

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 10TH DAY OF DECEMBER 2015/19TH AGRAHAYANA, 1937

Crl.MC.No. 7751 of 2015 ()

ORDER IN CMP NO.1233/2015 IN MC 17/2015 OF THE JUDICIAL FIRST CLASS
MAGISTRATE COURT, KALADY

PETITIONER(S)/RESPONDENT 1 TO 6 IN CMP 1233/15 IN JFCM, KALADY:

1. SHYLA DEVASSYKUTTY, AGED 61 YEARS
PERUMAYAN HOUSE, VADAKKUMBHAGAM KARA & VILLAGE
KANJOOR PO, ALUVA TALUK.
2. DISMOL JOY, AGED 37 YEARS
W/O.JOY MATHAI, KACHAPPILLY (H), PULIYANAMKARA
PULIYANAM PO, PARAKADAVU VILLAGE, ALUVA TALUK.
3. LAISY JOJO, AGED 35 YEARS
W/O.JOJO JOSEPH, VADAKUMPADATH (H)
ENANALLOOR KARA & VILLAGE, ENANALLOOR PO
MUVATTUPUZHA.
4. JOY MATHAI, AGED 42 YEARS
S/O.MATHAI, KACHAPPILLY (H), PULIYANAMKARA
PULIYANAM PO, PARAKADAVU VILLAGE, ALUVA TALUK.
5. JOJO JOSEPH, AGED 40 YEARS,
S/O.JOSEPH, VADAKUMPADATH (H)
ENANALLOOR KARA & VILLAGE , ENANALLOOR PO
MUVATTUPUZHA.
6. T.D.VARGHESE, AGED 60 YEARS
S/O.DEVASSYKUTTY, THEKKEKARA HOUSE
KANJOOR KARA & POST, ALUVA

BY ADVS.SRI.PRAVEEN K.JOY
SRI.NIXON PAUL

RESPONDENT(S)/STATE & PETITIONER IN CMP 1233/15 IN MC 17/15 OF JFCM:

1. STATE OF KERALA
REP. BY PUBLIC PROSECTOR, HIGH COURT OF KERALA
ERNAKULAM-682018
2. REMYA OUSEPHACHAN, AGED 29 YEARS, W/O.OUSEPACHAN,
PERUMAYAN (H), VADAKKUBHAGAM KARA & VILLAGE,
KANJOOR PO, ALUVA TALUK - 682055.

R BY PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
10-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 7751 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE 1- COPY OF THE INJUNCTION ORDER IN IA 588/15 IN OS 182/15 OF
MUNSIFF'S COURT, ALUVA

ANNEXURE 2- COPY OF THE ORDER DATED 31.7.2015 IN CMP 1233/15 IN MC
17/15 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY

ANNEXURE 3- COPY OF THE COUNTER IN MC 17/15 OF JUDICIAL FIRST CLASS
MAGISTRATE COURT, KALADY

ANNEXURE 4- COPY OF THE FIR 2065/15 OF KALADY POLICE STATION

ANNEXURE 5- COPY OF THE COMMISSION REPORT IN OS 182/15 OF MUNSIFF'S
COURT, ALUVA

RESPONDENT(S) ' EXHIBITS: NIL

//TRUE COPY//

PA TO JUDGE

bka/-

P. UBAID, J.

Crl. M.C. No. 7751 of 2015

Dated this the 10th day of December, 2015

ORDER

The petitioners herein are the respondents in MC No.17/2015 of the Judicial First Class Magistrate Court, Kalady. It is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (for short, “the DV Act”). On an application filed as CMP No.1233/2015 in the main proceeding, the learned Magistrate passed an interim order under Section 23 of the DV Act on 31.07.2015, granting certain reliefs to the claimant. The said order is under challenge in this petition brought under Section 482 of the Code of Criminal Procedure.

2. This Court has recently settled the position that proceedings or orders under the DV Act cannot be quashed by the High Court under Section 482 of the Cr.P.C. The DV Act is a self contained Act, providing

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certain remedies to aggrieved persons, and also prescribing the procedure, including right of appeal. If right of appeal is not possible, or if revision is also not possible in a given situation, the aggrieved person can come under Article 227 of the Constitution, provided the issue involves some jurisdictional manner. The petitioners herein will have to appear before the learned Magistrate and make contest, presenting all the grievances. Whatever be their case; whether it be that the claimant has no domestic relation, or that the claimant has not at any time shared the household, or that the claimant is not entitled to any relief under the law, the petitioners will have to present all their grievances and defence before the Magistrate. CMP No.1233/2015 is yet to be decided on merits after hearing both sides. Instead of making contest there and to have the application decided on merits, the petitioners rushed to this Court under Section 482 of Cr.P.C. Such a course cannot be entertained. The petitioners will have to find their remedies under the DV

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Act. They can very well file their counter statements in the main proceeding and also in CMP No.1233/2015. What is granted by the learned Magistrate is only an adinterim order, which is not appealable. The question of appeal or revision comes only when the matter is decided on merits. CMP No.1233/2015 will have to be decided by the learned Magistrate on merits. Before that, this Court cannot interfere.

In the result, this Crl.M.C. is disposed of, with observation that the petitioners will have to approach the learned Magistrate and make contest there, and that CMP No.1233/2015 will have to be decided on merits, after hearing both the parties.

Sd/-
P. UBAID
JUDGE