

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

Crl.MC.No. 1958 of 2014

MC 11/2011 of J.M.F.C.-I, CHITTUR

PETITIONER/RESPONDENT :-

**R.SATHISH KUMAR, AGED 36 YEARS,
S/O.RAMACHANDRAN, RESIDING AT
MELEMUTTICHIRA HOUSE,
PATTANCHERRY POST, PALAKKAD - 678 532.**

**BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU**

RESPONDENT/PETITIONER :-

**SARITHA, W/O.SATHISH KUMAR,
RESIDING AT ATHANI KEERALAMALA HOUSE,
KUSUMAGIRI P.O., KAKKANAD, ERNAKULAM - 680 030.**

R BY ADV. SRI.P.R.PADMANABHAN NAIR

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 27-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

rkj

Crl.MC.No. 1958 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES :-

ANNEXURE A : TRUE COPY OF THE ORDER IN M.C. NO. 11/2011 ON THE FILE OF THE COURT OF THE JUDICIAL 1ST CLASS MAGISTRATE-I, ALUVA DATED 12-4-2011.

ANNEXURE B : TRUE COY OF THE PETITION FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, ALUVA AS M.P. NO. 62/2014 IN M.C. NO. 11/2011 DATED 10-1-2014.

ANNEXURE C : TRUE COPY OF THE CERTIFICATE ISSUED BY K.S.R.T.C. DATED 20-9-2013.

ANNEXURE D : TRUE COPY OF THE PETITION AND THE PROCEEDINGS SHEET IN C.M.P. NO. 7751/2012 IN M.C. NO. 11/2011 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, CHITTUR DATED 10-10-2012.

RESPONDENT(S)' ANNEUXRES :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

=====

Crl.M.C.No.1958 of 2014

=====

Dated this the 27th day of November, 2015

ORDER

The petitioner herein is the respondent in MC No.11 of 2011 of the Judicial First Class Magistrate Court-I, Chittur. In the said proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (DV Act), the learned Magistrate passed an ex-parte order directing payment of maintenance at the rate of ₹7,000/- per month, and also payment of a compensation of ₹10,00,000/-. Just because the respondent remained ex-parte, the learned Magistrate mechanically granted the whole relief. Anyway, an application is now pending at the instance of the petitioner herein to set aside the ex-parte order. By the time the claimant filed an application for execution of the award, under Section 31 of the DV Act. Here again the learned Magistrate committed a mistake, and issued distress warrant. The said order is sought

to be set aside under Section 482 Cr.P.C.

2. It appears that the learned Magistrate is under a misapprehension that the claim made by the claimant will have to be allowed in toto when the respondent is ex-parte. This Court has many times cautioned Judicial Magistrates discharging various functions of a civil nature, that such orders shall not be passed mechanically. I hope the learned Magistrate will properly and judiciously consider the application made by the petitioner herein to set aside the ex-parte order. The present grievance is regarding the distress warrant issued by the learned Magistrate on the application brought under Section 31 of the DV Act.

3. Section 31 of the DV Act is not a provision for execution of maintenance order or compensation order. The law under the Rules framed under the DV Act provides how such orders should be executed. Section 31 of the DV Act is only a penal provision providing punishment for violation of some orders passed by the Court. In short, Section 31 of the DV Act is a penal provision which authorises judicial Magistrates to proceed with prosecution when violation of the Court's orders is complained of. Failure to pay maintenance will not amount to such a violation punishable under Section 31 of the DV Act. The proper way of execution is to bring execution petition as

provided under the DV Rules, as is done for the execution of the orders passed under Section 125 Cr.P.C. In short, instead of making a proper application for execution of the order, the claimant wrongly brought a petition under Section 31 of the DV Act which is a penal provision, and the learned Magistrate also wrongly acted on it, and issued distress warrant. The said warrant is liable to be recalled.

In the result, this petition is allowed. The court below is hereby directed to recall the distress warrant issued on Annexure-D petition, and pass appropriate Judicial order on the said application according to law. This order will not stand in the way of a proper execution petition.

Sd/-

**P.UBAID
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE