

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

Cr1.Rev.Pet.No. 563 of 2013 ()

AGAINST THE JUDGMENT IN CRIMINAL APPEAL NO. 562/2010 of ADDL.DISTRICT
& SESSIONS JUDGE (ADHOC-III), NORTH PARAVUR DATED 22-02-2013

AGAINST THE ORDER IN M.C.NO.41/2009 of JUDICIAL 1 CLASS MAGISTRATE-I,
ALUVA DATED 03-09-2010

PETITIONER/RESPONDENTS/PETITIONER:

SHINEY AUGUSTINE, AGED 35 YEARS,
D/O. AUGUSTY K.B.BAWA, KOLLAPARAMBIL HOUSE
CHEMBUMUKKU P.O., TRIKKAKARA - 682 021.

BY ADV. SRI.T.O.XAVIER

RESPONDENTS/APPELLANT/RESPONDENTS AND STATE:

1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

2. CHACKO P.MATHEW, AGED 40 YEARS
S/O. P.M.MATHAI, PAPPALIL HOUSE, DAM ROAD
BANGGLAKALAM, PALAGHAT DISTRICT-678624.

3. P.MATHAI, AGED 69 YEARS,
S/O. P.M.MATHAI, PAPPALIL HOUSE, DAM ROAD
BANGGLAKALAM, PALAGHAT DISTRICT-678624.

4. ANNAMMA MATHAI, AGED 66 YEARS
W/O. P.M.MATHAI, PAPPALIL HOUSE, DAM ROAD
BANGGLAKALAM, PALAGHAT DISTRICT-678624.

5. DANIEL P.MATHEW, AGED 37 YEARS
S/O. P.M.MATHAI, PAPPALIL HOUSE, DAM ROAD
BANGGLAKALAM, PALAGHAT DISTRICT-678624.

R1 BY PUBLIC PROSECUTOR SMT.S.HYMA
R2 TO R5 BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 03-09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE A CERTIFIED COPY OF THE JUDGMENT IN CRL.A.NO.562/2010
OF THE ADDL. DISTRICT & SESSIONS JUDGE (ADHOC-III) N.PARAVUR DATED
22.2.2013.

ANNEXURE B CERTIFIED COPY OF THE JUDGMENT IN CRL.R.P.22/2011
OF THE ADDL. DISTRICT & SESSIONS JUDGE (ADHOC-III) N.PARAVUR DATED
22.2.2013.

ANNEXURE C TRUE COPY OF THE ORDER IN M.C.41/2009 JFCM-1, ALUVA
DATED 3.9.2010.

RESPONDENTS' EXHIBITS : NIL

/TRUE COPY/

P. A. TO JUDGE

SUNIL THOMAS, J.

Crl. R. P. No. 563 of 2013

Dated this the 3rd day of September, 2015

ORDER

This revision petition is filed by the wife in a strained matrimonial relationship, aggrieved by the judgment in Criminal Appeal No.562/2010, in a proceeding under Section 12 of the Protection of Women from Domestic Violence Act & Rules (hereinafter referred as 'DV Act'). The revision petitioner herein was married to the 2nd respondent on 10.11.2003. The respondents 3 to 5 are the in-laws. The matrimonial relationship got strained and ultimately the wife filed M.C.No.41/2009 before the Magistrate Court seeking reliefs of protection and return of the gold ornaments and the amount, given at the time of marriage. It was contended that, at the time of marriage, she was given 43 sovereigns of gold ornaments which were squandered away by the husband, in the course of the matrimonial relationship. It was further alleged that, at the time of marriage, a sum of ₹2 lakhs was also given to the husband and another sum of ₹7,000/- for purchase of an almirah.

2. Before the trial Court, the respondents appeared and contested the proceedings. On the side of the complainant, PW1 to PW3 were examined and Exts.P1 to P3 were marked. On the side of

the respondents, RW1 was examined and Ext.D1 was marked. The trial Court granted the prohibitory order along with a protection order and directed the 1st respondent to return 43 sovereigns of gold ornaments and ₹2,00,000/- to the revision petitioner herein within three months from the date of the order. This was challenged in appeal before the Addl. District and Sessions Judge, (Adhoc-III), N.Paravur. The appellate Court on a re-evaluation of the available materials, differed from the findings of the trial Court, set aside the order and allowed the appeal. Hence this revision petition, contending that the Court below has committed material irregularity in upsetting the finding of the trial Court.

3. Heard both sides and examined the records. The learned counsel for the revision petitioner confined himself to his claim in relation to return of 43 sovereigns of gold ornaments and ₹2,00,000/-. It was submitted by the learned counsel that, in the meanwhile, a decree of divorce was granted by the Family Court and hence he is not pursuing the remaining reliefs.

4. As mentioned above, there is a specific averment in the petition that, at the time of marriage 43 sovereigns of gold ornaments were given to her. It is further asserted that, this gold ornaments were taken possession by the husband in the course of the matrimonial

relationship and was kept in his safe custody. Thereafter, without her knowledge, the gold ornaments were allegedly sold one after another. In the written objections and the additional counter statement filed by the respondents, there is only a vague averment that the gold ornaments were held by the petitioner herself. It was further stated that the gold ornaments were not with the respondents and hence they were not liable to return the same.

5. Regarding the payment of ₹2 lakhs, in para 4 of her petition, she has specifically stated that, ₹2 lakhs was handed over to the respondents by the father of the revision petitioner. There is a further averment that the amount was received by the 2nd respondent and counted by both the 1st & 2nd respondents and thereafter they kept it. It is further stated that the amount was not returned. In the counter statement, there is absolutely no reference regarding this specific allegation.

6. To substantiate the case of the petitioner, she deposed as PW1 and also relied on the statement of her father as PW2. Both of them asserted in terms of the above pleadings. They also relied on Ext.P2, the original of which was produced as Ext.P6. Ext.P2 (Ext.P6) is admittedly is a document executed by the revision petitioner as well as by the 1st respondent in the Vanitha Police Station pursuant to a

complaint submitted by her to the Vanitha Police. Regarding this document, the version of the 1st respondent was that, pursuant to the complaint he was called to the Police Station and he was called upon to sign certain blank documents. It was asserted that one of the paper was converted in to Ext. P6.

7. The lower appellate Court did not accept the evidence of PW1 and PW2, on the ground that there was no independent evidence. It is true that, there was no other independent oral testimony apart from the evidence of the revision petitioner and her father as PW 1 and PW2. Evidently, in a case of matrimonial dispute, it cannot always be expected to prove the allegations through documentary evidence as well as through the independent evidence. The Court below ought to have considered the evidence available on record and satisfied itself as to whether the allegations were proved or not. Rather than doing so, the Court below held that, there was no further independent evidence, which according to me was not justified.

8. Even though admittedly, Exts.P2 and P6 were executed in the Vanitha Cell and hence to be appreciated with caution, it cannot be completely discarded, for few reasons. Even though, the husband asserted that he was pressurized and coerced by the Police to execute such a document, he thereafter did not lodge any complaint regarding

it. Further PW3, who is the Police Officer attached to the Vanitha Police Station, herself deposed denying the above allegation. Hence this is one piece of evidence which the Court below could have appreciated, rather than discarding it in toto, on the ground that it was executed in Police Station.

9. The Court below also stated that there was no specific denial regarding the above allegations. As mentioned earlier, the specific allegation in the petition is not specifically answered in the counter statement and even in the chief affidavit of DW1. There is only a vague reference, regarding gold ornaments. There is no specific averment that he has not misappropriated the gold ornaments or the money which were entrusted. On a totality of the above circumstances, it can safely be said that the denial was rather vague and not specific. These facts were not appreciated by the appellate Court in its correct perspective and the considered order of the trial Court was reversed based on the surmises. Hence I feel that, the matter requires reconsideration in the back ground of what is stated above. In revision, I am not inclined to upset the finding of the appellate Court and to substitute its findings. Hence it is essential that the matter should be remanded back to the Court below for a fresh consideration of the issue, relating to the return of gold ornaments and

the amount alone, in the light of what is stated above.

In the result, this Criminal Revision Petition is allowed. The impugned judgment is set aside. However, the remand is confined only to return of the gold ornaments and a sum of ₹2 lakhs. The Court below shall consider the entire matter afresh, untrammelled by any of the observations made above. Both sides shall appear before the lower appellate Court on 17.10.2015.

Sd/-

SUNIL THOMAS, JUDGE.

Pn