Kerala High Court
Chithrangathan vs Seema on 4 September, 2007
Equivalent citations: I (2008) DMC 365
Author: V Ramkumar
Bench: V Ramkumar
ORDER V. Ramkumar, J.

1. In this revision filed under Section 397 read with Section 401, Cr.P.C. the revision petitioner, who is the father of the 1st respondent herein, challenges Annexure-C order dated 9.3.2007 passed by the Chief Judicial Magistrate, Kollam in C.M.P. No. 1526/2007.

2. When this revision came up for hearing, the learned Counsel appearing for the 1st respondent raised a preliminary objection that this revision is not maintainable in view of Section 401(4), Cr.P.C. read with Section 399(2), Cr.P.C. since the impugned order is appealable under Section 29 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the PWDV Act" for short).

3. Advocate Mr. M. Balagovindan, the learned Counsel for the revision petitioner, maintained that the revision is maintainable. In support of his stand, he made the following submissions before me:

Section 29 of the PWDV Act, which confers the right of appeal, gives such a right of appeal only to the respondent and to "the aggrieved person" and to no other person and such appeal can evidently lie only from a final order. Section 29 cannot be read along with Section 24 of the Act as per which the Magistrate passing any order under the Act is to give free copy of the order not only to the parties to the application but to the police officer-in-charge of the police station concerned and to the service provider within the local limits of the Court and to a service provider who has registered a domestic incident report. The impugned order is an ad interim order passed under Section 23(2) of the said Act. Unlike in the case of an interim order under Section 23(1) of the Act, an ex parte order under Section 23(2) can be passed only on an affidavit by an "aggrieved person" and such affidavit has to be filed in Form No. III of the Protection of Women from Domestic Violence Rules, 2006 ("the Rules" for short). When under Section 12 of the Act the Magistrate can be approached not only by an aggrieved person but also by a protection officer or any other person on behalf of the aggrieved person, there can be an interim order in an application filed by a protection officer in which case he is not expected to file an affidavit in Form No. III of the Rules as enjoined by Section 23(2) of the Act. Since the right of appeal is conferred only to "the aggrieved person" or "the respondent" and an aggrieved person as defined under Section 2(a) of the Act can only mean a woman, who is or has been in a "domestic relationship" with the respondent, the Act does not contemplate an appeal against an order passed by the Magistrate on an application filed by a person other than an aggrieved person. Both the decisions rendered by a learned Single Judge of this Court in Sulochana and Anr. v. Kuttappan and Ors. 2007 (2) KLT1, and P. Chandrasekhara Pillai v. Valsala Chandran and Anr. III (2007) CCR 235 : 2007 (2) KLT 36, holding that all interim orders passed under the Act are appealable under Section 29 of the Act, having been rendered without noticing this distinction and, therefore, require reconsideration. The statutory insistence of an affidavit by an aggrieved person is to pin her down to whatever has been stated in the affidavit and going by Section

26(3) of the PWDV Act she has to disclose any relief which has been obtained by her in any proceedings other than a proceeding under the PWDV Act. In a civil suit instituted by the wife of the revision petitioner against the first respondent/ applicant, an interim injunction has been obtained on the footing that the plaintiff therein is the owner of the house in question. She was bound to disclose the said fact in the application as well as in the affidavit. Since the revision petitioner, after entering appearance, had moved the Magistrate under Section 25 of the Act for alteration of the order, he cannot be driven to the necessity of filing an appeal. The order referred to in Section 29 of the Act can only be a final order and since the impugned order is not a final order, the revision petitioner cannot be asked to exhaust the remedy by way of appeal.

4. I am afraid that I cannot agree with the above submissions. Under Section 12 of the PWDV Act, either an aggrieved person or a protection officer or any other person on behalf of the aggrieved person has locus standi to file an application before the competent Magistrate for seeking one or more of the reliefs under the said Act. The reliefs, which can be obtained under the Act, constitute a Protection Order under Section 18, a Residence Order under Section 19, a Monetary Relief under Section 20, a Custody Order under Section 21 and a Compensation Order under Section 22. Section 23 of the Act reads as follows:

23. Power to grant interim and ex parte orders.:

(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

(2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Sections 18, 19, 20, 21 or, as the case may he, Section 22 against the respondent.

