legal vacuum. It is an ancillary, interlocutory, and dependent provision. The "parent" or "host" proceeding is the main application filed under Section 12 of the DV Act for substantive reliefs (such as Protection Orders under Section 18, Residence Orders under

Section 19, or Monetary Reliefs under Section 20). Therefore, the invocation of Section 21 presupposes the active pendency of a main application under Section 12 before the Court.

4. JUDGMENTS OF VARIOUS HON'BLE HIGHCOURTS REGARDING THIS ISSUE:

4.1. The legal proposition that an independent application under Section 21 is barred by law has been consistently affirmed by various High Courts across the nation.

4.2. In "**Payal Agarwal v. Kunal Agarwal**" 2014 (0) AIJEL-RJ 1835665 the Hon'ble Rajasthan High Court, while interpreting the nature of Section 21, categorically held that:

"A dynamic reading of Section 21 of the Act makes it clear that a separate and independent application for custody of a child cannot be entertained under Section 21. Such a relief can be sought only as an interim measure during the pendency of a main application filed for reliefs under Sections 18, 19, or 20 of the Act."

4.3. The same view was reinforced in "**Harsh v. Komal**"[2015 (0) AIJEL-RJ 1838007]where it was established that the **Magistrate does not possess the status of a plenary 'Custody Court' or 'Guardianship Court'**. The power granted under Section 21 is a temporary, stop-gap mechanism designed to ensure that a husband cannot use the separation or withholding of a child as a tool of ongoing domestic violence during the litigation of the main case. **Permanent or independent custody disputes fall exclusively within the domain of the Guardians and Wards Act, 1890, or the Family Courts Act, 1984.**

Harsh Versus Komal @ Priyanka

Review Petition (Criminal) No. 721 of 2014 ;

Decided on:- 04-02-2015

2015 (0) AIJEL-RJ 1838007 RAJASTHAN HIGH COURT

Hon'ble Judges: Banwari Lal Sharma

*(a) Protection of Women from Domestic Violence Act, 2005 - S. 21 - Family Courts Act, 1984 - S. 7, 8, 20 - revision petition against appellate court's order granting custody of child to respondent-wife under the Act of 2005 - petitioner contended that Family Court has exclusive jurisdiction over custody matters and that lower courts lacked authority to grant custody under the provisions of the Act of 2005 - Held that **since a Family Court had been established, proceedings initiated under S. 21 of the Act of 2005 were not maintainable** - orders passed by lower courts were declared null and void as they contravened exclusive jurisdiction conferred upon Family Courts by the Act of 1984 - application for custody dismissed. (Paras 1, 2, 4, 15, 16)*

*(b) Protection of Women from Domestic Violence Act, 2005 - S. 21 - Family Courts Act, 1984 - S. 20 - dispute regarding jurisdiction between two legislative acts concerning child custody matters - respondent argued that non-obstante clause in the Act of 2005 grants it overriding effect over the Family Courts Act - Held that while both Acts contain non-obstante clauses, the scope and intent differ significantly; hence **provisions in the Family Courts Act prevail in matters pertaining to child custody due to its specific purpose and establishment of special courts for such issues** - thus affirming exclusive jurisdiction lies with Family Courts. (Paras 5, 12, 14)*

*(c) Protection of Women from Domestic Violence Act, 2005 - S.21 - examination of whether independent remedy exists for seeking child custody under the provisions of domestic violence legislation - Held that **S.21 does not provide an independent remedy for custody but allows temporary orders during***

protection order hearings; thus reinforcing that comprehensive proceedings regarding guardianship must be pursued under the Family Courts Act which provides broader jurisdiction for such matters. (Paras 12)

5. ANALYSIS (FINDINGS AND CONCLUSION OF THIS COURT):

This Court has taken judicial notice of a crucial procedural development in the main application pending under Section 12 of the Act. My learned predecessor Judge of this Court had already called for the statutory Protection Officer's Report / Domestic Incident Report (DIR). Upon a perusal of the said report, it is observed that the Protection Officer has specifically recorded and incorporated the Applicant's prayer and grievance regarding the temporary custody of her 9-year-old minor daughter. This fact reinforces that the issue of custody is not an afterthought but is deeply embedded within the matrix of the domestic violence allegations being investigated under the parent application. In view of the statutory mandate laid down by the Hon'ble Supreme Court in *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414, the Protection Officer's report holds immense binding and evidentiary value for the Magistrate. **Since the prayer for custody is already a part of the official DIR on record in the main case**, the Applicant-mother faces no legal prejudice whatsoever. Instead of maintaining this defective, independent file, her remedy is explicitly safeguarded by law to move an Interim Application (IA) under Section 21 within that same parent file, where the P.O. report is already available to support her case."

5.1. In the present case, the Applicant has preferred this application as a standalone main case. Since it is not preferred as an interim application (Interlocutory Application/Exhibit) within a pending main file under Section 12 in this Court, **it lacks the necessary statutory foundation required by Section 21.**

5.2. Maintaining an independent file under Section 21 would lead to procedural anomalies and run completely counter to the express legislative mandate of the DV Act. **A court cannot rewrite the plain text of a statute to validate an incorrectly instituted suit.**

5.3. However, this Court is also mindful that procedural defects should not blind the administration of justice to the emotional stakes involved, particularly where the visitation and custody of a 9-year-old child are concerned. **Dismissing this application on a technical ground without granting recourse would cause undue hardship to the aggrieved mother.**

5.4. Therefore, after hearing both the parties, after considering record and proceedings and after considering legal provisions, while this independent application cannot be sustained in its current form and must be rejected on account of maintainability, the interests of justice demand that **the Applicant-mother be granted explicit liberty to file a fresh Interim Application (IA) for temporary custody and visitation rights within the main, pending Section 12 proceeding.** Hence I pass the following order in the greater interest of Justice.

//ORDER//

1. The present Criminal Misc. Application preferred independently under Section 21 of the Protection of Women from Domestic Violence Act, 2005, is hereby **dismissed as legally not maintainable.**
2. **Liberty is expressly granted** to the Applicant-mother to file a fresh, appropriate Interim Application (IA) for temporary custody and/or visitation rights under Section 21 within the main, substantive application pending under Section 12 of the DV Act. **i.e CRMA.J.111/2025**
3. If such an interim application is preferred within the pending main case, the same shall be heard and decided on its own merits, uninfluenced by the technical dismissal of this separate file.
4. No order as to costs.

Judgment signed and pronounced today on this 1st day of june of 2026 in Open Court.

Date:01/06/2026

Bhaskarkumar Rameshbhai Kariya

Place: Bhesan

Principal Civil Judge& J.M.F.C.

Bhesan

Judge Code No.:GJ01626