

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

TUESDAY, THE 17TH DAY OF MARCH 2015/26TH PHALGUNA, 1936

Crl.Rev.Pet.No. 620 of 2013 ()

AGAINST THE ORDER IN M.C. 15/2009 of JUDICIAL FIRST CLASS MAGISTRATE COURT - I, MAVELIKKARA DATED 28.10.2011

AGAINST THE JUDGMENT IN CRA 548/2011 of ADDITIONAL SESSIONS COURT, MAVELIKKARA DATED 15.02.2013

REVISION PETITIONERS/APPELLANTS IN CRA 548/2011/ RESPONDENTS IN MC

M.C.15/2009

- 1. BINUMON A.B. AGED 32 YEARS
S/O.SRI.BALAKRISHNAN
RESIDING AT ASHTAPATHY, OPPOSITE PERUVA
NARASIMHA SWAMY TEMPLE
VAIKOM, KOTTAYAM.**
- 2. LEELAMMA AGED 53 YEARS
W/O.SRI.BALAKRISHNAN
RESIDING AT ASHTAPATHY OPPOSITE PERUVA
NARASIMHA SWAMY TEMPLE
VAIKOM, KOTTAYAM.**

**BY ADVS.SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.N.K.SUBRAMANIAN
SMT.B.N.BINDU**

RESPONDENTS/ RESPONDENTS IN CRA 548/2011 & PETITIONERS IN MC 15/2009.:

- 1. DEEPA, AGED 31 YEARS
D/O.SRI.SADANANDAN
PERMANENTLY RESIDING AT AMBADY HOUSE, PONAKAM MURI
MAVELIKKARA, PIN-690101, ALLEPPEY DISTRICT.**
- 2. DRISYA (MINOR)
D/O..SRI BINUMON A.B.
PERMANENTLY RESIDING AT AMBADY HOUSE, PONAKAM MURI
MAVELIKKARA, PIN-690101
ALLEPPEY DISTRICT. (REPRESENTED BY HER MOTHER- 1ST RESPONDENT).**

Crl.Rev.Pet.No. 620 of 2013 ()

**3. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

R1 BY ADV. SRI.SUNIL NAIR PALAKKAT

R1 BY ADV. SRI.K.N.ABHILASH

R1 BY ADV. SMT.R.LEELA

R3 BY SRI GITHESH R., PUBLIC PROSECUTOR

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 17-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

JV

K. ABRAHAM MATHEW, J.

Crl.R.P. No.620 of 2013

Dated this the 17th day of March, 2015

ORDER

The first revision petitioner is the son of the second revision petitioner. The first respondent is the wife of the first revision petitioner and the second respondent is their minor daughter. Respondents 1 and 2 filed an application under Section 12 of the Protection of Women from Domestic Violence Act claiming reliefs under Section 18(e) and 20(1)(d) of the Act.

2. The allegations were that the revision petitioners misappropriated the gold ornaments of the first respondent worth 106 sovereigns and Rupees two lakhs her parents had given her. She prayed for return of the gold ornaments or its value and the amount of two lakh rupees. The second prayer was to direct the first revision petitioner to pay maintenance to respondents 1 and 2 at the rate of Rs.3,000/- and Rs.1,500/- respectively. Learned Magistrate found that the second respondent is entitled to maintenance and he fixed the amount at Rs.1,500/- per month. He directed the revision petitioners to

return the gold ornaments worth 106 sovereigns to the first respondent or to pay its market value. The order was challenged in Criminal Appeal 548/2011. Learned Sessions Judge dismissed the appeal. In this revision only the finding with regard to the gold ornaments is challenged.

3. In the petition filed under Section 12 of the Protection of Women from Domestic Violence Act there is no averment that the first respondent entrusted any gold ornaments to the revision petitioners. There is a bald allegation that they misappropriated her gold ornaments; no details are given. In the evidence also the first respondent, who was examined as PW1, has no case that she entrusted custody of the gold ornaments to either of the revision petitioners. There is no mention how the revision petitioners happened to be in custody of the gold ornaments.

4. It is interesting to note how the learned Magistrate came to the conclusion that the revision petitioners misappropriated the gold ornaments. In the order it is stated "the question to be determined is whether those gold ornaments were appropriated by the respondents. Exts.P4, P6 and P10 could be successfully proved through PW-5 and those documents probablise the case of the applicant that the gold ornaments

were diverted at the instances of the respondent for their own use". Exts.P4 and P5 are documents produced from the custody of a bank showing that certain gold ornaments had been pledged with it. It is seen from Ext.P4 that it was the first respondent's father-in-law who pledged the gold ornaments on 03.12.2004 and from Ext.P5 that it was the first respondent who pledged the gold ornaments on 31.12.2005. Ext.P10 was produced to prove that on the strength of the authorisation given by the first respondent, her father-in-law redeemed the pledge made by her. I wonder how those documents will prove or even probablise that the revision petitioners misappropriated the gold ornaments of the first respondent. As mentioned earlier, there is not even a whisper that the first respondent, or for that matter, her father-in-law entrusted custody of the gold ornaments to the revision petitioners. The finding of the learned Magistrate is patently illegal.

5. The finding of the learned Sessions Judge is more interesting. He has held: "thus from the available evidence it is in evident that 1035.40 grams of ornaments were with Balakrishna Pillai as on 18.08.2008 and he being the father-in-law of 1st applicant cannot wriggle out of the entrustment on

behalf of his son.” How the learned Sessions Judge came to the conclusion that the 1st respondent entrusted custody of the ornaments to her father-in-law, who received it on behalf of his son? There is no foundation for the observation of the learned Sessions Judge. It is pertinent to note that the ornaments had been kept in a locker, which was being operated by the first respondent and her father-in-law. None of the revision petitioners had any right to operate it.

In view of my finding that the findings of the learned Magistrate and the learned Sessions Judge are patently illegal, it is only to be held that the impugned order and judgment are liable to be set aside.

In the result, this revision petition is allowed. The impugned order and the judgment are set aside to the extent they relate to the claim for gold ornaments.

SD/-
K. ABRAHAM MATHEW,
JUDGE