IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 13TH DAY OF JANUARY 2025 / 23RD POUSHA, 1946

CRL.REV.PET NO. 1173 OF 2013

AGAINST THE ORDER/JUDGMENT DATED 30.04.2013 IN Crl.A NO.323 OF 2011 OF SESSIONS COURT, PALA ARISING OUT OF THE ORDER/JUDGMENT DATED 16.06.2011 IN MC NO.35 OF 2010 OF JUDICIAL MAGISTRATE OF FIRST CLASS, PALA

REVISION PETITIONER/APPELLANT/COUNTER PETITIONER:

D. SUDHEER,
AGED 38 YEARS,
S/O.DIVAKARAN NAIR, UNEMPLOYED HINDU (NAIR),
CHARULATHA HOUSE, VAIKOM PO, PADINJATTINKARA,
CHERIYAVADAKKEMURI KARA, NADUVILE VILLAGE,
VAIKOM TALUK, KOTTAYAM DISTRICT.

BY ADV SRI.P.CHANDRASEKHAR

RESPONDENTS/COMPLAINANT:

1 **ANUSHA.R. NAIR,**
AGED 32 YEARS,
W/O.D.SUDHEER,
PUTHUCHIRAMATTATHIL VEEDU,
VALAVOOR KARA, NECHIPUZHOOR PO,
VALLICHIRA VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.

**2 THE STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

**BY ADVS.
Dr. SEBASTIAN CHAMPAPPILLY
SRI.K.A.ABDUL NISTAR
SRI.P.T.DINESH
ABRAHAM P.MEACHINKARA(K/1234/1995)
GEORGE CLEETUS(K/000704/2002)
MARGARET MAUREEN DROSE(K/1328/2019)
SWATHI KRISHNA P.H.(K/000791/2024)
SRI.G.SUDHEER, PUBLIC PROSECUTOR**

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13.01.2025, ALONG WITH Crl.Rev.Pet.1577/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 13TH DAY OF JANUARY 2025 / 23RD POUSHA, 1946

CRL.REV.PET NO. 1577 OF 2013

AGAINST THE ORDER/JUDGMENT DATED 30.04.2013 IN Crl.A NO.323 OF 2011 OF SESSIONS COURT, PALA ARISING OUT OF THE ORDER/JUDGMENT DATED 16.06.2011 IN MC NO.35 OF 2010 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,PALA

REVISION PETITIONER/RESPONDENT/COMPLAINANT:

ANUSHA R.NAIR,
AGED 32 YEARS,
W/O D.SUDHEER,
PUTHUCHIRAMATTATHIL VEED,
VALAVOOR KARA, NECHIPUZHOOR P.O.,
VALLICHIRA VILLAGE,
MEENACHIL TALUK,
KOTTAYAM DISTRICT,
PIN:686 574.

BY ADVS.
DR.SEBASTIAN CHAMPAPPILLY
SRI.P.T.DINESH
SRI.GEORGE CLEETUS
SRI.KURIAN ANTONY EDASSERY

RESPONDENT/APPELLANT/ACCUSED:

D.SUDHEER,
AGED 38 YEARS,
S/O DIVAKARAN NAIR, UNEMPLOYED HINDU (NAIR),
CHARULATHA HOUSE, VAIKOM P.O.,
PADINJATTINKARA, CHERIYAVADAKKEMURI KARA,
NADUVILE VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT, PIN:686141.

BY ADV SRI.P.CHANDRASEKHAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 13.01.2025, ALONG WITH Crl.Rev.Pet.1173/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

K.BABU, J.

Crl.R.P Nos.1173 & 1577 of 2013

Dated this the 13th day of January, 2025

O R D E R

These Criminal Revision Petitions arise from the order dated 16.06.2011 in M.C No.35/2010 passed by the Judicial First Class Magistrate, Pala, in a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act'), which was modified by the Sessions Court, Kottayam, in Crl.A No.323/2011.

2. The petitioner in M.C No.35/2010 is the revision petitioner in Crl.R.P No.1577/2013. Respondent No.1, her former husband, is the revision petitioner in Crl.R.P No.1173/2013.

3. The parties will be referred to in terms of their status in the Trial Court.

Revision Petition No.1577/2013

4. The petitioner filed an application seeking protection order, residence order and monetary reliefs as per the provisions of the DV Act.

5. The petitioner set up the following pleadings:

Respondent No.1 is the husband of the petitioner. Respondent Nos. 2 and 3 are his parents. Respondent No.4 is his brother. The marriage between respondent No.1 and the petitioner was solemnised on 06.07.2003. Two children were born in their relationship. The petitioner had 115 sovereigns of gold ornaments at the time of marriage. Her father had also purchased a building at Kochukavala at Vaikom to facilitate the petitioner, who is a homeo doctor, to run a clinic. Her father had deposited a sum of Rs.5 Lakhs in her name at Valavoor Co-operative Bank. The respondents misappropriated the entire assets of the petitioner. From the very beginning of the marital relationship, they harassed her mentally and physically, demanding more money as dowry.

