

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 10TH DAY OF DECEMBER 2024 / 19TH AGRAHAYANA,
1946
CRL.MC NO. 1370 OF 2021

CMP NO.1720 OF 2020 OF JUDICIAL MAGISTRATE OF
FIRST CLASS-I, KOTTARAKKARA

PETITIONERS/RESPONDENTS 1, 3 & 4:

- 1 SUNNY MATHEW, AGED 56 YEARS,
S/O KOCHU KUNJU MATHEW, VALIYAPARAMPIL SAM
VILLA, KALLUMALA P.O., MAVELIKARA, ALAPPUZHA
DISTRICT-690 110.
- 2 JOLLY MATHEW, AGED 48 YEARS,
W/O SUNNY MATHEW, VALIYAPARAMPIL SAM VILLA,
KALLUMALA P.O., MAVELIKARA, ALAPPUZHA DISTRICT-
690 110.
- 3 SONIYA MATHEW, AGED 29 YEARS,
W/O ANEESH DAS, MUKKADAYIL DASAN'S VILLA, MYLOM
P.O., MYLOM VILLAGE, KOTTARAKKARA-691 506, NOW
RESIDING AT VALIYAPARAMPIL SAM VILLA, KALLUMALA
P.O., MAVELIKARA, ALAPPUZHA DISTRICT-690 110.
BY ADVS.
RINNY STEPHEN CHAMAPARAMPIL
SMT.ASHA ELIZABETH MATHEW

RESPONDENTS/STATE & DE-FACTO COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM-682 031.
- 2 KUNJUMOL DAS, AGED 58 YEARS,
MUKKADAYIL DASAN'S VILLA,
MYLOM P.O., MYLOM VILLAGE, KOTTARAKARA-691 506.

BY ADVS.
K.V.ANIL KUMAR
SWAPNA VIJAYAN
RADHIKA S.ANIL
NIJAZ JALEEL (K/3557/2024)
SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 14.11.2024, THE COURT ON 10.12.2024 PASSED THE
FOLLOWING:



“C.R”

A. BADHARUDEEN, J.

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Crl.M.C No.1370 of 2021
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Dated this the 10th day of December, 2024

ORDER

This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure ('Cr.P.C' for short hereafter), seeking the relief to quash Annexure H complaint in C.M.P.No.1720/2020 on the files of Judicial Magistrate of First Class-I, Kottarakara.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor in detail. Heard the learned counsel appearing for the 2nd respondent also. Perused the relevant documents.

3. In this matter Annexure H complaint, of which Annexure G also forms part, has been filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 ('DV Act' for short) by one Kunjumol Das, before the Judicial First Class Magistrate-I, Kottarakara, is under challenge. The respondents in Annexures H and G are Sunny



Mathew, Sam Mathew, Jolly Mathew, and Soniya Mathew. Earlier Soniya Mathew, the 4th respondent in Annexure H complaint and her minor daughter filed M.C.No.6/2020 before the Judicial First Class Magistrate Court-I, Mavelikara against Anish Das, her husband and Kunjumol Das, the mother-in-law. Along with the M.C.6/2020, CMP.668/2020 was also filed. As per Annexure C order dated 30.01.2020, the learned Magistrate restrained Anish Das and Kunjumol Das from committing any act of physical or mental torture against the petitioners in the M.C, until further orders. While so, Kunjumol Das filed Annexure H complaint under Section 12 of the DV Act and the main prayer therein was to restrain respondents 1 to 4 therein from entering upon the residence of Kunjumol Das.

4. It is pointed out by the learned counsel for the petitioners herein that Kunjumol Das has no locus standi to file such a petition since there is no 'domestic relationship' in between Kunjumol Das and the petitioners herein, as defined under Section 2(f) of the DV Act. Therefore, Annexures G and H filed under Section 12 of the DV Act against the petitioners are not maintainable. It is submitted by the learned counsel for the petitioners further that as per the decision of this Court reported in