5. Sub-section (2) of Section 23 clearly shows that in an appropriate case where the Magistrate is satisfied that the application discloses that the respondent to the application is committing or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, the Magistrate is empowered to grant an ex parte order (ad interim order) on the basis of an affidavit in Form No. III of the Rules and such ad interim order can be passed either under Section 18, 19, 20 or 21. Annexure-C order is a Residence Order passed under Section 19 read with Section 23(2) of the Act. The basis for moving the Magistrate was on account of the threat by the revision petitioner/father regarding the right of the daughter to reside in the "shared household" in question. Section 17 of the Act reads as follows:

17. Right to reside in a shared household.-

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(Emphasis supplied) (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Thus, every woman in a "domestic relationship" has the right to reside in the "shared household" whether or not she has any right, title or beneficial interest in the same. The expression "domestic relationship" has been defined under Section 2(f) of the Act as follows:

"Domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

6. There is no dispute that the revision petitioner and the 1st respondent applicant are related by consanguinity. Section 24 of the Act reads as follows:

24. Court to give copies of order free of cost.-The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the Court and if any service provider has registered a domestic incident report, to that service provider.

Thus, in all cases where the Magistrate has passed any order under the Act, he has to order that a copy of such order shall be given free of cost to the parties to the application besides to the other functionaries referred to in the section. No doubt, Annexure-C order does not direct furnishing of a free copy of the order to the revision petitioner who was the respondent to the application. But then, the revision petitioner has no grievance or complaint that he was not served with a free copy of the order as mandated by Section 24 of the Act. The right of appeal under Section 29 of the Act is not hedged in by any statutory restrictions either expressly or by necessarily implication, it gives 30 days' time to the aggrieved person or to the respondent to file the appeal and the said period starts from the date on which the impugned order by the Magistrate is served on him.

7. Even in a case where the application tinder Section 12 is not filed by the aggrieved person but is filed by a protection officer or any other person on behalf of the aggrieved person, such protection officer or any other person will be an aggrieved person if an order sought by such protection officer or any other person has not been granted by the Magistrate. Hence, the expression 'aggrieved person' in Section 29 of the Act is wide enough not only to take in the parties to the application but also a protection officer or a person who has moved the Magistrate on behalf of the aggrieved person. Anyhow, such a finer distinction as is attempted by the revision petitioner does not arise in the present revision since the revision petitioner was the respondent to the application filed by his daughter and the revision petitioner is competent to file an appeal against the impugned order in view of Section 29 of the Act. I am not persuaded to accept the distinction drawn by the learned Counsel with regard to Sections 24 and 29 of the Act since both the said provisions are in

consonance with the statutory scheme under the Act. The impugned order is clearly appealable under Section 29 of the Act and if so, this revision is incompetent and the remedy of the revision petitioner is to challenge the impugned order by filing an appeal under Section 29 of the Act.

8. With regard to the alleged failure to disclose the relief as envisaged by Section 26(3) of the Act, even assuming that the Civil Court has passed an interim injunction against the applicant/1st respondent, that is not a relief which she has obtained in any proceedings other than proceedings under this Act and, therefore, she was not bound to disclose the same in an application under Section 12 of the Act or in the affidavit in Form No. III of the Rules. Moreover, the civil suit allegedly filed by the revision petitioner's wife who is none other than the mother of the 1st respondent herein is still pending and an order of interim injunction cannot finally decide the rights of parties.

9. After hearing both sides and after considering the provisions of the PWDV Act and the Rules, I am not persuaded to disagree with the view taken by Mr. Justice Basant in the two decisions adverted to earlier to the effect that all interim orders are appealable under Section 29 of the Act.

10. The result of the foregoing discussion is that since the impugned order is an appealable order, this revision is not maintainable and is accordingly dismissed as such.

11. Even though Section 29 does not mention about any power to condone the delay, since the appeal is provided to the Court of Session, it goes without saying that in case the revision petitioner prefers an appeal against the impugned order, he can seek condonation of the delay by invoking the provisions of the Limitation Act, 1963.