

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

Crl.Rev.Pet.No. 898 of 2015 ()

**CRA 227/2009 of ADDITIONAL DISTRICT AND SESSIONS COURT FAST TRACK
(ADHOC-I),KOZHIKODE
MC 84/2008 of JUDICIAL FIRST CLASS MAGISTRATE COURT-I, THAMARASSERY
=====**

PETITIONER/APPELLANT/1ST ACCUSED:

**SHAMEER, AGED 30 YEARS
S/O.ANIKKATTIL ABU, MELE ARAPPATTA
MUPPANAD AMSOM, MEPPADI.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS/RESPONDENT/COMPLAINANT:

**1. SABIRA, AGED 24 YEARS
D/O.LATE ISMAIL, KUNHIPARAMBIL
KADAVOOR AMSOM, CHAMAL DESOM-693014.**

**2. STATE OF KERALA, REP. BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031.**

**R1 BY ADV. SRI.K.A.SALIL NARAYANAN
R2 BY PUBLIC PROSECUTOR SMT. SREELATHA PARAMESHWARAN**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
27-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SD

P. UBAID, J.

Crl.R.P.No.898 of 2015

Dated this the 27th day of July, 2015

O R D E R

The revision petitioner herein is the respondent in M.C.No.84/08 of the Judicial First Class Magistrate Court-I, Thamarassery. It is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act). The petitioner herein remained absent in the said proceeding, and consequently, an ex-parte order happened to be passed in favour of the respondent herein on 03.01.2009. The learned Magistrate directed the revision petitioner to pay maintenance @Rs.4,000/- per month to the respondent, and to return 35 sovereigns of gold ornaments, and also to make payment of an amount of Rs.1.5 Lakhs to the 1st respondent. Aggrieved by the said order dated 03.01.2009, the revision petitioner approached the Court of Sessions, Kozhikode under Section 29 of the PWDV Act with Crl.A.No.227/09. The learned Additional Sessions Judge (Adhoc-I), Kozhikode dismissed the appeal by judgment dated 17.12.2010. The said judgment is under challenge in this revision petition.

2. This revision petition was delayed by 1410 days. Application to condone the delay was allowed by this Court, on condition. Before getting report of compliance of the conditions, the revision happened to be numbered by the Registry. Any way, in the particular nature of the case, I find that the revision petition itself can be disposed of.

3. On hearing both sides, and on perusal of the impugned judgment, I find that the matter requires to be adjudicated, and decided on merits. It is not known on what definite materials, the learned Magistrate directed the revision petitioner to return 35 sovereigns of gold ornaments, and to make payment of Rs.1.5 Lakhs. As regards the quantum of maintenance also, there must be a decision on merits. Such an adjudication and decision can be made only after hearing the revision petitioner also. Of course, it is true that he had received notice in the proceedings. But he could not make appearance in the trial court, and thus the case happened to be decided ex-parte against him. When he has some grievance as regards the quantum of maintenance and also the direction to make payment of huge amount inclusive of the value of ornaments, I feel it appropriate that the dispute be decided afresh, and let the claims be adjudicated on merits.

However, I find that the revision petitioner will have to be put to terms as a condition for allowing the revision petition.

In the result, this revision petition is disposed of as follows:

- a) The impugned order passed by the learned Judicial First Class Magistrate Court-I, Thamarassery in M.C.84/2008, and also the judgment of the court below (Appellate Court) in Crl.A.227/2009 will stand set aside on condition.
- b) As a condition for allowing the revision, the revision petitioner will make deposit of 50% of the amount of maintenance due under the impugned order till this date, in the trial court, within two months from this date. If he has already made deposit as directed by this Court on the application to condone delay, that amount can be adjusted towards the 50% of the amount due till this date.
- c) In case deposit is made within time as ordered, this revision petition will stand allowed, or else (in case of failure to make deposit), this revision petition will stand dismissed.
- d) The amount in deposit can be withdrawn by the

respondent, subject to final decision in the main proceeding.

- e) If the condition is complied with, M.C.84/08 will stand restored to files in the trial court. The learned Magistrate will decide the case on merits after granting reasonable opportunity to the revision petitioner to file counter statements and also adduce his own evidence.

The parties will appear in the trial court on 15.09.2015.

Sd/-

P. UBAID, JUDGE

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