

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2020 / 24TH BHADRA, 1942

Cr1.MC.No.7977 OF 2018(F)

(CMP NO.10886/2016 (MC 28/2017) ON THE FILE OF THE JUDICIAL
MAGISTRATE OF FIRST CLASS, HOSDRUG

PETITIONERS/RESPONDENTS 2&3:

1 LATHA.P.C
AGED 65 YEARS
W/O LATE GOPALAKRISHNAN, 7A, K.K.PADMANABHAN ROAD,
OPP. KERALA WATER AUTHORITY GUEST HOUSE,
KACHERIPPADY, KOCHI

2 JYOTHI P.C.,
AGED 55 YEARS
W/O.HARI GOVIND, 7A, K.K.PADMANABHAN ROAD, OPP.
KERALA WATER AUTHORITY GUEST HOUSE, KACHERIPPADY,
KOCHI

BY ADVS.
SRI.S.RAJEEV
SRI.K.K.DHEERENDRAKRISHNAN
SRI.V.B.UNNIRAJ
SRI.V.VINAY
SRI.D.FEROZE
SRI.K.ANAND (A-1921)

RESPONDENTS/STATE/COMPLAINANT/1ST RESPONDENT:

1 STATE OF KERALA
REP BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM 682 031.

2 SHEEJA K.,
AGED 32 YEARS
W/O.P.C.JAYADEV, D/O.K.K.PADMANABHAN MASTER
KARAVAYAL ROAD, MOORIKOVVAL, ANNUR P.O., PAYYANNOOR.

3 P.C.JAYADEV
AGED 36 YEARS
B/O.P.K.GOPALAKRISHNAN MASTER
KARAVAYAL ROAD, MOORIKOVVAL,

Cr1.MC.No.7977 OF 2018(F) & OP(Cr1.).No.234 OF 2019

2

ANNUR P.O, PAYYANNOOR 689 008

R2 BY ADV. SRI.SURESH KUMAR KODOTH

R2 BY ADV. SRI.K.P.ANTONY BINU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 19-08-2020, ALONG WITH OP(Cr1.).234/2019, THE COURT
ON 15-09-2020 PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 15TH DAY OF SEPTEMBER 2020 / 24TH BHADRA, 1942

OP(Cr1.).No.234 OF 2019

PETITIONER:

SHEEJA.K.
AGED 35 YEARS
D/O. P. K. PADMANABHAN MASTER, VARAVAYAL
ROAD, MOORIKOVVAL, ANNUR P.O., PAYYANNUR,
NOW RESIDING AT THRIKKARIPUR,
KASARGOD DISTRICT.

BY ADVS.
SRI.SURESH KUMAR KODOTH
SRI.K.P.ANTONY BINU

RESPONDENTS:

- 1 P.C.JAYADEV
AGED 39 YEARS
S/O. P.K. GOPLAKRISHNAN MASTER, RESIDING AT
KERALA WATER AUTHORITY GUEST HOUSE,
KACHERIPADY, ERNAKULAM, KOCHI - 682 018.
- 2 LATHA P. C.
W/O. P.K. GOPALAKRISHNAN MASTER, RESIDING AT
KERALA WATER AUTHORITY GUEST HOUSE,
KACHERIPADY, ERNAKULAM, KOCHI - 682 018.
- 3 JYOTHI P. C.
D/O. P.K. GOPALAKRISHNAN MASTER, RESIDING AT
KERALA WATER AUTHORITY GUEST HOUSE,
KACHERIPADY, ERNAKULAM, KOCHI - 682 018.

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 19-08-2020, ALONG WITH Cr1.MC.7977/2018(F), THE COURT ON 15-09-2020 DELIVERED THE FOLLOWING:

C.R.

P.B.SURESH KUMAR, J.

Criminal M.C.No.7977 of 2018

&

Original Petition (CrI) No.234 of 2019

Dated this the 15th Day of September, 2020.

J U D G M E N T

These matters relate to one and the same proceedings under the Protection of Women from Domestic Violence Act, 2005 (the Act), and they are, therefore, disposed of by this common judgment. Parties and documents are referred to in this judgment, as they appear in CrI.M.C.No.7977 of 2018.

