

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR**

**FRIDAY, THE 10TH DECEMBER 2010 / 19TH AGRAHAYANA 1932**

**Crl.MC.No. 4843 of 2010()**

**CMP.2198/2010 IN MC. 246/2010 OF JUDL. MAGISTRATE OF FIRST CLASS  
COURT-II, THIRUVANANTHAPURAM.**

**PETITIONER/RESPONDENT/ACCUSED**

**SHANAVAS, S/O.ABDULSALAM,  
AGED 25 YEARS, RESIDING AT T.C.41/491,  
M.A.MANZIL, NEAR MATHSYAFED, BEEMAPALLY,  
THIRUVANANTHAPURAM.**

**BY ADV. SRI.AYYAPPAN SANKAR,  
SRI.G.SURARSHAN.**

**RESPONDENTS/PETITIONER AND STATE**

**1. RASEENA, D/O.SHIHABUDEEN,  
AGED 20 YEARS, RESIDING AT T.C.42/526,  
PUTHUVAL HOUSE, BEEMAPALLY, VALLAKADAVU P.O.,  
THIRUVANANTHAPURAM, REP. BY HER MOTHER  
ASEESEEE BEEVI, W/O.SHIHABUDEEN,  
RESIDING AT DO. DO.**

**2. STATE OF KERALA,  
REP. BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM.**

**R2 BY PUBLIC PROSECUTOR MR.P.A. SALIM.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 10/12/2010, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:**

**rs**

M.Sasidharan Nambiar, J.

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Crl.M.C.No.4843 of 2010  
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**ORDER**

First respondent, through her mother, filed petition under Section 12 of Protection of Women from Domestic Violence Act before Judicial First Class Magistrate's Court-II, Thiruvananthapuram, which was numbered as M.C.No.246/2010. First respondent also filed a petition for interim order under Section 23 of Protection of Women from Domestic Violence Act. By Annexure-II ex parte order dated 24.9.2010, respondents therein were restrained from committing any sort of domestic violence against the first respondent herein. Petitioner, the first respondent therein, was directed to appear before the court on 7.10.2010 and surrender his passport. He was also directed to pay Rs.1,500/- per month towards maintenance to the aggrieved person. Notice was ordered to the respondents therein, including the petitioner. Petitioner, along with the third respondent, challenged that order before Sessions Court, Thiruvananthapuram in Crl.A.No.758/2010. It is pending. They also sought an order staying Annexure-II

order. By Annexure-IV order, learned Sessions Judge stayed only the direction to surrender the passport. Annexure-VI, copy of the proceedings paper in M.C.No. 246/2010, shows that case was posted to 19.10.2010 and on that day, learned Magistrate directed the petitioner to appear in person and pay maintenance. On that day, case was posted to 2.11.2010. On 2.11.2010, petitioner was absent. The case was then posted to 18.11.2010. On 18.11.2010 recording that petitioner was absent and there was no payment of interim maintenance ordered, non bailable warrant returnable on 9.12.2010 was issued. This petition is filed under Section 482 of Code of Criminal Procedure for a direction to the learned Magistrate to dispose the petition filed under Section 12 of Protection of Women from Domestic Violence Act expeditiously and to stay the order issuing non bailable warrant.

2. In the light of the order to be passed in this petition, it is not necessary to issue notice to the first respondent.

3. Section 23(1) of Protection of Women from Domestic Violence Act provides that in any proceeding

before the Magistrate, he may pass such interim order as he deems just and proper. Sub-section (2) provides that if the Magistrate is satisfied that an application prima facie discloses that respondent is committing or has committed an act of domestic violence or that there is likelihood that 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 22 against the respondent.

4. Section 31 of Protection of Women from Domestic Violence Act provides for penalty for breach of protection order. Under sub-section (1), a breach of protection order or of an interim protection order by the respondent shall be an offence and shall be punishable with imprisonment for a term which may extend to one year or fine or both. Section 32 provides that notwithstanding anything contained in the Code of Criminal Procedure, the offence under sub-section (1) of Section 31 shall be cognizable and non bailable.

5. As is clear from Section 31 of Protection of Women from Domestic Violence Act, when an order under

Section 23, whether under sub-section (1) on hearing the respondent or under sub-section (2), an ex parte interim protection order, was passed and respondent commits breach of that order, respondent is punishable as provided under sub-section (1) of Section 31. That offence, as provided under Section 32 of Protection of Women from Domestic Violence Act is non bailable and cognizable. But the cognizable offence provided under Section 31(1) would only be the result of a breach of the protection order as provided under Section 18 of Protection of Women from Domestic Violence Act.

6. A Magistrate, on passing an order under Section 23(1) or an ex parte order under Section 23(2) of Protection of Women from Domestic Violence Act, cannot direct arrest of the respondent by issuing non bailable warrant before taking cognizance of the offence, if an offence is committed under sub-section (1) of Section 31. Annexure-VI proceeding paper shows that after passing Annexure-II ex parte order as provided under sub-section (2) of Section 23 of Protection of Women from Domestic Violence Act, the petition filed by the first respondent under Section 12 of Protection of

Women from Domestic Violence Act was posted for the appearance of the respondents. When first respondent appeared through a counsel, he was directed to appear in person and pay the maintenance. It is on the failure to appear and pay maintenance as ordered, the non bailable warrant was issued. Learned Magistrate cannot order non bailable warrant for the failure to pay maintenance as has been done in this case. It is made clear that Magistrate can proceed against the petitioner or other respondents for non payment of the interim maintenance only as provided under Protection of Women from Domestic Violence Act and such an order cannot be enforced as has been done by the learned Magistrate. In such circumstances, the order issuing non bailable warrant can only be quashed.

Petition is allowed. The order issuing non bailable warrant against the petitioner in M.C.No. 246/2010 is quashed. Judicial First Class Magistrate-II, Thiruvananthapuram is directed to dispose the petition filed under Section 12 of Protection of Women from Domestic Violence Act, on merits, expeditiously. It is also made clear that learned Magistrate is

competent to execute Annexure-II order passed under Section 23(2) of Protection of Women from Domestic Violence Act, in accordance with the provisions of the Act.

10<sup>th</sup> December, 2010

(M.Sasidharan Nambiar, Judge)

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