

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

OP(Crl.).No. 297 of 2015 (Q)

CRL.APPEAL NO.276/2015 OF THE COURT OF SESSIONS, ERNAKULAM

PETITIONER :-

**SELIN BABY, AGED 63 YEARS, W/O. BABY MATHEW,
KAVALAM THARAYIL, ELAMKULAM VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT.**

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS :-

- 1. SABU, S/O. BABY, AGED 38 YEARS,
KAVALAM THARAYIL, ELAMKULAM VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT-682020.**
- 2. SIJI, W/O. SABU, AGED 30 YEARS,
KAVALAM THARAYIL, ELAMKULAM VILLAGE,
KANAYANNUR TALUK, ERNAKULAM DISTRICT-682020.**
- 3. STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM-682031.**

**R1 BY ADVS. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM
SMT.K.R.MONISHA**

R BY SMT.SHEEBA M.T, PUBLIC PROSECUTOR

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 06-10-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rkj

OP(Crl.).No. 297 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS :-

- EXHIBIT P1- TRUE COPY OF THE ORDER IN CMP 4844/2013 OF THE JFCM-2 ERNAKULAM.
- EXHIBIT P2- TRUE COPY OF THE ORDER IN CMP 7218 OF THE CJM-ERNAKULAM.
- EXHIBIT P3- TRUE COPY OF THE PROCEEDINGS IN CRIMINAL APPEAL 82/15 DATED 18TH MARCH AND 1ST APRIL 2015.
- EXHIBIT P4- TRUE COPY OF THE ORDER IN CRIMINAL MC 3768/2015 OF THE HONOURABLE COURT.
- EXHIBIT P5- A TRUE COPY OF THE ORDER IN CRIMINAL MP 2412/2015 OF THE CHIEF JUDICIAL MAGISTRATE ERNAKULAM.
- EXHIBIT P6- A TRUE COPY OF THE APPEAL MEMORANDUM IN CRIMINAL APPEAL 276/2015 BEFORE THE COURT OF SESSIONS ERNAKULAM.
- EXHIBIT P7- A TRUE COPY OF THE ORDER OF STAY PASSED IN CRIMINAL APPEAL 276/2015 BY THE COURT OF SESSIONS, ERNAKULAM.

RESPONDENT(S)' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

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P.UBAID, J.

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O.P.(Crl)No.297 of 2015

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Dated this the 6th day of October, 2015

JUDGMENT

The petitioner herein is the petitioner in CMP 7218 of 2014 before the Chief Judicial Magistrate's Court, Ernakulam. It is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (DV Act). The first respondent in the said proceeding is her own son, and the second respondent is the daughter-in-law. The petitioner had earlier filed an application before the Judicial First Class Magistrate Court-II, Ernakulam under the DV Act, but for some reasons she decided not to prosecute it, and brought another application before the Chief Judicial Magistrate Court. In the said proceeding, the learned Chief Judicial Magistrate passed an interim order under Section 23 of the DV Act in CMP No.178 of 2015. Aggrieved by the said interim order of protection, the respondents herein brought a criminal appeal under Section 29 of the DV Act before the Court of Session as Crl. Appeal No.82 of 2015. The respondents

made an application for stay of execution of the interim order. Accordingly, interim stay was granted by the Court of Session, but later it expired. In such a situation, the petitioner herein filed an application for execution before the trial court as CMP No.2412 of 2015. In the said proceeding, the learned Magistrate passed an order in enforcement of the interim order earlier passed. Ext.P5 is the said order. Aggrieved by the said order, the respondents again preferred another CrI.Appeal before the Court of Session as CrI.Appeal No.276 of 2015. The petitioner seeks orders quashing the said criminal appeal on the ground that the said appeal cannot be maintained, and that the remedy available to the respondents is only to seek stay of execution in the first appeal brought by them.

2. On hearing both sides in detail, and on a perusal of the materials including the impugned orders, I find that CrI.Appeal No.276 of 2015 brought by the respondents cannot proceed. They have already brought an appeal under Section 29 of the DV Act, challenging the interim order passed by the Court under Section 23 of the DV Act. Even as regards interim orders passed under Section 23, this Court has settled the position that such an appeal can be entertained under Section 29 of the DV Act only in exceptional circumstances, because such an order is always subject to appropriate modifications, and also

subject to the final orders to be passed in the main proceeding. When that is the position as regards interim orders enforceable under the law, nothing need be stated as regards a mere procedural order in execution. In short, such procedural order in execution cannot be the subject matter of an appeal under Section 29 of the DV Act. The respondents had earlier obtained an order of stay, but unfortunately it is expired without being extended. The learned Magistrate passed orders in execution when there was no stay from the appellate court. In such a situation, the remedy available to the respondents is to approach the appellate court itself in the appeal, and obtain necessary stay orders. If appeal, one after the other, is entertained by the appellate court under section 29 of the DV Act against any interim order passed, that will create an unpleasant situation of unending legal battles. What is under challenge in the first appeal is an enforceable order, which is subject to modification or cancellation appropriately. Anyway, let that appeal proceed, and let appropriate decision be taken by the learned appellate judge. However, as regards CrI.Appeal No.276 of 2015 this Court finds that it will have to be quashed because, the impugned order therein is not amenable to appeal under Section 29 of the DV Act, and the remedy available to the respondents against the said impugned order in execution is only to approach the appellate court itself, and apply for

extension of stay.

In the result, this original petition is allowed. Accordingly the whole proceedings in the Court of Session, Ernakulam in CrI.Appeal No.276 of 2015 will stand quashed, without prejudice to the right of the respondents herein to approach the appellate court itself for extension of stay or other appropriate orders. The appellate court is also directed to dispose of CrI.Appeal No.82 of 2015 itself within the shortest possible period, if such a course is practically possible. However, if such disposal is not possible in the near future, the application for revival, or extension of stay made by the respondents shall be seriously and appropriately considered without any delay.

Sd/-

**P.UBAID
JUDGE**

rkj

//TRUE COPY//

P.A. TO JUDGE