

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

OP(Crl.).No. 282 of 2015 (Q)

AGAINST CRL.M.P NO.796/2015 IN M.C NO.39/2015 DATED 9.3.2015
OF THE CHIEF JUDICIAL MAGISTRATE COURT, MANJERI.

PETITIONERS:

1. KUMUDINI, AGED 78 YEARS,
D/O.PULIYASSERY MADHAVIAMMA, AMBILI,
22ND MILES
MANJERI P.O, MALAPPURAM DISTRICT.
2. VINEETHA.P, AGED 52 YEARS,
D/O.KUMUDINI, AMBILI,
22ND MILES
MANJERI P.O, MALAPPURAM DISTRICT

BY ADVS.SRI.BABU S. NAIR
SRI.RANJITH R.

RESPONDENTS:

1. THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM, KOCHI 682 031 FOR THE SUB
INSPECTOR OF POLICE,
MANJERI POLICE STATION, MALAPPURAM DISTRICT.
2. PRIYANKA PALAKKAL, AGED 30 YEARS,
W/O.PAVAN PARAMESWAR, KEZHAKKUZHI VEEDU,
KARUNILAKKODE,
VARKALA, EDAVA P.O
THIRUVANANTHAPURAM DISTRICT. 695 311.

R1 BY GOVERNMENT PLEADER SRI.JUSTIN JACOB

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Cr1.).No. 282 of 2015 (Q)

APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT P1. COPY OF THE MC 39/15 FILED BY THE 2ND RESPONDENT
BEFORE THE CJM MANJERI ALONG WITH PETITION.

EXHIBIT P2. COPY OF THE ORDER IN CRL.M.P 796/15 IN MC 39/15
DATED 9.3.15 OF THE CJM MANJERI.

EXHIBIT P3. COPY OF THE ORDER IN CRLMP 796/15 IN MC 39/15
DATED 24.4.15 OF THE CJM MANJERI.

EXHIBIT P4. COPY OF THE SETTLEMENT DEED ENTERED INTO BETWEEN
THE FIRST AND 2ND PETITIONERS DATED 25.8.09.

RESPONDENTS' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

ab

P.UBAID, J.

O.P (Crl) No.282 of 2015

Dated this the 7th day of October, 2015

J U D G M E N T

The petitioners herein are the respondents in M.C No.39/2015 of the Chief Judicial Magistrate Court, Manjeri. It is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (D.V Act) for certain reliefs. Along with the main petition, the petitioners brought Crl.M.P No.796/2015 for interim relief under Section 23(2) of the D.V Act. The first petitioner herein is the grandmother of the claimant in M.C No.39/2015, the second petitioner is the daughter of the first petitioner. On 9.3.2015 the learned Magistrate passed an interim order on Crl.M.P No.796/2015 restraining the petitioners herein from committing any act of domestic violence, and also restraining their from alienating or creating any encumbrance over the shared household. Instead of preferring appeal against the said order under Section 29 of the D.V Act, the petitioners approached this Court with this petition under Article 227 of the Constitution to quash the whole proceeding brought under the D.V Act. The petitioners seek orders on the ground that the claimant cannot be considered as

an aggrieved person, and that there is no domestic relationship between the claimant and the respondents.

2. On a perusal of the materials, I find that the matters agitated by the petitioners before this Court are in fact matters to be examined by the trial court. There is no reason or explanation why the petitioners have not preferred appeal against the interim order under Section 29 of the D.V Act. Instead of pursuing the right remedy available under the law, they brought this petition under Article 227 of the Constitution.

3. The dispute raised by the petitioners is that the claimant in the trial court does not come under the definition of aggrieved person under the law. So also it is submitted that she lived in the house of the petitioners only for a month after the marriage, and thereafter she went to her own house. So, it is argued that the claimant cannot claim any domestic relationship with the petitioners. It is submitted that the property wherein the shared household is situated exclusively belongs to one of the petitioner's and not the husband. So it is argued that it is not a shared household.

4. Whether the claimant comes under the definition of aggrieved person, or whether she has any domestic relationship with the petitioners herein, are all matters to be

examined, adjudicated and decided by the trial court. This Court cannot make such an adjudication in exercise of the powers under Article 227 of the Constitution. This Court can interfere under Article 227 only when the Court is well satisfied and convinced that the proceeding in the trial court will amount to clear abuse of legal process.

5. Any person having domestic relation with the respondents, and who complains of any sort of domestic violence will come under the definition of aggrieved person. Domestic relationship is also defined under the law. Admittedly, the claimant had resided in the house of the respondents for some time after the marriage, along with her husband. Whether that house can be considered as the shared household, will have to be looked into by the trial court. Let those aspects be looked into, considered and decided by the trial court.

In the result, this Original Petition (Crl) is dismissed in limine without being admitted to files, however without prejudice to the right of the petitioners to agitate all the questions of facts before the trial court.

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**P.UBAID
JUDGE**