

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

Crl.Rev.Pet.No. 2196 of 2013

AGAINST THE JUDGMENT IN CRL.A 231/2012 AND 239/2012 OF SESSIONS
COURT, KASARAGOD DATED 30-08-2013

AGAINST THE ORDER IN MC 92/2010 of J.M.F.C-1, KASARAGOD DATED 15-10-
2012

REVISION PETITIONER/1ST RESPONDENT/1ST RESPONDENT:

ABDUL RAHMAN, AGED 45 YEARS,
S/O.B.M.MOHAMMED, PANDI, ADOOR VILLAGE
KASARAGOD TALUK, KASARAGOD DISTRICT.

BY ADVS.SRI.M.SASINDRAN
SRI.A.ARUNKUMAR

RESPONDENTS/COMPLAINANT AND RESPONDENTS 2 TO 5::

1. K.P. TAHIRA, AGED 37 YEARS,
D/O.K.P.ABDULLA, RESIDING AT NATTAKKALLU HOUSE,
P.O.BELLUR, ADHUR VILLAGE, KASARAGOD TALUK
KASARAGOD DISTRICT - 671 121.

2. KHADEEJA, AGED 48 YEARS
D/O.B.M.MUHAMMED, PANDI, ADOOR VILLAGE
KASARAGOD TALUK, KASARAGOD DISTRICT - 671 121.

3. HAJIRA, AGED 48 YEARS
W/O.ABOOBACKER, PANDI, ADOOR VILLAGE
KASARAGOD TALUK, KASARAGOD DISTRICT - 671 121.

4. AYISHA, AGED 33 YEARS
W/O.ABDUL RAHIMAN, PANDI, ADOOR VILLAGE
KASARAGOD TALUK, KASARAGOD DISTRICT - 671 121.

5. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

BY ADV. SRI.P.K.MUHAMMED
R5 BY PUBLIC PROSECUTOR SRI.GITHESH.R.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 19-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.ABRAHAM MATHEW J.

Crl.R.P.No.2196 of 2013

Dated this the 19th day of March, 2015

ORDER

The first respondent is wife of the revision petitioner. The 4th respondent is his another wife and respondents 2 and 3 are his sisters. The first respondent initiated proceedings against the revision petitioner and respondents 2 to 4 under Section 12 of the Protection of Women from Domestic Violence Act (for short 'the Act'). She claimed that the revision petitioner and those respondents subjected her to domestic violence. On the allegation that he misappropriated her gold ornaments worth 100 sovereigns she claimed return of the ornaments or payment of their value. Her another allegation was that the revision petitioner and respondents 1 to 3 drove her out of her shared household. She prayed for an order restraining them from dispossessing her of it and from entering the portion of the house which is in her occupation and from alienating or encumbering the property. She also prayed for protection order under Section 18 of the Act. The learned Magistrate entered a finding that respondents 2 and 4 were unnecessarily made respondents. He took the view that the first respondent is not entitled to protection order under Section 18 of the Act nor is she entitled to get an order restraining the revision petitioner from alienating or encumbering the house which she claimed to be a shared household. He refused to grant the relief of

return of gold ornaments or payment of their value. The only relief granted by him is maintenance to her and her minor child. The revision petitioner filed Crl.A.No.239 of 2012 and the first respondent Crl.A.No.231 of 2012. The learned Sessions Judge dismissed the revision petitioner's appeal and allowed the first respondent's appeal in part. He allowed her claim for return of gold ornaments, which was fixed at 20 sovereigns and her claim for prohibitory order in respect of the household. Legality of this order is challenged in this revision petition.

