

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 13TH DAY OF OCTOBER 2015/21ST ASWINA, 1937

OP(Crl.).No. 315 of 2015 (Q)

CMP NO.820/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, DEVIKULAM

PETITIONER/RESPONDENT :-

**T.RAJAN, AGED 42 YEARS,
S/O.THANGAVEL, 41/5, LATHA COTTAGE
MUTHUPATTI, MADURAI, TAMILNADU.**

**BY ADVS.SRI.NIRMAL. S
SMT.VEENA HARI**

RESPONDENTS/COMPLAINANT :-

**1. VANI.P, AGED 40 YEARS,
D/O.LATE N.PADMANABHAN & W/O.MR.T.RAJAN,
COLLEGE LECTURER, RESIDING AT SRI PADMANABHAN HOUSE,
NEAR GOVERNMENT L.P. SCHOOL, DEVIKULAM - 685 613.**

**2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

R2 BY SMT.SHEEBA M.T., GOVERNMENT PLEADER

**THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 13-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rkj

OP(Crl.).No. 315 of 2015 (Q)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE COMPLAINT FILED DATED 25.06.2014.
- EXHIBIT P2 : TRUE COPY OF THE AFFIDAVIT AND PETITION FILED UNDER
SECTION 23 TO DATED 25.6.2014.
- EXHIBIT P3 : TRUE COPY OF THE STATEMENT OF OBJECTION DATED 11.11.2014.
- EXHIBIT P4 : TRUE COPY OF THE ORDER DATED 4.7.2015 IN CMP 820/14.
- EXHIBIT P5 : TRUE COPY OF THE ORDER SHEET IN CMP 820/14 COMMENCING
FROM 19.6.2014.
- EXHIBIT P6 : TRUE COPY OF THE ORDER SHEET IN CMP 820/14 COMMENCING
FROM 25.6.2014.
- EXHIBIT P7 : TRUE COPY OF THE LETTER DIRECTING THE DISTRICT WOMEN
PROTECTION OFFICER CALLING FOR THE DOMESTIC INCIDENT
REPORT.

RESPONDENT(S)' EXHIBITS :- NIL

//TRUE COPY//

P.A. TO JUDGE

rkj

P.UBAID, J.

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O.P.(CrI)No.315 of 2015

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Dated this the 13th day of October, 2015

JUDGMENT

The petitioner herein is the respondent in CMP No.820 of 2014 of the Judicial First Class Magistrate Court, Devikulam. It is a proceeding brought under Section 12 of the Protection of Women from Domestic Violence Act (DV Act). On 04.07.2015, the learned Magistrate passed an order against the respondent, restraining him from alienating the property wherein the shared household is situated, and also restraining him from committing any act of domestic violence against the petitioner. Aggrieved by the said order, the respondents in the proceeding has approached this Court under Article 227 of the Constitution of India with a prayer to set aside the said order, and also for a direction to the court below to dispose of the proceeding expeditiously.

2. Finding that the impugned order is only an interim order against which remedy lies under Section 29 of the DV Act

this Court directed the learned counsel for the petitioner to address the Court how this original petition is maintainable, when normal remedy of appeal is available. But, the learned counsel submitted that the order passed by the court below is not an interim order because, it bears the very same number of the main proceeding, and so it must be considered as a final order. Even if it is a final order, the remedy lies only under Section 29 of the DV Act. Anyway, this Court called for report from the learned Magistrate regarding the nature of the order passed by him. Now there is a report by the learned Magistrate that the order passed by him on 04.07.2015 is only an interim order under Section 23(2) of the DV Act, and that the main proceeding stands posted to 31.10.2015. Thus, the confusion regarding the nature of the impugned order stands cleared. In the above situation, where the petitioner herein can very well avail the remedy of appeal under Section 29 of the DV Act, this original petition can be closed. I do not find any special situation for a direction for expeditious disposal of the matter. Being a proceeding under the DV Act, the learned Magistrate will make earnest efforts to dispose of the matter as expeditiously as possible. If the petitioner is aggrieved by the interim order passed on 04.07.2015, he can either prefer appeal

against the said order, or wait till decision is finally taken by the learned Magistrate in the main proceeding.

In the result, this original petition is dismissed in limine, without being admitted to files, however directing the petitioner either to avail the remedy of appeal under Section 29 of the DV Act against the impugned order, or to wait for decision finally in the main proceeding. The learned counsel now submits that time for filing appeal has already expired. The petitioner can very well file an application to condone the delay along with the appeal, if he is so opts to file an appeal.

Sd/-
P.UBAID
JUDGE

rkj

//TRUE COPY//

P.A. TO JUDGE