[2010 (1) CivCC 536 : 2010 (1) ILR(Ker) 60 : 2010 KLT 79 : 2010 (6) RCR(Civ) 1046 : (2009) 0 Supreme (Ker) 989], **Dr. V.K.Vijaualekshmi Amma v. Bindu & Ors.**, this Court held that a party against whom proceedings were initiated by the Magistrate under Section 12, on a petition filed under Section 12(1) of the Act seeking relief under Sections 18 to 23, has adequate remedy before the Magistrate, it is not for the High Court to exercise the extraordinary inherent powers and quash the proceedings, thereby it was held further that Section 482 is to be invoked in appropriate cases either to give effect to any order passed under the Act or to prevent abuse of process of any court or to secure the ends of justice, when cognizance was taken by the Magistrate for an offence under Section 31(1) or 33(1) of the DV Act. It is pointed out that in the decision of the Apex Court reported in [2011 KHC 4730 : 2011 (2) KLD 411 : 2011 (3) KHC SN 26 : 2011 (9) SCALE 295 : 2011 (3) KLJ NOC : 2011 (4) KLT SN 72 : 2011 (12) SCC 588], **Inderjit Singh Grewal v. State of Punjab & anr.**, the Apex Court exercised power under Section 482 of Cr.P.C and, therefore, it could not be said that, power under Section 482 of Cr.P.C could not be invoked by the High Court.

5. Whereas it is submitted by the learned counsel for the 2nd



respondent Kunjumol Das that the Madras High Court in [2021 0 Supreme (Mad) 1133], *Mathew Jacob Chakramakal @ Mahesh v. Seema Mathew*, held that inherent powers of the High Court under Section 482 of Cr.P.C could not be invoked to quash proceedings under the D.V Act.

6. In this matter, the first question to be decided is; whether Kunjumol Das had any domestic relationship, as defined under Section 2(f) of the DV Act with the petitioners herein? Section 2(f) defines the meaning of 'domestic relationship' as *a relationship between two persons who live or lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family*. Scouring the definition of the term 'domestic relationship', the same is a relationship between two persons, who live or lived together in a shared household, when they are related, as stated in Section 2(f). So the vital ingredient to find 'domestic relationship' is to see whether there is a relationship between two persons, who live or lived together in a shared household. In the instant case, the marriage between the 3rd petitioner and the 2nd respondent's son was solemnised on 19.02.2018 as per religious rites and custom. After the marriage, the 3rd petitioner started to reside at



the matrimonial home/shared household in Kottarakara along with her husband and the 2nd respondent. While staying so, when harassment and acts of domestic violence at the instance of the 2nd respondent and her son were found to be intolerable, on 21.01.2020, the 3rd petitioner was constrained to submit a complaint before the Kottarakara Police Station and thereafter on 30.01.2020 she filed M.C.6/2020 before the Judicial First Class Magistrate-I, Mavelikara, seeking various reliefs. Annexure A is the copy of the said M.C. Along with Annexure A, M.C, an interim application CMP.668/2020 was filed and copy of the same is Annexure B, wherein a prohibitory order was passed by the learned Magistrate as Annexure C. Thereafter, the 2nd respondent and her son consistently violated the prohibition order and hence the 3rd petitioner filed an application under Section 31 of the DV Act as CMP.No.1366/2020, pending before the Judicial Magistrate of First Class-I, Mavelikara as Annexure D. Order in Annexure D petition has been awaiting. Thereafter, the 3rd petitioner filed O.P.No.901/2020 before the Family Court, Mavelikara, against the 2nd respondent and her son, for return of money and for mandatory injunction as per Annexure E, wherein an interim injunction order was passed as per Annexure F order, restraining the 2nd



respondent and her children from alienating and encumbering the property wherein the share household is situated, until further orders.

7. While so, the petitioners received separate notices from JFCM-I, Kottarakara in CMP.No.1720/2020 (Annexures G and H) filed by the 2nd respondent Kunjumol Das under the DV Act raising false and frivolous allegations. Copy of Annexure H is the Form No.II filed by the 2nd respondent along with Annexure G. According to the petitioners herein, Annexures G and H proceedings are abuse of process of court, since the petitioner in Annexures G and H is not in domestic relationship with the petitioners herein, as defined under Section 2(f) of the DV Act and also not an aggrieved person, as defined under Section 2(a) of the DV Act.

8. Section 2(a) of the DV Act defines 'aggrieved person' as any woman who is, or has been, in the domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. The main point raised by the learned counsel for the petitioners is that as far as petitioners 1 and 2, the parents of the 3rd petitioner, are concerned, they did not live or did not have at any point of time lived together in a shared household with the 2nd respondent herein



and, therefore, they are neither related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption and nor they are family members living together as a joint family, if so, the complaint filed under Section 12 of the DV Act against petitioners 1 and 2 is not maintainable though the same may be maintainable against the 3rd petitioner, since there is a domestic relationship in between Kunjumol Das and the 3rd petitioner herein. It is relevant to note that in this matter, petitioners 1 and 2 are the parents of the 3rd petitioner herein, who is the wife of the 2nd respondent's son. The averments in Annexures G and H in no way suggest that petitioners 1 and 2 and the 2nd respondent herein are in a domestic relationship whereby they live or have at any point of time lived together in a shared household. Therefore, they should not be added in the array of respondents in a proceedings filed by the 2nd respondent as an aggrieved person, who is not in domestic relationship with petitioners 1 and 2. In view of the matter, the contentions raised by petitioners 1 and 2 that proceedings under Section 12 of the DV Act will not be maintainable against them is sustainable.

