**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN**

**THURSDAY, THE 03RD DAY OF DECEMBER 2020 / 12TH AGRAHAYANA, 1942**

**WP(C).No.11605 OF 2020(A)**

**PETITIONER/S:**

**ABRAHAM VARGHESE, AGED 60 YEARS**
**S/O. VARGHESE, KAIPPANPLAKKAL HOUSE,**
**KUDASSANADU P.O., POOZHIKKADU NURI,**
**PANDALAM VILLAGE-689 501**

**BY ADVS.**
**SRI.RINNY STEPHEN CHAMAPARAMPIL**
**SMT.ASHA ELIZABETH MATHEW**

**RESPONDENT/S:**

1 **THE CIRCLE INSPECTOR OF POLICE**
**PANDALAM POLICE STATION, PANDALAM P.O.,**
**PIN-689 501**

2 **JANCY, AGED 56 YEARS**
**HOUSE NO.131, WARD -22, PANDALAM MUNICIPALITY,**
**NEAR RONY TIMBERS, PATHANAMTHITTA-689 501**

**R2 BY ADV. SRI.M.P.MADHAVANKUTTY**

**OTHER PRESENT:**

**SR.GP - SRI. THAJUDEEN PP**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03.12.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**JUDGMENT**

The petitioner and the 2nd respondent are husband and wife. The petitioner has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Station House Officer to afford adequate and effective police protection for the smooth functioning of his timber mill, namely 'Rony Timbers' in the land comprised in Re.Sy.No.97/4/1, 97/4/2, 97/4/4 and 97/5 in Poozhikkad of Kurampala Village in Adoor Taluk and also for his life as against any illegal acts from the part of the 2nd respondent.

2. On 18.06.2020, when this writ petition came up for admission, this Court admitted the matter on file. The learned Government Pleader took notice for the 1st respondent. Petitioner was directed to take out notice to the 2nd respondent and produce proof of service of notice before the Registry. While ordering the writ petition to be listed on 07.07.2020, this Court has granted an interim order for police protection as prayed for, i.e., an order directing the 1st

respondent to afford adequate and effective protection for the smooth functioning of the petitioner's timber mill and for his life as against any illegal acts from the part of the 2nd respondent. The said interim order, which was extended from time to time, is still in force.

3. Along with I.A. No.1 of 2020, the petitioner has placed on record Ext.P7 photographs.

4. A counter affidavit has been filed by the 2nd respondent, opposing the reliefs sought for in this writ petition.

5. The petitioner has also filed reply affidavit.

6. On 13.08.2020, when this writ petition came up for consideration, this Court passed the following order:

> "The petitioner and the 2nd respondent are present before this Court on 13.08.2020. They are husband and wife. The dispute between them is pending before the Family Court, Pathanamthitta. In the marriage, they have two adult children, one is 33 years old and the other is an MBBS student in Philippines. The petitioner approached this Court for police protection on account of the marital dispute.

> 2. Having interacted with the petitioner and the 2nd respondent, this Court is of the view that there is a possibility of settlement. In view of the fact that, mediation has not started in the State, on account of COVID restriction, it is appropriate that the petitioner and the 2nd respondent undergo counseling session before the Clinical Psychologist at Pathanamthitta. Accordingly, the petitioner and the 2nd respondent are directed to appear before Dr.Thomas Abraham, Counseling Psychologist at Lifeguide Centre, Pathanamthitta on 24.08.2020. The petitioner shall bear the entire expenses and professional fee payable to the Clinical Psychologist. The Psychologist shall file a report before this Court after holding necessary sessions with the petitioner and the 2nd respondent. In the meanwhile, both parties agree to maintain a cordial relationship till a decision is taken by this Court. The police also shall ensure that law and order is maintained by both the parties."

7. The Counseling Psychologist has filed a report dated 16.11.2020, wherein it is stated that the effort to unite the petitioner and the 2nd respondent will be in vain.

8. Heard the learned counsel for the petitioner, the learned Senior Government Pleader appearing for the 1st respondent Station House Officer and also the learned counsel

for the 2nd respondent.

9. The Kerala Police Act, 2011 is enacted to consolidate and amend the law relating to the establishment, regulation, powers and duties of the Police Force in the State of Kerala and for matters connected therewith and incidental thereto. Chapter II of the Act deals with duties and functions of Police. Section 3 of the Act deals with general duties of Police. As per Section 3, the Police, as a service functioning category among the people as part of the administrative system shall, subject to the Constitution of India and the laws enacted thereunder, strive in accordance with the law, to ensure that all persons enjoy the freedoms and rights available under the law by ensuring peace and order, integrity of the nation, security of the State and protection of human rights. Section 4 of the Act deals with functions of Police. As per Section 4, the Police Officers shall, subject to the provisions of the Act, perform the functions enumerated in clauses (a) to (s) of Section 4. As per clause (a), the Police Officers shall enforce the law impartially; and as per clause

(b), the Police Officers shall protect the life, liberty, property, human rights and dignity of all persons in accordance with the law.