2. Heard the learned counsel on both sides.

3. Neither in the petition filed under Section 12, nor in the evidence given by the first respondent as PW1 there is an allegation that she entrusted custody of her ornaments to the first respondent. There is only a bald allegation that the revision petitioner misappropriated her ornaments. A few months before the filing of the petition under Section 12 the revision petitioner and the first respondent jointly executed a document, a copy of which was marked Ext D1. This document refers to the dispute between them. Strangely, there is no mention that there was any dispute with regard to her gold ornaments. Absence of such a statement in the document is a clear indication that there was no dispute between the parties so far as the ornaments were concerned. The learned Magistrate in my opinion rightly came to the conclusion that there

was no evidence to prove that the first respondent had gold ornaments worth 100 sovereigns or that the revision petitioner misappropriated her ornaments. The learned Sessions Judge took the view that the revision petitioner is liable to return gold ornaments worth 20 sovereigns or to pay Rs.Four lakhs. He relied on the evidence of the first respondent, the revision petitioner who was examined as RW1 that at the time of marriage the first respondent had gold ornaments worth 10-20 sovereigns. By no stretch of imagination this can be said to be an admission that she entrusted the ornaments to him or that he misappropriated them. The learned Sessions Judge was palpably wrong in directing the revision petitioner to return gold ornaments worth 20 sovereigns or to pay their value.

4. Another relief denied by the learned Magistrate and granted by the Sessions Judge is a direction prohibiting the revision petitioner from alienating the house which is said to be the shared household of the first respondent, and from encumbering it. The learned Magistrate denied the relief on the ground that the evidence proves that the house was not a shared household. Section 2(s) of the Protection of Women from Domestic Violence Act defines shared household as follows:

2.xxxxxx

(s) "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.

5. No interpretation is necessary to hold that unless the aggrieved person lives or at any stage has lived in a domestic relationship in a house it cannot be called her shared household.

6. An evidence adduced by the first respondent with regard to the household may be examined. The house was constructed in the property belonging to the revision petitioner. The house warming was on 3.4.2008 as deposed to by the first respondent(PW1). She would say that house was constructed with Rs.Thirty lakhs provided by her parents, for which there is no evidence. She testified that she came to know about the marriage between the revision petitioner and the 4th respondent only when she came to the house in connection with the housewarming. She would say that she stayed there one month, after which she was compelled to leave due to the domestic violence of the revision petitioner and the respondents concerned. On the other hand, the revision petitioner, who was examined as DW1, stated in the box that after his marriage with the 4th respondent, which was in 2007, he and the

first respondent never resided together anywhere as husband and wife. For the last time they resided together in his family house which was before the house warming of the new house. He further deposed that he and the 4th respondent started residing in the new house in 2007 and the first respondent never came there; later she trespassed into his house in his absence, which compelled him to issue Ext P2 lawyer notice to her asking her to vacate it.

7. In Ext D1 agreement, the genuineness of which is admitted, disputes between the revision petitioner and the first respondent have been specifically mentioned. This document was executed on 21.1.2010. The petition under Section 12 of the Protection of Women from Domestic Violence Act was filed six months later i.e, 21.7.2010. In the agreement there is a specific statement that as the first respondent was residing separately the revision petitioner married the 4th respondent in 2007. Her admission proves that before the execution of the document she and the revision petitioner were residing separately and for that reason he married the 4th respondent in 2007. Her testimony that she came to know about the marriage only in 3.4.2008 is false. She has no case that subsequent to the execution of D1 agreement she started living with the revision petitioner in the shared household. This corroborates the version of the first respondent that later in his absence she trespassed into the house which is said to be her

household. There is absolutely no evidence to prove that at any point of time she and the revision petitioner resided together in the house which is in dispute. There is no reason to believe that she resided with him in that house at any point of time. For cogent reasons the learned Magistrate came to the conclusion that the house in dispute is not her shared household. He rightly denied her claim in respect of the building. There was no justification for the Sessions Judge to hold that it was a shared household and she is entitled to the relief of prohibitory order. This direction also is liable to be set aside.

In the result, this revision petition is allowed. The judgment of the learned Sessions Judge to the extent it grants the first respondent the relief of return of gold ornaments or payment of their value, and the relief in respect of the household is set aside. The order of the learned Magistrate is restored.

Sd/-

**K.ABRAHAM MATHEW,
JUDGE**

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/True copy/

P.S.to Judge