Due to the ill-treatment on the part of the respondents, the petitioner had to stop her practice in the clinic. On 02.05.2007, she was driven out of the matrimonial home while she was pregnant. She took asylum in her parental house . Thereafter, the petitioner filed O.P No.449/2008 before the Family Court, Kottayam, seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act. The petitioner filed the present case on 18.12.2008.

6. The respondents set up the following pleadings:

The petitioner is the legally wedded wife of respondent No.1. Two children were born in their relationship. The respondents have not ill-treated the petitioner as pleaded. The petitioner left the matrimonial home without any reasonable excuse. The petitioner is working as a homeo doctor in the Government service. She draws a salary at the basic pay of Rs.11,070/-. She is not entitled to any of the reliefs prayed for.

7. The evidence on the side of the petitioner consists of the oral evidence of PW1 and Exts.P1 series and P2. CPWs 1 and 2 were

examined and Exts.D1 to D12 were marked on the side of the respondents.

8. The Trial Court allowed the application in part and granted the following reliefs:

> "(i) The respondents are restrained from committing any acts which harm, or injure or endanger the health, safety, life, limb or well-being of the aggrieved person/petitioner and also aiding or abetting in the commission of the above acts of domestic violence, u/s 18 of the Protection of Women from Domestic Violence Act.
>
> (ii) R1 is directed to secure an alternate accommodation/house having the same level of facilities in the shared house hold for the petitioner within one month from today or to pay Rs.5,000/- per month to the petitioner towards the rent for arranging a rented house for the residence of the petitioner, u/s 19 of the Protection of Women from Domestic Violence Act.
>
> (iii) R1 is directed to pay Rs.23,000/- to the petitioner towards the medical expenses incurred by her, u/s 20(i)(b) of the Protection of Women from Domestic Violence Act.

(iv) R1 is directed to pay Rs.2,500/- per month each to the minor children of the petitioner and R1 from the date of this petition as maintenance, u/s 20(1)(d) of the Protection of Women from Domestic Violence Act and

(v) Considering the facts and circumstances of this case, the parties are directed to bear their respective costs."

9. Respondent No.1 challenged the order passed by the learned Magistrate by filing Crl.A No.323/2011 before the Sessions Court, Kottayam. The Sessions Judge partly allowed the appeal. The operative portion of the judgment passed by the Sessions Court is as follows:

"In the result, appeal is allowed in part as follows:

(a) Original respondents are prohibited from entering the place of employment of the aggrieved person or aiding or abetting in the commission of any acts of domestic violence U/s 18 of the Protection of Women from Domestic Violence Act.

(b) The appellant shall send an amount of Rs.5,000/- per month in the correct name and postal address of the aggrieved person towards the rent for the suitable

accommodation, be selected by the aggrieved person U/s 19 of the Act.

(c) Payment shall be effected from May of 2013 onwards.

(d) Appellant is directed to pay the balance amount of Rs.7,600/- towards the medical expenses incurred by the aggrieved person within 45 days from the date of this order.

(e) Appellant is also directed to pay Rs.2,500/- each per month as the maintenance for his two minor children from May of 2013 onwards without any failure.

(f) He shall deposit the arrears of the maintenance amount from the date of passing of the order dated 16.06.2011.

(g) Considering the relations, parties are directed to suffer their respective costs.

(h) Registry shall transmit the records to the lower court as early as possible."

10. I have heard the learned counsel for the revision petitioner/petitioner and the learned counsel for respondent/respondent No.1.

11. The learned counsel for the revision petitioner/petitioner in Crl.R.P No.1577/2013 challenges the judgment of the Sessions

Court to the extent it restricted the maintenance awarded to the minor children from the date of order. The learned counsel for the petitioner submitted that the children are entitled to get maintenance from the date of the petition.

12. The learned counsel relied on **Rajnesh v. Neha [(2021) 2 SCC 324]** in support of his contention. In **Rajnesh** the Supreme Court observed that the rationale of granting maintenance from the date of application finds its roots in the object of enacting maintenance legislations so as to enable the wife to overcome the financial crunch which occurs on separation from the husband. In paragraph 113 of the judgment, the Supreme Court held thus:

> **"113**. It has therefore become necessary to issue directions to bring about uniformity and consistency in the orders passed by all courts, by directing that maintenance be awarded from the date on which the application was made before the court concerned. The right to claim maintenance must date back to the date of filing the application, since the period during which the maintenance proceedings remained pending is not within the control of the applicant."

13. Therefore, the order passed by the Sessions Court restricting the maintenance from the date of the order is liable to

be set aside. I order so. The order directing maintenance to the minor children from the date of petition, that is, 18.12.2008, passed by the learned Magistrate, stands restored. The revision petition No.1577/2013 stands allowed as above.

