

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 3RD DAY OF SEPTEMBER 2015/12TH BHADRA, 1937

OP(Crl.).No. 254 of 2015 (Q)

MC 103/2011 of J.M.F.C.-II, TRIVANDRUM

PETITIONER:

**RAVEENDRAN NAIR, AGED 65 YEARS
PANCHAJANYAM, TC 10/134(1), SWATHY NAGAR
PAIPPINMOODU, PEROORKADA, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.ASP.KURUP
SRI.SADCHITH.P.KURUP**

RESPONDENTS:

- 1. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM-682031.**
- 2. SREELATHA NAIR
D/O LAKSHMIKUTTY AMMA, KOIKKALETHU HOUSE
PALLIPPAD P.O., HARIPPAD, ALAPPUZHA 690512.**
- 3. GREESHMA NAIR, D/O SREELATHA NAIR
KOIKKALETHU HOSUE, PALLIPPAD P.O.
HARIPPAD, ALAPPUZHA-690512.**

BY GOVERNMENT PLEADER SMT. SHEEBA M.T.

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 03-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS

- EXHIBIT P1: TRUE COPY OF PENSION PAYMENT ORDER DATED 4.8.2011 ISSUED BY EMPLOYEES PROVIDENT FUND ORGANISATION TO PETITIONER.
- EXHIBIT P2: TRUE COPY OF MEDICAL TREATMENT RECORD ISSUED BY MEDICAL COLLEGE HOSPITAL, TRIVANDRUM.
- EXHIBIT P3: TRUE COPY OF PETITION FILED BY PETITIONER BEFORE THE COLLECTOR, THIRUVANANTHAPURAM ON 13.6.12.
- EXHIBIT P4: TRUE COPY OF PROCEEDINGS DATED 6.8.12 ISSUED IN EXT.P3.
- EXHIBIT P5: TRUE COPY OF ORDER DATED 30.11.2012 ISSUED IN M.C.NO.103/2011.
- EXHIBIT P6: TRUE COPY OF JUDGMENT DATED 31.7.2013 IN CRIMINAL APPEAL NO.613/2012.
- EXHIBIT P7: TRUE COPY OF ORDER DATED 2.3.2015 PASSED BY MAINTENANCE TRIBUNAL, TRIVANDRUM.
- EXHIBIT P8: TRUE COPY OF ORDER DATED 5.3.2015 IN WPC NO.7006/2015.
- EXHIBIT P9: TRUE COPY OF ORDER DATED 9.3.2015 IN MC NO.1286/14.
- EXHIBIT P10: TRUE COPY OF ORDER DATED 18.3.15 PASSED BY MAINTENANCE TRIBUNAL, TRIVADNRUM.
- EXHIBIT P11: TRUE COPY OF ORDER DATED 8.4.15 PASSED IN CRL.REV.PETITION NO.2100/2013.
- EXHIBIT P12: TRUE COPY OF CMP NO.1122/2015 IN MC NO.103/2011.
- EXHIBIT P13: TRUE COPY OF OBJECTION DATED 23.7.2015 IN CMP 1122/2015 IN MC 103/2011.
- EXHIBIT P14: TRUE COPY OF ORDER DATED 12.8.15 IN CMP NO.1122/2015 IN MC 103/2011.
- EXHIBIT P15: TRUE COPY OF PETITION DATED 17.8.2015 FILED BY PETITIONER IN MC 103/2011.

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A. TO JUDGE

SD

P. UBAID, J.

O.P.(Crl) No.254 of 2015

Dated this the 3rd day of September, 2015

JUDGMENT

The petitioner herein is the respondent in M.C.No.103/2011 of the Judicial First Class Magistrate Court-II, Thiruvananthapuram. The said proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V.Act') was disposed of by the learned Magistrate on 30.11.2012, granting protection order, and also maintenance order. The prayer, for an order to remove the petitioner herein from the shared household was disallowed by the learned Magistrate. In the appeal brought by the petitioners therein, before the Court of Session, Thiruvananthapuram as Crl.Appeal No.613/2012, the learned Additional Sessions Judge-I, Thiruvananthapuram confirmed the order passed by the learned Magistrate, and also directed the petitioner herein to remove himself from the shared household. Thus, the petitioners in the D.V.Act proceeding obtained all the reliefs sought. It is alleged that in execution of the order passed in appeal, the petitioner

herein was evicted from the premises. Any way, he later filed an application before the learned Magistrate under Section 25(2) of the D.V.Act as C.M.P.No.2257/2015, for cancellation of the order on the basis of material change in the circumstances. His case is that he is actually in possession of the shared household even now. He also filed another application as C.M.P.No.2266/2015 for suspension of the enforcement of the order passed in execution. In view of such an application, the learned Magistrate called for a report from the police. Accordingly, the Station House Officer reported that the petitioner herein stands already removed from the shared household. In this petition brought under Article 227 of the Constitution of India, the petitioner, who is the respondent in the D.V.Act proceedings, seeks orders directing the learned Magistrate to dispose of his application under Section 25(2) of the D.V.Act, without any delay, and also directing the court below to set aside Ext.P.14 order, in execution of which, he was removed from the premises.

2. I obtained a report from the learned Magistrate regarding the facts. The report submitted by the learned Magistrate on 22.08.2015 shows that the two applications filed by the petitioner herein are still pending there. The main application is C.M.P. No.2257/2015 filed by the petitioner under Section 25(2) of the D.V.Act. The learned Magistrate's report that C.M.P.No.2257/2015 must have become

infructuous, cannot be now accepted. There is police report that the petitioner stands already removed from the premises. The learned Magistrate has acted on the police report. When the petitioner alleges material change in circumstances and seeks orders under Section 25 (2) of the D.V.Act, the learned Magistrate will have to conduct a proper enquiry, record evidence regarding the change in circumstances alleged, and take a judicious decision on the said application brought under Section 25(2) of the D.V.Act. The appellate order in Crl.Appeal No.613/2012 shows that the learned Appellate Judge granted such a residence order directing the petitioner to remove himself from the shared household, just as an eye opener, and not because there are extreme circumstances and reasons to remove him from the shared household. The learned Appellate Judge has observed that such an order will cause harm and hardship to the petitioner at his old age, and there is a direction to the children to find out a convenient and suitable shelter to the petitioner. The last portion of the appellate order shows that the Appellate Judge is not in fact sure regarding the right of the petitioner to get such an order. Such an order was disallowed by the learned Magistrate for proper reasons. I reserve my comments on the appellate order directing the petitioner to remove himself from the house. The said order is not under challenge in this proceeding. Any way, when the petitioner at his old age seeks orders for a comfortable

stay at his house, on the ground of change in circumstances materially, it will have to be seriously considered by the learned Magistrate, and appropriate judicious orders will have to be passed without any delay. I find, in the particular facts and circumstances, that the petitioner's grievance is quite genuine and his request before the learned Magistrate deserves consideration and adjudication at the earliest.

In the result, this Original Petition is disposed of as follows:

- a) The learned Magistrate will anxiously consider Ext.P15 application brought by the petitioner under Section 25(2) of the D.V.Act, make an enquiry, record evidence therein, and take appropriate judicious decision within a period of three months.
- b) In case Ext.P15 application is allowed, the learned Magistrate will have to pass consequential orders in the matter.
- c) The petitioner's contention that he stands not actually evicted from the premises will also have to be seriously considered by the learned Magistrate in the process of taking decision.

Sd/-

P. UBAID, JUDGE

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