

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

Cr1.Rev.Pet.No. 1652 of 2014 ()

AGAINST THE JUDGMENT IN CRA 191/2010 of II ADDITIONAL DIST. & SESSIONS
COURT, THODUPUZHA DATED 03-10-2012

AGAINST THE ORDER IN MC 55/2008 of CHIEF JUDICIAL MAGISTRATE,
THODUPUZHA DATED 18-03-2010

REVISION PETITIONER/APPELLANT/RESPONDENT NO.2:

JOSE
KATTUPARAKUZHIIYIL HOUSE, KOOVAKANDAM P.O.
POOMALA KARA, VELLIYAMATTOM VILLAGE.

BY ADVS.SRI.M.B.SANDEEP
SMT.R.PRIYA
SRI.V.VISAL AJAYAN
SRI.B.SURJITH
SMT.B.DHANYA

RESPONDENTS/RESPONDENTS/COMPLAINANTS:

1. JOIES
D/O. JOHN, VATTAKUZHYY HOUSE, MALANKARA DIVISION II
THEKKUMBHAGAM KARA, KARIKODE VILLAGE - 686 601.

2. MUTHUMOL
D/O. BINEESH, VATTAKUZHYY HOUSE, MALANKARA DIVISION II
THEKKUMBHAGAM KARA, KARIKODE VILLAGE - 686 601.

3. STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE
NEDUMKANDOM, IDUKKI DISTRICT, BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.

R1 BY ADV. SRI.LATHEESH SEBASTIAN
BY PUBLIC PROSECUTOR: SMT M G LISHA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
16-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SUNIL THOMAS, J.

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Crl.R.P.No.1652 of 2014

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Dated this the 16th day of October, 2015

ORDER

This revision is at the instance of the second respondent in M.C.No.55 of 2008 of the Chief Judicial Magistrate Court, Thodupuzha.

2. The complainant had married the first respondent and a child was born in the matrimonial relationship. The second respondent is father of the first respondent/husband. Alleging commission of various offence under the provisions of Domestic violence Act, she approached the Magistrate Court invoking Section 12 of the Protection of Women from Domestic Violence Act and sought protection order, maintenance and also return of the gold ornaments and money, allegedly entrusted at the time of marriage. Evidence was let in and by order of the Court, the respondents were prohibited from abusing, harassing or threatening the first aggrieved person, directing the respondents to return 56 gms of gold ornaments and an amount of Rs.40,000/- within a period of one month and directing the first respondent to pay maintenance to

both aggrieved persons at the rate of Rs.1000/- per month.

3. This was carried in appeal before the District Court which by order in Crl.A.No.191 of 2010 dismissed it confirming the learned magistrate's order. Contending that both the Courts committed grave irregularity in the appreciation of evidence and also in its ultimate conclusion, this revision is filed at the instance of the second respondent alone.

4. Heard both sides and examined the records.

5. It is pertinent to note that both the respondents filed a common objection denying all the allegations. The first respondent was examined in Court. Court disbelieved his evidence and relying on the evidence of PWs.1 and 3 on facts inter alia, arrived at a conclusion that the respondents had received 56 gms of gold ornaments and an amount of Rs.40,000/- at the time of marriage. That were ordered to be returned.

6. Essentially, the bone of contention in this appeal at the instance of the second respondent is only the above relief granted. The first and third reliefs are not in issue in this revision. Even though learned counsel for the appellant (second respondent before the court below) vehemently contended that both the courts have committed grave irregularity in the evaluation of the evidence, in revision, I am not inclined to upset the factual finding concurrently

arrived at on the basis of the evidence of PWs.1 and 3 discarding the evidence of CPW1. In revision, that finding cannot be upset on a ground that the Court could have arrived at a different conclusion, unless manifest error in the appreciation of evidence or irregularity in the application of evidence is established.

7. Learned counsel for the appellant contended that he did not get a reasonable opportunity to contest the matter since the case was being prosecuted by the first respondent/son. This contention is no longer available, since both the respondents jointly filed the objection. Husband alone tendered evidence. The father was satisfied with the evidence so let in. Thereafter, they jointly preferred an appeal and after having suffered concurrent orders, now at the instance of the father, a revision is not sustainable.

8. Learned counsel, relying on the proviso to Section 12 of the Protection of Women from Domestic Violence Act further contended that the magistrate was bound to take into consideration any domestic incident report received by him from the Protection Officer. It was contended by the counsel that there is nothing on record to show that the court below had considered this. Learned counsel contended that in the appeal before the District Court, they had taken up a contention that the court below did not consider the domestic incident report. Eminently, provision only provides that

the court below shall consider the protection order, if available. Impugned order does not show whether the Court has relied on it. The scope of the proviso is not intended to treat the domestic incident report as a part of the evidence or to consider it as a basis for evaluation of the evidence. It need only form part of the record and is only to be considered by the magistrate in the proceedings. It cannot have the status of a piece of evidence other than evidence let in by the parties. Further, even though such a contention was taken up before the appellate court and impliedly rejected, it has not been set up as a ground in revision before this Court. Hence, I am not inclined to consider that contention also at this stage.

In the light of the above, there is no merit in the revision and I am not persuaded to interfere in the concurrent findings of fact arrived at by both the Courts. The revision fails and is dismissed.

Sd/-

SUNIL THOMAS
Judge

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True Copy /

P.A to Judge