2. The second respondent is the wife of the third respondent and the petitioners are the mother and sister respectively of the third respondent. The marriage between the second respondent and the third respondent was solemnized on 18.11.2005 and they have a child aged nine years. The second respondent instituted M.C.No.28 of 2017 on the files of the Court of the Judicial Magistrate of the First Class-I, Hosdurg under Section

12 of the Act, against the petitioners and the third respondent. Annexure-A1 is the application preferred by the second respondent in this regard. It is alleged by the second respondent in Annexure A1, among others, that the petitioners had taken away her gold ornaments on the very first day of her marriage; that the petitioners have been ill treating her thereafter with the support of the third respondent; that the petitioners and the third respondent did not extend to her any care or protection while she was carrying; that the petitioners and the third respondent were indifferent towards her even after she delivered the child; that the petitioners and the third respondent used to humiliate her parents and that the third respondent is providing only paltry amount for her sustenance. The reliefs sought in the proceedings on the said allegations include orders prohibiting the petitioners and the third respondent from committing acts of domestic violence, orders directing the petitioners and the third respondent to return the gold ornaments, orders directing the third respondent to pay maintenance and to provide alternative accommodation to the second respondent, orders restraining the third respondent from alienating his properties etc. The case set out by the petitioners in the Cr1.M.C is that the facts disclosed in the application do not make out a case of domestic violence as defined under the Act and

the proceedings would, therefore, amount to an abuse of the process of the court liable to be quashed under Section 482 of the Code of Criminal Procedure (the Code).

3. O.P.(Cr1)No.234 of 2019 is one instituted by the second respondent stating, among others, that after service of notice on the petitioners and the third respondent, the court below passed an interim order in the proceedings on 14.2.2018, directing the third respondent to pay a sum of Rs.10,000/- to the second respondent and Rs.5,000/- to the child towards their maintenance; that Ext.P3 order has so far not been complied with by the third respondent, and that nevertheless, further action is not being taken by the court in view of the interim order passed by this court staying the further proceedings in Annexure A1 application. The second respondent, therefore, seeks appropriate directions for enforcement of the interim order passed by the court on 14.2.2018 and for disposal of Annexure A1 application finally within a time limit.

4. Heard the learned counsel for the petitioners and the learned counsel for the second respondent. There is no appearance for the third respondent.

5. The learned counsel for the petitioners reiterated the stand taken by the petitioners in the Cr1.M.C. It was also

submitted by the learned counsel that a trivial matrimonial dispute has been blown out of proportion by the second respondent for the purpose of instituting Annexure A1 application and the intention of the second respondent is to exert pressure on the third respondent to satisfy her illegitimate demands. It was further submitted by the learned counsel that the allegations in the application as far as the petitioners are concerned, are vague and ambiguous and the learned Magistrate, in the circumstances, ought not to have issued notice to the petitioners in the proceedings.

6. Per contra, the learned counsel for the second respondent submitted that the allegations in Annexure A1 application would certainly make out a case of domestic violence and the Cr1.M.C is one instituted with a view to delay the disposal of the proceedings.

7. I have considered the contentions advanced by the learned counsel for the parties on either side.

8. The Act is a welfare legislation enacted to provide a remedy in civil law for protection of women from domestic violence. The proceedings under the Act are, therefore, essentially civil in nature except in so far as it relate to Section 31 dealing with the breach of protection order issued under the Act and Section 33 dealing with failure or refusal by Protection Offices

in discharging their duties in terms of the orders issued by the Court. As such, in **Vijayalekshmi Amma v. Bindu**, 2010 (1) KLT 79, this Court held that a party against whom a proceedings is initiated under Section 12 of the Act cannot approach this court for quashing the proceedings, invoking the power of this Court under Section 482 of the Code, and that the power of this Court under Section 482 can be exercised only in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of the process of the court or to secure the ends of justice, when cognizance is taken by the Magistrate for an offence under sub-section (1) of Section 31 or Section 33 of the Act. Paragraphs 17 to 19 of the said judgement read thus:

“17. In an application filed under section 12 claiming reliefs either under section 18, 19, 20, 21 or 22, the Magistrate can pass an interim order under section 18 to 23. All these reliefs are in respect of the civil liability and not the criminal liability. If that be so, it is not for this court under section 482 of the Code of Criminal Procedure, to quash the proceedings invoking the extra-ordinary inherent powers provided under the Code, as such order is necessary neither to give effect to any order under the Code nor to prevent abuse of the process of any court nor to secure the ends of justice. An offence under sub section (1) of Section 31, or an offence under section 33 taken cognizance by the Magistrate or an order passed by the Magistrate directing the respondent to execute a bond as provided under sub section 3 of Section 19, which by the mandate under sub

section 5 that such order is to be treated as an order under Chapter VIII of Code of Criminal Procedure, stand on different footing. They are truly criminal proceedings. Except in respect of such proceedings it is not for the High Court to exercise the extraordinary inherent jurisdiction to quash the proceedings pending before the Magistrate.

