

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Crl.MC.No. 772 of 2015 (A)

**AGAINST THE ORDER IN CRA 11/2015 OF SESSIONS COURT,
THIRUVANANTHAPURAM DATED 29.01.2015**

**AGAINST THE ORDER IN MC 53/2014 of J.M.F.C-I, THIRUVANANTHAPURAM
DATED 05.01.2015**

REVISION PETITIONER(S)/PETITIONERS :-

1. KUMARI JYOTHI, AGED 41 YEARS,
D/O.BABY SIVADASAN HAVING HER ADDRESS AT SUNHESSONIT,
VILLA NO.10, SUN HOME PVT. LTD. BABUJI NAGAR,
MEDICAL COLLEGE PO, THIRUVANANTHAPURAM - 695 011,
(MEDICAL COLLEGE POLICE STATION),
NOW RESIDING AT JYOTHI NILAYAM , MELATTUMOOZHI,
VAMANAPURAM PO, THIRUVANANTHAPURAM -695 606.
2. MANASA SHAMMY, AGED 12 YEARS,
SUNHESSONIT, VILLA NO.10, SUN HOME PVT.LTD.,
BABUJI NAGAR, MEDICAL COLLEGE PO,
THIRUVANANTHAPURAM - 695 011,
(MEDICAL COLLEGE POLICE STATION)
NOW RESIDING AT JYOTHI NILAYAM , MELATTUMOOZHI,
VAMANAPURAM PO, THIRUVANANTHAPURAM -695 606
(REPRESENTED BY ITS 1ST PETITIONER MOTHER).

BY ADV. SRI.M.H.HANIL KUMAR

RESPONDENT(S)/RESPONDENT :-

1. DR.SHAMMY SREENIVASAN, AGED 41 YEARS,
S/O. N.SREENIVASAN, SUNHESSONIT, VILLA NO.10,
SUN HOME PVT.LTD., BABUJI NAGAR, MEDICAL COLLEGE PO,
THIRUVANANTHAPURAM -695 011.
(SREEKARIYAM POLICE STATION LIMIT).
2. STATE OF KERALA,
REP.BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

R1 BY ADVS. SRI.N.R.SURESH KUMAR

SRI.J.JAYAKUMAR

SRI.MUHAMMED JALALUDEEN

R2 BY SRI.JUSTIN JACOB, PUBLIC PROSECUTOR

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rkj

APPENDIX

PETITIONER(S)' ANNEXURES :-

- ANNEXURE A1 : TRUE COPY OF THE M.C. NO.53/2014 FILED BY THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM DATED.**
- ANNEXURE A2 : TRUE COPY OF THE AD- INTERIM ORDER PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT,-1, THIRUVANANTHAPURAM IN M.C.NO. 53/2014 DATED 11.12.2014.**
- ANNEXURE A3 : TRUE COPY OF THE MODIFICATION PETITION FILED BY THE RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM DATED 12.12.2014.**
- ANNEXURE A4 : TRUE COPY OF THE MODIFICATION ORDER PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT-1, THIRUVANANTHAPURAM DATED 05.01.2015.**
- ANNEXURE A5 : TRUE COPY OF THE STAY PETITION IN C.M.P.NO. 76/2015 IN CRIMINAL APPEAL NO. 11/2015 BEFORE THE SESSIONS COURT, THIRUVANANTHAPURAM DATED 12.01.2015.**
- ANNEXURE A6 : TRUE COPY OF THE STAY IN C.M.P. NO.76/2015 IN CRIMINAL APPEAL NO.11/2015 DATED 29.01.2015, PASSED BY THE SESSIONS COURT, THIRUVANANTHAPURAM.**
- ANNEXURE A7 : TRUE COPY OF THE APPEAL NO. 11/2005 FILED BY THE PETITIONERS BEFORE THE SESSIONS COURT, THIRUVANANTHAPURAM.**

RESPONDENT(S)' ANNEXURES :- NIL

//TRUE COPY//

P.A. TO JUDGE

P.UBAID, J.

=====

Crl.M.C.No.772 of 2015

=====

Dated this the 13th day of November, 2015

ORDER

An order passed by the Judicial First Class Magistrate Court-I, Thiruvananthapuram modifying an order passed earlier under Section 23 of the Protection of Women from Domestic Violence Act (DV Act) is under challenge, and it is sought to be set aside under Section 482 Cr.P.C. It was submitted that an appeal brought by the petitioners against the said order is pending before the Court of Session, Thiruvananthapuram. Accordingly, a report was called for. Now there is a report by the learned First Additional Sessions Judge, Thiruvananthapuram that the Crl.Appeal No.11 of 2015 stands posted to 22.12.2015 for hearing. The report shows that the respondent has already entered appearance, and that the appeal is ripe for hearing. In such a situation, no orders are necessary in this proceeding. Even otherwise, the said order cannot be set aside because, this Court has recently settled that

proceedings brought under the DV Act cannot be quashed under Section 482 Cr.P.C. The aggrieved party will have to resort to the normal remedies possible under the law, like appeal or revision. Presently, appeal against the order is pending, and will have to be disposed of by the appellate Judge.

In the above circumstances, this Crl.M.C. is disposed of, with a direction to the learned First Additional Sessions Judge, Thiruvananthapuram to hear and dispose of Crl.Appeal No.11 of 2015 as expeditiously as possible.

Sd/-
**P.UBAID
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE