

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 24TH DAY OF NOVEMBER 2015/3RD AGRAHAYANA, 1937

Cr1.MC.No. 6137 of 2015 ()

AGAINST MC 2/2015 of JUDICIAL MAGISTRATE OF FIRST CLASS,,NEDUMKANDOM

PETITIONER/RESPONDENT:

CHACKO LUKOSE
THATHANKINARUKARA HOUSE, KOTTAYAM, UZHAVOOR
UDUMBANCHOLA,
PARATHODE PRESENTLY RESIDING AT 49-DACKLUST LINE
MOUNT LOREN, N.J. (NEW JERSY), PIN-08054
U.S.A.

BY ADV. SRI.SHERRY J. THOMAS

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. STATE OF KERALA
REPRESENTED THROUGH PUBLIC PROSECUTOR
HIGH COURT OF KERALA.
2. KATHREENA (KUNJUMOL), AGED 46 YEARS
THATHANKINATTUKARA HOUSE, MONIPPILLY, UZHAVOOR
NOW RESIDING AT PARATHODE VILLAGE, MARIYIL HOUSE
UDUMBANCHOLA THALUK, IDUKKI DISTRICT-685554.
3. JOSHAW SUNNY, AGED 14 YEARS
S/O. SUNNY, REPRESENTED BY KATHREENA (KUNJUMOL)
THATHANKINATTUKARA HOUSE, MONIPPILLY, UZHAVOOR
NOW RESIDING AT PARATHODE VILLAGE, MARIYIL HOUSE
UDUMBANCHOLA THALUK, IDUKKI DISTRICT-685554.
4. JIYANNA SUNNY, AGED 11 YEARS
D/O. SUNNY, REPRESENTED BY KATHREENA (KUNJUMOL)
THATHANKINATTUKARA HOUSE, MONIPPILLY, UZHAVOOR
NOW RESIDING AT PARATHODE VILLAGE, MARIYIL HOUSE
UDUMBANCHOLA THALUK, IDUKKI DISTRICT-685554.

R1 BY PUBLIC PROSECUTOR SRI. JUSTIN JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 6137 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE A1- THE CERTIFIED COPY OF THE MC.NO. 2/2015 FILED BEFORE THE
JFMC NEDUMKANDAM.

ANNEXURE A2- THE MEDICAL CERTIFICATE DATED 21-2-14 ISSUED FROM BISHOP
VAYALIL MEDICAL CENTRE.

ANNEXURE A3- THE TRUE COPY OF THE AGREEMENT DATED 22-10-11.

ANNEXURE A4- THE TRUE COPY OF THE FIR NO. 361/2015 OF KURAVILANGAD
POLICE STATION.

ANNEXURE A5- THE TRUE COPY OF THE PASSPORT OF THE PETITIONER.

ANNEXURE A6- THE TRUE COPY OF THE OBJECTION FILED BY THE PTITIONER TO
ANNEXURE A1.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.A. TO JUDGE.

kp/-

P.UBAID, J.

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Cr.M.C.No.6137 of 2015

Dated this the 24th day of November, 2015

ORDER

The petitioner herein is the sole respondent in a proceeding brought by the respondents 2 to 4 herein under section 12 of the Protection of Women from Domestic Violence Act (D.V. Act) before the Judicial Magistrate of First Class, Nedumkandom. The petitioner has already appeared before the learned Magistrate and has filed statement of objections to the application. Now he has approached this Court with this petition filed under Section 482 of the Cr.P.C to quash the said D.V Act proceeding on various grounds.

2. One is that, he has been permanently residing in U.S.A and the other is that, presently there is no domestic relationship between him and the claimants. Very recently, this Court has settled the legal position, that a proceeding brought under the D.V. Act for various reliefs cannot be quashed by the High Court under Section 482 of the Cr.P.C. This Court has also observed that when normal remedies like appeal or other course under the

D.V.Act, or a revision under Section 397 of the Cr.P.C, are not possible, and if the issue involves some question of jurisdiction, the aggrieved person can very well move the High Court under Article 227 of the Constitution of India. Here, the petitioner seeks relief under section 482 of the Cr.P.C on two grounds. Those things will have to be looked into and decided by the trial court. Those are matters related to the right to relief under the D.V.Act. Whether the claimants have any domestic relationship with the respondent, or whether the claimant is really an aggrieved person as defined under the law, or whether there is any possibility of any sort of domestic violence in a situation where the respondent resides elsewhere, or whether the claimants are entitled to get any relief under the D.V. Act, are all matters to be decided by the trial court. Those things cannot be considered and decided by the High Court under Section 482 of the Cr.P.C.

3. In view of the position settled by this Court recently, this proceeding brought under Section 482 of the Cr.P.C cannot proceed further. The learned counsel for the petitioner however made a request to direct the trial court not to insist on the

physical presence of the petitioner during the enquiry. A proceeding brought under Section 12 of the D.V Act is not a criminal proceeding. It is quite unlike a prosecution, where the trial court may insist on the presence of the accused on some occasion. The petitioner has already entered appearance before the learned Magistrate, and has filed his statement of objections. If he wants to adduce any evidence of his own, he can very well appear before the learned Magistrate and adduce his evidence at the time of trial. If he does not appear or does not adduce any evidence, he will be set ex-parte, and orders will be passed accordingly. I do not think that the learned Magistrate will insist on the physical presence of the respondent in a D.V.Act proceeding.

In the result, this Crl.M.C is disposed of as not maintainable.

P.UBAID, JUDGE.