

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

OP(CrI.).No. 23 of 2015 (Q)

MC 299/2014 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM

PETITIONER :

**SHIMA, AGED 29 YEARS,
D/O.SAINUDEEN, CHARUVILAVEETIL, SILPA NAGAR - 35
AYATHI P.O., VADAKKEVILA VILLAGE, KOLLAM.**

BY ADV. SRI.T.H.ABDUL AZEEZ

RESPONDENTS :

- 1. NAVAS
S/O.HASHIR, NAJIYA HOUSE, AZAD NAGAR - 2
PALLIMUKKU, VADAKKEVILA VILLAGE, KOLLAM - 691 008.**
- 2. A.R.HASHIR
NAJIYA HOUSE, AZAD NAGAR - 2, PALLIMUKKU
VADAKKEVILA VILLAGE, KOLLAM - 691 008.**
- 3. RESAEENA BEEVI
W/O.A.R.HASHIR, NAJIYA HOUSE, AZAD NAGAR-2
PALLIMUKKU, VADAKKEVILA VILLAGE, KOLLAM - 691008.**
- 4. NIYAS
S/O.A.R.HASHIR, NAJIYA HOUSE, AZAD NAGAR-2
PALLIMUKKU, VADAKKEVILA VILLAGE, KOLLAM - 691 008.**
- 5. NOUFAN HASHIR
S/O.A.R.HASHIR, NAJIYA HOUSE, AZAD NAGAR - 2
PALLIMUKKU, VADAKKEVILA VILLAGE, KOLLAM - 691 008.**
- 6. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 011.**

**R2 TO R5 BY ADVS. SRI.ANIL XAVIER
SRI.M.SHAHEED AHMAD
SRI.M.RISHIKESH SHENOY
SMT.O.K.DEEPAMOL
SRI.E.V.BABYCHAN
R6 BY GOVERNMENT PLEADER SRI. JIBU P. THOMAS**

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE PETITION BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE-II, KOLLAM UNDER SECTIONS 18, 19, 20, 21 AND 22 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 WITH AN AFFIDAVIT.
- EXT.P2: TRUE COPY OF THE ORDER ON 31/12/2014 IN C.M.P.NO. 16985/2014 IN M.C.NO. 299/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM.
- EXT.P3: TRUE COPY OF THE ORDER DATED 09/01/2015 IN C.M.P.NO. 326/2015 IN M.C.NO. 299/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM.
- EXT.P4: TRUE COPY OF THE REPORT DATED 16/01/2015 FILED BY THE PROTECTION OFFICER.
- EXT.P5: TRUE COPY OF THE PETITION IN M.C.NO. 299/2014 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, KOLLAM.
- EXT.P6: TRUE COPY OF THE ORDER DATED 16/01/2014 IN C.M.P.NO. 553/2015 IN M.C.NO. 299/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOLLAM.

RESPONDENT(S)' EXHIBITS :

- EXT.R4(A): COPY OF THE ORDER DT 28/1/2015 IN CRL.M.P. NO. 245/2015 IN CRL. APPEAL NO. 16/2015 PASSED BY THE SESSION COURT, KOLLAM
- EXT. R4(B): COPY F THE ORDER DT 30/1/2015 IN CMP NO. 958/2015 IN MC NO. 299/2014 PASSED BY THE SESSION COURT, KOLLAM

//TRUE COPY//

P.A. TO JUDGE

bp

[CR]

B.KEMAL PASHA, J.

.....
O.P.(Crl.) No. 23 of 2015
.....

Dated this the 10th day of February, 2015

J U D G M E N T

This Court has noted a situation wherein a lady was thrown out of her shared household, allegedly by her in-laws, who are hand in gloves with her husband. Her husband has been watching and enjoying the procedure by sitting behind the curtain.

2. This is a case wherein the learned Magistrate has passed a residence order. That order was not obeyed. She again approached the learned Magistrate through Ext.P5 Crl.M.P for getting police aid for the implementation of the order. The learned Magistrate passed Ext.P6 order on 16.01.2015, thereby directing the Station House Officer concerned to give necessary police aid. It was averred in

the petition that by that time the house was locked and the respondents have gone away from there for restraining the woman from gaining an entry into the house.

3. As the concerned police officer was not directed to open the house for enabling the woman to gain entry, the police expressed their inability. Even though she has prayed for a better order, her cries fell in deaf ears, and strangely, it invited a prolonged adjournment of the case. The petitioner has come up with a prayer for directing the learned Magistrate to pass an order in terms of Ext.P5. Initially, this Court has not passed any order; whereas a notice was ordered through special messenger. When the special messenger of this Court attempted to serve notice on the respondents, it has been reported that, they were not ready and willing to accept the notice. At that stage, this Court was convinced that the lawful orders passed by the learned Magistrate was deliberately flouted and the building was locked by the respondents and they went away from there.

