

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Crl.Rev.Pet.No. 401 of 2015 ()

**AGAINST THE JUDGMENT IN CRA No.323/2013 OF THE COURT OF
ADDL. SESSIONS JUDGE, PALAKKAD DATED 08-10-2014**

**AGAINST THE ORDER IN MC 18/2012 of J.M.F.C.- I, OTTAPPALAM
DATED 01-08-2013**

REVISION PETITIONER:

**RADHAKRISHNAN, AGED 69 YEARS,
S/O. NARAYANAN NAIR,
NAMBIYATHODI VEED, KAVALAPPARA POST,
KARAKKAD AMSOM, OTTAPPALAM TALUK,
PIN-679 523.**

**BY ADVS.SRI.KRISHNA PRASAD. S
SRI.SIBI BHAGAVANDAS**

RESPONDENT(S):

- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA**
- 2. SATYABHAMA,
D/O. PANTHALLUR AMBUJAKSHI,
KAVALAPPARA POST,
KARAKKAD AMSOM, OTTAPPALAM TALUK,
PIN-679 523.**

R1 BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

STK

C.T. RAVIKUMAR, J.

Crl. R.P.401 of 2015

Dated this the 31st day of March, 2015

ORDER

This Revision Petition is directed against the judgment dated 08.10.2014 of the Court of Session, Palakkad in Crl. Appeal No.323/2013. As per the said judgment, the Appellate Court confirmed the order passed by the court of the Judicial First Class Magistrate, Ottapalam in M.C.No.18/2012 under the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act') filed by the second respondent herein, claiming to be the wife of the revision petitioner. It was contended therein, inter alia, that their marriage was solemnized on 28.06.1980 and two children were born in the wedlock and also that she was living separately from the revision petitioner from April, 2002 onwards. Allegations of ill-treatment were raised and cited as the reason for parting with his company. Essentially it was contended by the second respondent that the revision petitioner who is capable of maintaining her, had been neglecting to maintain her. Certain other contentions were also raised by the second respondent to seek for various reliefs in M.C. No.18/2012,

which was filed under Sections 12, 18(a), (b), (d), (e), 19(d), 19(8), 20(1), 22 and 23(2) of the Protection of Women from Domestic Violence Act, 2005. The learned Magistrate allowed the said petition in part and as per the order dated 01.08.2013, restrained the revision petitioner from committing any domestic violence towards the second respondent. He was also directed to pay monthly maintenance @ Rs.1000/- to the second respondent from the date of filing the petition i.e. 23.02.2012. Further he was restrained from alienating the property described in the said petition which stands in his name and also from cutting and removing of the trees standing there. The petitioner preferred Criminal Appeal No.323 of 2013 feeling aggrieved by the said order. It is to be noted that though some of the reliefs sought for were declined the second respondent did not take up the matter further. The Appellate Court, after considering the contentions raised by the petitioner found them meritless and consequently dismissed the appeal. This revision petition is filed against the order in Criminal Appeal No.323 of 2013.

2. I have heard the learned counsel for the revision petitioner, and also the learned public prosecutor. The

learned counsel appearing for the revision petitioner contended that the appellate court had not considered the contentions of the petitioner in the appeal in their true perspective. Taking note of the fact that the petitioner is aged 70 years, he should not have been saddled with the liability to pay maintenance @ Rs.1000/- to the second respondent, it is contended. It is also contended that the order of the learned Magistrate restraining him from alienating the property ought to have been interfered with as it is illegal and that the exercise of the appellate jurisdiction was wrongly declined.

3. Evidently, in this case, the revision petitioner attempted to deny his marriage with the second respondent. His contention is that she is not his legally wedded wife. The said contention was repelled by the learned Magistrate mainly relying on a decision of the High Court of Madras in **Aysha v. Ozir Hassan reported in 2013(3) KLT 176**. In the said decision, it was held that if a man aged above 21 years and a girl aged above 18 years co-habited and had sexual relationship and if during course of such relationship the women became pregnant she would thenceforth be treated as wife and the man would be treated as the husband. In case they want to separate themselves, they have to obtain divorce

from the court. In the said context it is to be noted that position regarding the status of a man and woman who lived considerably long period as man and wife and recognized as such by the society there can be no two views. It is pertinent to note that it was not argued before me that the discussion of evidence of PW1 made by the learned Magistrate is factually incorrect. Evidently, in this case, on the side of the second respondent she was examined as PW1 and one Mr.Mohandas was examined as PW2 besides the documentary evidence consisting of Exts.P1 to P10. The revision petitioner's evidence consisted of his own oral testimony as DW1, the oral testimony of one Gopinathan as DW2 and Exts.D1 to D3. In this case, according to the revision petitioner, he was aged less than 21 years and the second respondent was having just above 18 years. Going by the evidence of the second respondent, discussed by the courts below, marriage ceremony was performed at her house on 28.06.1980 and it was attended by 25 persons and at that time the revision petitioner and the second respondent had attained nobility and thenceforth, they started as living together as husband and wife. According to her, she started living separately from him only in April, 2002. The revision petitioner cannot not