9. Now comes the second pertinent question, as to whether the High Court, by invoking its inherent power under Section 482 of



Cr.P.C can quash proceedings under the DV Act? It is true that in **Dr. V.K.Vijayalekshmi Amma's** case (*supra*), this Court held that in a complaint under Section 12(1) of the DV Act seeking relief under Sections 18 to 23, High Court could not exercise its extraordinary inherent power to quash the proceedings though such power is to be invoked to give effect to any order passed under the DV Act or to prevent abuse of process of any court or to secure the ends of justice when cognizance was taken by the Magistrate Court under Sections 31(1) or 33(1) of the DV Act. At the same time, in **Inderjit Singh Grewal v. State of Punjab & Anr's** case (*supra*), the Apex Court exercised power under Section 482 of Cr.P.C to quash a complaint filed under Section 12 of the DV Act.

10. The power under Section 482 of Cr.P.C as well as Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short) is an inherent, innate and intrinsic one, permitting the High Court to make such order as may be necessary to give effect to any order under the Cr.P.C or under BNSS or to prevent abuse of process of court or otherwise to secure the ends of justice. Therefore, it could not be held as a ratio that, Section 482 of Cr.P.C or Section 528 of BNSS could not be invoked in DV Act proceedings and there is a bar to exercise the said power. At the same



time, since DV Act proceedings are in the nature of civil proceedings, in order to put an end to the proceedings, the petitioners could very well not press, settle or withdraw the proceedings, for which, power under Section 482 of Cr.P.C or Section 528 of BNSS need not be invoked. But when the proceedings under the DV Act are found to be abuse of process of Court, in order to secure the ends of justice and to save the parties being put into a frivolous litigation, the High Court must exercise its power under Section 482 of Cr.P.C or under Section 528 of BNSS, otherwise abuse of process of Court could not be addressed or prevented.

11. The upshot of the discussion is that the proceedings initiated under Section 12 of the DV Act against petitioners 1 and 2 are not maintainable and the same are liable to be quashed.

Accordingly, this petition stands allowed in part. The proceedings against petitioners 1 and 2, who are respondents 1 and 2 in Annexures G and H, pending on the files of the Judicial Magistrate of the First Class-I, Kottarakara, stand quashed, while allowing the same to be continued against the 3rd petitioner, as per law.

Sd/- A. BADHARUDEEN, JUDGE

APPENDIX OF CRL.MC 1370/2021**PETITIONERS' ANNEXURES**

- ANNEXURE A** A TRUE COPY OF THE PETITION BEFORE THE JFCM-1, MAVELIKARA FILED ON 30.1.2020 IN MC NO 6/2020.
- ANNEXURE B** A TRUE COPY OF CMP NO 668/2020 BEFORE THE JFCM-1, MAVELIKARA IN MC NO 6/2020.
- ANNEXURE C** A TRUE COPY OF THE INTERIM ORDER DATED 30.1.2020 IN CMP NO 668/2020 IN M.C NO 6/2020.
- ANNEXURE D** A TRUE COPY OF THE APPLICATION FILED AS CMP NO 1366/2020 BEFORE THE JFCM-1, MAVELIKARA.
- ANNEXURE E** A TRUE COPY OF OP NO 901/2020 OF FAMILY COURT, MAVELIKARA.
- ANNEXURE F** A TRUE COPY OF THE ORDER DATED 23.11.2020 IN IA NO 4/2020 IN OP NO 1047/2020 OF THE FAMILY COURT, MAVELIKARA.
- ANNEXURE G** A TRUE COPY OF THE PETITION BEFORE JFCM-1, KOTTARAKKARA AS CMP NO 1720/2020.
- ANNEXURE H** A TRUE COPY OF THE COMPLAINT BY 2ND RESPONDENT IN FORM NO.II BEFORE JFCM COURT-1, KOTTARAKKARA IN CMP NO 1720/2020.
- ANNEXURE I** A TRUE COPY OF THE NOTICE DATED 22.03.2022 OF JFCM COURT-I, KOTTARAKKARA IN CMP.NO.1720/2020.