4. The special messenger appointed by this Court has reported that the woman along with her aged parents were seen residing at the open veranda of the locked house. In the interest of justice, this Court has assumed the power under Article 226 of the Constitution of India relying on the decision in ***M/s Pepsi Foods Ltd. v. Special Judicial Magistrate***[AIR1998 SC 128] and passed the present order by directing the concerned Sub Inspector of Police to force open the house for enabling the petitioner as well as her aged parents to gain entry into the house. The said order has been duly executed.

5. It is settled law that High Court can exercise its power of judicial review in criminal matters. The nomenclature under which the petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses.

6. The learned Senior Counsel appearing for respondents 2 to 5, on the strength of the decision in ***Batra***

v. Taruna Batra [AIR 2007 SC 1118], has argued that the house in question, being the one belongs to the mother-in-law of the woman, cannot be treated as the shared household of the woman.

7. The facts and circumstance of the decision in **Taruna Batra** (*supra*) can be distinguished in the facts and circumstances of the present case. In all cases, it cannot be said that the house of a mother-in-law or a father-in-law cannot be styled as the shared household of their daughter-in-law. If a girl, along with her husband, has stayed in a particular house either belongs to her mother-in-law or the father-in-law after her marriage, and if she was married by their son through a marriage arranged by them, and brought as the wedded bride to that house with their blessings, they cannot subsequently turn against her with a stand that it is not her shared household. Such a marriage arranged by the parents of the bridegroom and the further permission to bring the married bride to that house by giving an

opportunity to the son and the daughter-in-law to stay there, definitely gives an implied authority and right to the girl to reside in that house by treating it as the shared household. Otherwise, the parents of the bridegroom ought not to have permitted to make use of their house for the stay of the bride as well as the bridegroom, after the marriage. If they permit the bride as well as the bridegroom to use that house, on marriage as the shared household, they cannot be heard to say that the girl cannot treat that house as the shared household.

8. If, as a matter of fact, a girl is brought to the house by the bridegroom on his own without the junction of his parents, of course, the girl cannot forward a claim on such a house belonging to the father-in-law or the mother-in-law as the shared household. In this particular case, the husband of the woman is nowhere in the picture. He has virtually abandoned the girl and has gone abroad. It seems that his parents are hand in gloves with him and they want to see

that the girl is thrown to the street. The marriage of the girl was an arranged marriage, and she was brought not to the street after marriage, whereas she was brought to the house in question. Party respondents have no case that her husband has another house of his own wherein they were living together. Had she been made aware before the marriage that she would not be permitted to reside in that house and she would not be permitted to treat that house as shared household, she would not have agreed for such a marriage. In such a case, no sensible parents of a girl will give their daughter in marriage to such a person. Therefore, having accepted the girl as their daughter-in-law and permitted to be taken to that house for her stay there, they cannot be permitted to show the doors to her, on a mere claim that the house belongs to the mother-in-law.

9. The learned Senior Counsel has argued that *thalak* has been pronounced by the husband of the woman in this case, and hence, the woman is not entitled to have recourse

to the provisions of the Protection of Women from Domestic Violence Act, 2005. Whether she is a divorced wife or not, if there was a domestic relationship and the house was used as a shared household even for a moment, the woman is entitled to claim the right of residence in that shared household.

10. The present hue and cry is that this Court has passed an illegal order by permitting the parents of the woman also to have an entry into the house. This is a case wherein a house was deliberately locked and abandoned and the respondents had gone away from the spot. A young woman alone cannot reside in that house. In that particular circumstance, this Court was of the view that the woman along with her parents could be granted permission to gain entry into the house.

11. The respondents have got a case that the house belongs to the mother-in-law and hence, the parents of the woman should not be permitted to stay there. Of course,

they can be ordered to move away by leaving the girl, provided the respondents are ready to face the necessary consequences in the matter. Let the woman reside in the house alone. She should not be restrained from residing in the house. The petitioner shall not take her parents along with her in the house and they should not reside in the house. At the same time, at any reasonable hours, they can pay visits to their daughter at the house. Till the learned Magistrate passes an order on merits, this order shall continue. The learned Magistrate is directed to pass final orders in the matter within a period of two months from today. The Sub Inspector of Police, Eravipuram shall see that this order is complied with in letter and spirit.

In the result, this O.P.(Crl) is disposed of with the above said directions.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge