

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 24TH DAY OF JULY 2014/2ND SRAVANA, 1936

Crl.Rev.Pet.No. 366 of 2014 ()

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AGAINST THE JUDGMENT IN CrI.A 454/2010 of ADDL.SESIONS COURT, NOTH  
PARAVUR

AGAINST THE ORDER IN MC 103/2009 of JUDICIAL FIRST CLASS MAGISTRATE  
COURT, PERUMBAVOOR

REVISION PETITIONER(S)/REVISION PETITIONER/APPELLANT/ACCUSED:

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RAJAN  
S/O.SUBRAMANIYAN, VILANGATTIL HOUSE, NEELESWARAM KARA  
KALADY VILLAGE, ERNAKULAM DISTRICT.

BY ADV. SMT.SOUMINI JAMES

RESPONDENT(S)/RESPONDENTS/COMPLAINANTS:

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1. SIJI, AGED 38 YEARS  
D/O.PADMANABHAN, KANNOTH HOUSE, CHENGARA KARA  
PATTIMATTOM VILLAGE - 683 562.
  2. AKHIL  
S/O.RAJAN, KANNOTH HOUSE, CHENGARA KARA  
PATTIMATTOM VILLAGE, REP.BY MOTHER SIJI.
  3. STATE REPRESENTED BY PUBLIC PROSECUTOR  
HIGH COURT OF KERALA.

R1 & R2 BY ADV. SRI.VIPIN NARAYAN  
R3 BY PUBLIC PROSECUTOR SRI.GITHESH.R.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON  
24-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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**P.UBAID, J.**

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**Cri.R.P No.366 of 2014**

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**Dated this the 24<sup>th</sup> July, 2014**

**O R D E R**

An order obtained by the wife against her husband under the provisions of the Protection of Women from Domestic Violence Act, 2006 (hereinafter referred to as 'the Act' for short) is under challenge in this revision. The wife, who has been residing separately from the husband filed M.C No.103 of 2009 before the Judicial First Class Magistrate, Perumbavoor claiming reliefs under the Act. She sought protection order, maintenance order, order for compensation, residence order etc. She also sought the value of 4 ½ sovereigns of gold ornaments alleged to have been appropriated by her husband.

2 The husband entered appearance and resisted the claim on the contention that the alleged shared household does not belong to him, and that the wife is not entitled to get maintenance or compensation because she had not suffered anything bad at his hands, and that she has her own income to maintain herself. Thus, he denied

the alleged cruelty, and he contended that his wife has no right to claim right of residence in the house that belongs to his mother.

3. The learned Magistrate conducted enquiry in the proceedings and recorded evidence. The wife examined herself as PW1. Two witnesses including her mother-in-law were examined on the side of the wife, and two Doctors were examined on the side of the husband. Exts.P1 to P6 were marked on the side of the wife and Exts.D1 to D3 were marked on the side of the husband. These documents were marked, and the Doctors were examined to prove his case that he is physically disabled. However, on an appreciation of the evidence, the trial court found in favour of the wife, and granted the following reliefs against the husband.

(a) Restraining the husband from committing any act of domestic violence.

(b) Restraining the husband from alienating the shared household and the property wherein, the building is situated.

© Directing the husband to pay maintenance to the wife at the rate of ₹ 400 per

month and ₹ 500/- per month to the minor son.

(d) Directing the husband to pay an amount of ₹ 21,000/- as compensation to the wife and also the value of 4 ½ sovereigns of gold appropriated by him.

Those directions were made by order dated 14.07.2010 in M.C No.103/2009.

4. The aggrieved husband approached the Court of Session, Ernakulam with Crl.A No.454 of 2010. In appeal, the learned Additional Sessions Judge, North Paravur concurred with the findings of the trial court on all the points except the last direction to pay the value of gold ornaments. Accordingly, the appellate court reversed the direction to pay the value of 4 ½ sovereigns of gold ornaments but, maintained the other parts of the order in all respects. The husband is still aggrieved. He challenges the other parts of the order in revision.

5. On hearing both sides and on a perusal of the case records, I find that the husband in fact deserves some orders in his favour in revision. Of course, as regards the maintenance order or the order against the domestic

violence, I find no reason for interference. The wife has made out a case in her favour, and I find that she has some grievance of her own. Though not 100% acceptable she has given evidence proving her case against her husband that she had no peace in matrimony in the shared household. In the said factual situation, I also find the necessity of maintaining the first part of the order restraining the husband from committing any act of domestic violence. So also, I find the necessity of sustaining the maintenance order because it stands not proved that the wife has any definite source of income or job. Though she knows tailoring, it will not dis-entitle her to claim maintenance from her husband. What is ordered by the court below is only ₹ 400/- per month. The amount ordered to the child is only ₹ 500/- per month. It is true that the husband examined two Doctors to prove his disability. But this medical evidence will not prove that he is in fact physically disabled to do any work, or to earn for his livelihood. Within the limits and within his capacity, he will have to maintain his wife and child. What he is liable to pay a month is only ₹ 900/-. This amount can

be paid by any husband who is able bodied. I find no scope for interference in the maintenance order passed by the court below.

6. Now comes to the most objectionable part of the order contained in the second clause of the trial court order. The husband is restrained from alienating the shared house hold and the property wherein the building stands. Of course, the definite case of the husband is that the property was in fact purchased by his mother with her own funds and that the said direction will not bind the mother. Now, it is submitted that the mother is no more, and that the husband has inherited the property including the shared house hold, as the sole legal heir. Of course, it is true that the said direction was not in fact binding on the mother. Any way, now, the property has come in his hands as the legal heir. Once the property has come in his hand as the sole legal heir, he will have to obey the order. But the material question is whether the wife is entitled to get such an order. In fact, what she claims is merely a civil right over the property. Her case is that, the said property was in fact

purchased by the mother-in-law by utilising her funds also. It appears that she claims right to continue there as a co-owner, on a claim of right, on the basis of what she contributed, and not simply as the wife having right to live in the shared household. There is reason to believe that the relationship between the parties is really strained. If what the wife claims is some civil right over of the property, she will have to approach the competent Civil Court for appropriate civil remedy. However, she can continue in the shared household along with the husband so long as the shared house hold continues in the possession of the husband. The husband cannot be prohibited or restrained from alienating his property because it is his civil right. However, in case the husband proceeds to alienate the shared house hold, she can approach the court below for appropriate relief like alternative accommodation, and when such a claim comes, it will have to be decided by the trial court on merits. Subject to this, the second part of the order will have to be set aside.

In the result, this revision petition is allowed in part. Accordingly, the second clause of the trial court order restraining alienation of property will stand set aside, subject to the observations made above regarding the wife's right to approach the trial court for further relief of alternative accommodation in case of alienation. The other orders confirmed by the appellate court are maintained.

**Sd/-  
P.UBAID  
JUDGE**

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/True copy/

P.S to Judge