10. Lord Denning in 'The Due Process of law' [First Indian Reprint 1993, Page 102] has described the role of the Police thus;

> "In safeguarding our freedoms, the police play vital role. Society for its defence needs a well-led, well-trained and well-disciplined force or police whom it can trust, and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.
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> The police, of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man's house without authority. They must not use more force than the occasion warrants."

11. In **Manohar Lal Sharma v. Principal Secretary [(2014) 2 SCC 532]** the Apex Court held that, one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of

investigation is ultimately to search for truth and bring the offender to the book. The Apex Court reiterated the said principle in **Ankush Maruti Shinde v. State of Maharashtra [(2019) 15 SCC 470]**.

12. It is submitted by the learned counsel on both sides that O.P.No.292 of 2019 filed by the petitioner husband against the 2nd respondent wife seeking a decree of divorce is now pending consideration before the Family Court, Pathanamthitta. O.P.No.315 of 2019 filed by the petitioner seeking a decree of prohibitory injunction against the 2nd respondent from trespassing into the petition schedule property and from doing any act disturbing the smooth functioning of the timber mill; and O.P.No.705 of 2019 filed by the 2nd respondent against the petitioner for monitory reliefs are also pending before the Family Court, Pathanamthitta. The 2nd respondent has also filed M.C.No.56 of 2019 before the Judicial First Class Magistrate Court, Changanassery against the petitioner under the provisions of the Protection of Women from Domestic Violence Act, 2005. In O.P.No.315 of 2019 the

petitioner obtained Ext.P3 interim order from the Family Court, Pathanamthitta and in M.C. No.56 of 2019, the 2nd respondent obtained Ext.R2(a) order from the Magistrate Court.

13. The learned Senior Government Pleader, on instructions from the 1st respondent Station House Officer, would submit that at present there is no law and order problem and the dispute between the petitioner and the 2nd respondent is civil dispute.

14. Having considered the pleadings and materials on record and also the submissions made by the learned counsel on both side, this Court finds that since the petitioner and the 2nd respondent have already filed original petitions before the Family Court, Pathanamthitta, seeking a decree of divorce, monitory reliefs, etc., this Court need not go into the merits of the rival contentions, in exercise of writ jurisdiction under Article 226 of the Constitution of India.

In such circumstances, this writ petition is disposed of leaving open the legal and factual contentions raised by the

petitioner and the 2nd respondent and by directing the 1st respondent Station House Officer to maintain law and order taking note of the statutory provisions referred to hereinbefore, and also law laid down by the Apex Court in the decisions referred to supra.

**Sd/-**
**ANIL K.NARENDRAN**
**JUDGE**

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# APPENDIX

**PETITIONER'S/S EXHIBITS:**

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| **EXHIBIT P1** | **A TRUE COPY OF THE LICENSE ISSUED BY THE PANDALAM MUNICIPALITY** |
| **EXHIBIT P2** | **A TRUE COPY OF THE RECEIPT DATED 20.03.2020 ISSUED BY THE PANDALAM MUNICIPALITY** |
| **EXHIBIT P3** | **A TRUE COPY OF THE INTERIM ORDER DATED 30.3.2019 OF THE FAMILY COURT, PATHANAMTHITA IN IA NO 600/2019 IN O.P.NO.315/2019** |
| **EXHIBIT P4** | **A TRUE COPY OF THE COMPLAINT DATED 12.9.2019 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT** |
| **EXHIBIT P5** | **A TRUE COPY OF THE PETITION ACKNOWLEDGMENT RECEIPT DATED 12.9.2019 ISSUED FROM THE OFFICE OF THE FIRST RESPONDENT** |
| **EXHIBIT P6** | **A TRUE COPY OF THE REPRESENTATION DATED 06.06.2020 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT** |
| **EXHIBIT P7** | **PHOTOGRAPH EVIDENCING TRESPASS BY THE 2ND RESPONDENT INTO THE OFFICE OF RONY TIMBERS.** |
| **EXHIBIT P8** | **A TRUE COPY OF THE JUDGMENT DATED 22/01/2020 OF THIS COURT IN TR.P(C) NO.572/2019.** |
| **EXHIBIT P9** | **A TRUE COPY OF THE SALE DEED NO.305/2014 DATED 03/02/2014 OF SRO, PANDALAM.** |

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| **EXHIBIT P10** | **A TRUE COPY OF THE BUILDING TAX RECEIPT ISSUED FROM PANDALAM MUNICIPALITY.** |

**RESPONDENT'S/S EXHIBITS:**

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| **EXHIBIT R2(A)** | **TRUE COPY OF THE ORDER DATED 29/07/2019IN CMP NO.2408/2019 IN MC NO.56/2019.** |
| **EXHIBIT R2(B)** | **TRUE COPY OF THE OP NO.705/2019 BEFORE THE FAMILY COURT, KOTTAYAM AT ETTUMANOOR.** |
| **EXHIBIT R2(C)** | **TRUE COPY OF THE OP NO.315/2019 BEFORE THE FAMILY COURT, PATHANAMTHITTA.** |
| **EXHIBIT R2(D)** | **TRUE COPY OF THE INTERIM ORDER IN OP NO.315/2019 BEFORE THE FAMILY COURT, PATHANAMTHITTA.** |