18. A person to whom notice was issued by the Magistrate in a petition filed under section 12 of the Act can appear before the Magistrate and contend that the proceedings is not maintainable either on the ground that the person who filed the application is not an aggrieved person as defined under section 2(a) or the application is not filed for an aggrieved person. He is also entitled to contend that he is not a respondent, as defined under section 2(q) of the Act. He is also entitled to contend that there is no domestic violence as defined under section 2(g) or the reliefs sought for are not the reliefs provided under the Act. In all such cases, it is not for this court to consider the question, when it could legitimately be raised and decided before the Magistrate. So long as the respondent is not an accused in a proceeding initiated under the Act and pending before the Magistrate and he is not obliged to apply for bail in respect of such proceedings and even his personal presence is not mandatory for hearing and disposing a petition under section 12, it is not for this court to consider the question whether the petitioner before the Magistrate is an aggrieved person as defined under section 2(a) or the respondent is a respondent as defined under clause (q) of Section 2 or the household is a shared household as defined under clause (s) or whether there is any domestic relationship between the parties or whether the reliefs sought for in the petition could be granted. These are matters which are to be considered by the Magistrate,

before granting relief in the petition filed under section 12, either under section 18 or 19 or 20 or 21 or 22 or 23.

19. Learned counsel appearing for the petitioner pointed out that in various decisions of this court and the other High Courts and Apex Court, proceedings initiated under section 12 of the Act were quashed invoking the powers under section 482 of Code of Criminal Procedure and in such circumstance, it cannot be held that inherent powers under section 482 of the Code of Criminal Procedure is not to be exercised. In none of those decisions, the question was addressed as stated above and in fact in none of those decisions, question whether the inherent jurisdiction under section 482 of Code of Criminal Procedure is to be invoked to quash a proceeding initiated under the Act which is enacted to provide a remedy under the civil law was not considered. In such circumstances, for the reason that proceeding under the Act was quashed invoking the powers under section 482 of the Code of Criminal Procedure it cannot be said that the powers under section 482 is to be invoked in all cases. I am of the firm view that a party against whom proceedings were initiated by the Magistrate under section 12, on a petition filed under section 12(1) of the Act seeking relief under section 18 to 23, has adequate remedy before the Magistrate, it is not for the High Court to exercise the extraordinary inherent powers and quash the proceedings. Section 482 is to be invoked in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of process of any court or to secure the ends of justice, when cognizance was taken by the Magistrate for an offence under sub section (1) of Section 31 or Section 33 of the Act. In all other cases, the affected party could raise the question and seek an order from the Magistrate including the maintainability of the proceedings

and if an order is passed against him, he is at liberty to file an appeal as provided under section 29 of the Act. If that be so, it is not for this court to invoke the extraordinary jurisdiction under section 482 of the Code of Criminal Procedure, to quash a proceeding initiated under section 12 (1) of the Act.”

As evident from the extracted paragraphs of the judgement, this Court has held in the said case that a person to whom notice is issued by the Magistrate in an application under Section 12 of the Act can appear before the Magistrate and contend that the proceedings is not maintainable against him, on the ground either that the person who filed the application is not an ‘aggrieved person’ as defined in Section 2(a) of the Act, or that he would not fall within the definition of the ‘respondent’ in Section 2(q) of the Act, or that the allegations do not make out a case of ‘domestic violence’ as defined in Section 2(g) of the Act or that the reliefs sought are not reliefs provided for in the Act. It was also held by this Court in the said case that such contentions as regards the maintainability of the application, if raised, shall be decided by the Magistrate. It was further held by this Court in the said case that so long as the respondent is not an accused in a proceedings initiated under the Act, he is not even obliged to apply for bail in respect of such proceedings and his personal presence is not

mandatory for hearing and disposing of an application under Section 12. In the light of the decision of this Court in **Vijayalekshmi**, according to me, the Criminal M.C. is not maintainable.