have a case that they did not have a sponsal relationship for as long as he did not dispute the paternity of the two children given birth by the second respondent. The second respondent deposed that in the year 1984 she gave birth to the first child and the second child was given birth in the year 1988. The revision petitioner did not have a case that those children were begotten through any other lady. The second respondent produced Exts. P1 to P3 to establish that she is the wife of the second respondent and that two children are born in their wedlock. D2 series are produced by the revision petitioner himself to prove that it was he who remitted the education fee for the children. Thus, evidently the revision petitioner did not dispute the paternity of the children in whose cases he remitted the education fees and he would admit that they were born to him through the second respondent. As noticed hereinbefore the second respondent gave evidence to the effect that on 28.06.1980 their marriage was solemnized in accordance with customary ceremonies and it was attended by about 25 persons. The courts below appreciated the evidence adduced in regard to the marriage and found that the evidence of the second respondent as PW1 as trustworthy in the said matter. I do not find any reason to

hold that the courts below arrived at the said conclusion based on a perverse appreciation of evidence. The entitlement of the first respondent to the reliefs granted a per the order of the learned Magistrate and confirmed by the appellate court can be considered in another angle as well.

4. Section 2(a) of Act defines the term 'aggrieved person' as hereunder:-

““aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;”

5. Section 2(f) defines the term 'domestic relationship' thus:-

““domestic relationship” means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;”

6. As per section 2(c) the term 'shared household' means:-

““shared household” means a household

where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

7. In the decision in **Indra Sarma v. V.K.V Sarma (2013) 4 KLT 763** the guidelines for testing under what circumstances a live-in-relationship will fall within the expression 'relationship in the nature of marriage' under Sec. 2(f) of the Act have been enumerated. In this case, the revision petitioner cannot dispute the fact he lived a long period along with the second respondent and their relationship was in the nature of marriage. In this context, it is to be noted that the revision petitioner did not dispute the fact he begot two children through the second respondent. He did not have a case that he was a married man at the time

when he started such a relationship with the second respondent and the second respondent also knew about it and knowingly entered into a relationship with him. Interestingly, the revision petitioner though took up the contention that he had not lived together with the second respondent he would admit the paternity of the two children whose educational expenses were met by him as is obvious from Ext.D2 series. He did not have a case that he begot those two children through any other woman. In such circumstances, even if there was no legal marriage the revision petitioner cannot wriggle out of the liability under the Act raising such a contention. In fact, a finding that there was legal marriage between them was arrived at based on sound reasoning. Though various reliefs were sought for the Magistrate Court was allowed only in part. After a very careful scanning of the evidence, the trial court found it expedient to restrain the revision petitioner from committing any domestic violence towards the second respondent and also from alienating the property stands in his name and also from cutting and removing the trees standing thereon. He was also directed to pay monthly maintenance at the rate of Rs.1000/- from 23.02.2013, at the date of filing of the petition. I have already

found that there is no reason for interfering with the findings of the court below that the second respondent is the legally wedded wife of the revision petitioner and in such circumstances, the finding that the revision petitioner is liable to maintain the second respondent also calls for no interference. When that be so, fixation of the monthly maintenance at the rate of Rs.1000/- by the trial court which was confirmed by the appellate court is not liable to be interfered with. The learned Magistrate passed the order restraining the revision petitioner from alienating the property taking into account the peculiar circumstances involved in this case. Evidently, in this case, having lived for a pretty long period with the second respondent and begotten two children through her the revision petitioner attempted to dispute the status of the second respondent as his legally wedded wife. In the said circumstances, the second respondent raised the apprehension that to defeat the rights of the second respondent and also the children, the revision petitioner might alienate the property. Taking into account all such circumstances, the learned Magistrate thought it fit to pass an order restraining the revision petitioner from alienating the property. The question whether the learned

magistrate was justified in passing such an order has been dealt with elaborately by the appellate court and the appellate court found no reason to interfere with the same. In this context it is to be noted that there is no case for the revision petitioner that he is in dire necessity to deal with the property to get over any extreme contingency and at the same time, it is to be noted that there will be no impediment for the revision petitioner to enjoy the property otherwise. In the circumstances, I do not find any reason to hold that the order restraining the revision petitioner from alienating the property as also from cutting and removing the trees standing thereon is patently illegal warranting an interference in exercise of revisional jurisdiction. Such orders have been passed by the learned Magistrate and confirmed by the appellate court to do substantial justice between the parties. I am of the view that any interference with the order passed by the courts would result in miscarriage of justice.

In the said circumstances, this revision petition is liable to fail and accordingly it is dismissed.

**C.T. RAVIKUMAR,
JUDGE**