

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

Crl.Rev.Pet.No. 1291 of 2015

**AGAINST THE JUDGMENT IN CRA 372/2013 OF COURT OF SESSION, KOZHIKODE
DATED 09-06-2015**

AGAINST THE ORDER IN MC 24/2010 of J.M.F.C-I, PERAMBRA DATED 28-11-2012

PETITIONER/1ST RESPONDENT/PETITIONER :-

**BOBY JOSEPH, D/O.JOSEPH,
KUMMAYATHOTTIYIL, KODANCHERRY P.O.,
KOZHIKODE DISTRICT.**

**BY ADVS.SRI.SHAJI THOMAS PORKKATTIL
SRI.BINU PAUL
SRI.B.RAJESH (KOTTAYAM)**

RESPONDENT(S)/APPELLANTS & RESPONDENTS 2 & 3/RESPONDENTS :-

- 1. P.L.JOSE, S/O.P.L.LUCKO, PULINTHANATH HOUSE,
MUTHUKAD P.O., PERUVANNAMUZHI,
KOZHIKODE DISTRICT - 673 528.**
- 2. ELSAMMA, W/O.P.L.JOSE, PULINTHANATH HOUSE,
MUTHUKAD P.O., PERUVANNAMUZHI,
KOZHIKODE DISTRICT - 673 528.**
- 3. MANOJ P.JOSE, S/O.P.L.JOSE, PULINTHANATH HOUSE,
MUTHUKAD P.O., PERUVANNAMUZHI,
KOZHIKODE DISTRICT - 673 528.**
- 4. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

**R1 & R2 BY ADV. SRI.SANTHARAM.P
R BY SMT.SHEEBA M.T., PUBLIC PROSECUTOR**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
17-11-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.UBAID, J.

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Crl.R.P.No.1291 of 2015
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Dated this the 17th day of November, 2015

ORDER

The revision petitioner herein is the petitioner in M.C.No.24 of 2010 of the Judicial First Class Magistrate Court-I, Perambra. She brought the said proceeding under Section 12 of the Protection of Woman from Domestic Violence Act (DV Act) for various reliefs, against her husband and the parents-in-law. The matter was contested by the husband and his parents. The learned Magistrate conducted an enquiry in the proceeding and recorded evidence. On an appreciation of the evidence, the learned Magistrate found that the claimant is entitled for a protection order, and also monitory relief. Accordingly, the learned Magistrate directed all the three respondents (husband and parents-in-law) to pay an amount of ₹3,50,000/-, and also another amount of ₹8,50,000/- as the value of 60 sovereigns of gold ornaments, and also prevented

the respondents from committing any act of domestic violence, by order dated 28.11.2012 in M.C.No.24 of 2010. Aggrieved by the said order, the parents-in-law preferred appeal before the Court of Session, Kozhikode as Crl.Appeal No.372 of 2013. The husband did not prefer appeal against the order of the learned Magistrate. In appeal, the learned appellate Judge found no material to make the parents-in-law liable for the money and ornaments. Accordingly, the appeal of the parents-in-law was allowed. They stand exonerated from the liability. Thus the husband is now liable for the amount and the ornaments. Aggrieved by the said judgment, the claimant in the trial court has come up in revision. Her grievance is that the appeal brought by the parents-in-law was wrongly allowed by the appellate court.

2. On hearing both sides, and on a perusal of the materials including the orders of the courts below, I find that the appeal brought by the parents-in-law was rightly allowed by the learned appellate Judge. As regards the evidence regarding entrustment of gold and the liability to return the gold ornaments and the amount, the learned appellate Judge found thus in paragraph 7 of the judgment, "Further in the

cross examination PW1 has categorically admitted that the cash and gold ornaments were accepted by the 2nd respondent (husband) and not by the appellants herein.” The learned counsel for the appellants submitted that this finding is factually erroneous. On a perusal of the deposition given by PW1, I find that the claimant does not have a specific case or definite case as to who exactly received the gold ornaments, or who exactly appropriated the ornaments. There is absolutely nothing to show that any ornament was received or accepted by the parents-in-law or, any ornament was appropriated by them for their own purpose.

3. As regards the genuineness of the claim against the parents-in-law, the learned appellate Judge found thus in paragraph 8 of the appellate judgment, “In my view it is a typical example which would show how the parents of the husband could be harassed by an enraged wife.”

4. The husband has not challenged the order passed against him by the learned Magistrate. It appears that he accepts the order. The learned appellate Judge absolved the parents-in-law from the liability on the ground that there is no definite material to prove that they are liable to return the

ornaments, or that they had received any amount from the claimant. I find that in the absence of definite materials making the parents-in-law liable, an order cannot be passed against the parents-in-law. I find nothing wrong in the judgment of the learned appellate Judge.

In the result, this Revision Petition is dismissed in limine, without being admitted to files.

Sd/-
P.UBAID
JUDGE

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P.A. TO JUDGE