9. Despite the findings aforesaid, it is necessary to mention that in so far as the proceedings under the Act are to be dealt with by criminal courts in accordance with the procedure prescribed under the Code, it has become a common practice now to rope in the relatives, at times even distant relatives of the person from whom relief is essentially intended, as respondents in the applications instituted under the Act without any bonafides and with oblique motives, on omnibus and vague allegations, despite various judgements of the Apex Court deprecating that practice. In **Preeti Gupta v. State of Jharkhand** (2010) 7 SCC 667, the Apex Court has taken note of the said fact and observed that majority of such complaints are filed either on the advice of the lawyers or with their concurrence. Be that as it may. It is also observed that notice is invariably issued to all the respondents in such applications without application of mind as to whether the aggrieved person has made out a case of domestic violence against all of them, as a result of which, it is noticed that some of the proceedings under the Act, where parties are arrayed as

respondents without making out a case of domestic violence against them, have become a tool of harassment at the hands of the aggrieved persons to obtain reliefs which they are not entitled to. The statute being a remedial one to protect the women from domestic violence, it has to be enforced having regard to the realities of life. As such, even while taking all endeavours possible to protect the aggrieved persons from domestic violence, the courts have to be extremely cautious and careful to ensure that its powers are not being abused. One of the important steps to be taken towards that direction is to scrutinize the applications meticulously and satisfy that a case of domestic violence as defined in the Act is made out against all the respondents and no one is arrayed as a party to the proceedings on omnibus and vague allegations, so that the court can refrain from issuing notice to them. The provisions in the statute especially Section 28, conferring power on the Magistrate to lay down its own procedure for disposal of an application under Section 12 or under subsection (2) of Section 23 would indicate that the scheme of the statute is that the approach of the courts shall be to enforce the provisions of the Act, keeping in mind the fact that the parties who are close relatives in most of the cases, would at some point of time reconcile their differences and lead a life in harmony and

the opportunity for the parties to bring about a settlement of their differences is not lost on account of the steps taken in the proceedings. If proceedings under the Act are permitted to be used as tools of harassment, I have no doubt that the possibility of the parties settling their disputes amicably and leading a life in harmony would be bleak.

In the circumstances, the Original Petition (CrI) and Criminal M.C. are disposed of without prejudice to the right of the petitioners to approach the Magistrate for reliefs, as provided for in **Vijayalekshmi**. If the petitioners approach the Magistrate as permitted, the court below shall consider their requests, in the light of the decision of this Court in **Vijayalekshmi** and the observations made in this judgment. In so far as the petitioners are granted liberty to move the Magistrate for reliefs in terms of the judgment of this Court in **Vijayalekshmi**, the relief sought by the second respondent for time bound disposal of the proceedings is declined for the present.

Sd/-

P.B.SURESH KUMAR,

JUDGE.

APPENDIX OF Cr1.MC 7977/2018

PETITIONER'S EXHIBITS:

ANNEXURE-1 COPY OF THE COMPLAINANT RECEIVED BY
THE ACCUSED AND FILED BY THE SECOND
RESPONDENT BEFORE THE JUDICIAL
MAGISTRATE OF FIRST CLASS, HOSDURG.

ANNEXURE-II TRUE COPY OF THE TREATMENT RECORDS
AND DISCHARGE SUMMARY OF THE FIRST
PETITIONER.

RESPONDENTS' EXHIBITS: NIL

APPENDIX OF OP(Cr1.) 234/2019

PETITIONER'S EXHIBITS:

EXHIBIT P1	TRUE COPY OF MC DATED 28/12/2016 FILED BEFORE THE JFCM-1 HOSDURG.
EXHIBIT P2	TRUE COPY OF ORDER DATED 28.12.2016 IN CMP 10887/2016.
EXHIBIT P3	TRUE COPY OF ORDER DATED 14.02.2016 IN CMP 10887/2016.
EXHIBIT P4	TRUE COPY OF COUNTER AFFIDAVIT DATED 17.05.2018.

RESPONDENTS' EXHIBITS: NIL