Revision Petition No.1173 of 2013

14. The challenge in this Criminal Revision Petition is on two grounds:

(i) The learned Magistrate and the Sessions Court passed the residence order on a prima facie satisfaction that the respondents committed acts of domestic violence against the petitioner.

(ii) Even if the residence order is confirmed, she is not entitled to the benefit after 08.04.2014, the date on which the High Court dissolved the marital tie between the parties.

15. The learned counsel for the revision petitioner/respondent No.1 highlighted the observation of the learned Magistrate in the

impugned order while answering the point whether the petitioner is entitled to protection order under Section 18 of the DV Act. The relevant paragraph in the order highlighted by the learned counsel for the revision petitioner is extracted below:

> "As seen from Ext.D1 to D4 and admitted by the parties, many other litigations including divorce proceedings are pending before the Hon'ble Family Court, Ettumanoor. PW1 gave evidence that the respondents have committed physical, sexual, verbal, emotional, and economic abuses against her. But the learned counsel appearing for the respondents pointed out that the petitioner has no case that she had gone to any hospital or taken any treatment because of the alleged physical abuse committed by the respondents. It was also pointed out that all the belongings of the petitioner was taken by her from the house of the respondents after giving written acknowledgments, certified copies of which are marked as Ext.D5 and D6. It was submitted on behalf of the respondents that, in the absence of any evidence to show that the respondents have committed any act of domestic violence against the petitioner, the petitioner is entitled for a protection order. PW1 gave evidence that when there was delay for the birth of first child after the marriage R2 abused her calling "മച്ചി" (Barren). She further gave evidence that on 25.05.2007 all the respondents physically attacked her and sent her out of the house demanding her to bring 10 lakhs rupees more from her house. At that time she was pregnant and her father came to the house of the respondents, knowing the above incident and took her to her own house with child. It is true that there is no medical evidence or any other eye witnesses to the incident. But from the available materials including Ext.D1 to D4 it is prima facie proved that the respondents were committing acts of domestic violence against the petitioner." (sic)

16. The learned counsel for the revision petitioner submitted that the learned Magistrate, only upon a prima facie satisfaction of the material placed before it, came to the conclusion that the respondents committed the acts of domestic violence, which is not the mandate of Section 19 of the DV Act. The learned counsel submitted that only for passing protection order under Section 18 of the DV Act and granting ex parte interim order as provided under Section 23 of the DV Act the Court can act upon a prima facie satisfaction.

17. The relevant statutory provisions are extracted below:

> **"18. Protection orders.-** The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-
>
> xxx xxx xxx
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> **19. Residence orders.-** (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order -
>
> xxx xxx xxx
>
> **23. Power to grant interim and *ex parte* orders.-**(1) In any

> proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.
>
> (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

18. The learned counsel for respondent No.1 submitted that the Trial Court acted upon a *prima facie* satisfaction as to the question of whether the respondents committed domestic violence or not, only while dealing with the question of granting protection order under Section 18 of the DV Act. The learned counsel submitted that while considering the question of whether the petitioner is entitled to residence order under Section 19 of the DV Act, the learned Trial Magistrate satisfied himself that the respondents committed domestic violence as required in the statutory provision.

19. The proceedings under the DV Act are of a summary nature. The kinds of reliefs which can be obtained by the aggrieved

person under the DV Act are of civil nature. {Vide: **Shalu Ojha v. Prashant Ojha (AIR 2018 SC 3693)** and **Mathew Daniel v. Leena Mathew [2022 (5) KHC 433]**}.

20. The standard of proof evidently is preponderance of probabilities. While considering the question of whether an applicant is entitled to protection order under Section 18 or an ex parte interim order under Section 23, a *prima facie* satisfaction that the opposite party committed domestic violence is the requirement whereas, while passing residence order under Section 19 of the DV Act, the Magistrate has to go beyond *prima facie* satisfaction and has to satisfy that domestic violence has taken place. However, the satisfaction as contemplated in Section 19 of the DV Act is not a satisfaction beyond reasonable doubt. A prima facie satisfaction is not necessary for granting relief under Section 19 of the DV Act.

21. In the present case, the learned Magistrate has found that the evidence of the petitioner is to the effect that the respondents committed physical, sexual, verbal, emotional and economic abuses

against her. The learned Magistrate considered the statement of the petitioner that respondent No.2 abused her calling "barren" when there was delay for the petitioner to get pregnant after the marriage. The Court also took note of the evidence that on 02.05.2007, all the respondents physically attacked her and drove her out of the matrimonial home, demanding money. Her father was compelled to take her when the ill-treatment towards her aggravated. There was credible oral evidence within the meaning of Sections 59 and 60 of the Indian Evidence Act to establish domestic violence. Referring to the lack of medical evidence, the learned Magistrate observed that the petitioner prima facie proved the acts of domestic violence. Though the learned Magistrate used the phrase "prima facie" he came to the conclusion that the respondents committed domestic violence on being satisfied by the evidence adduced. Moreover, the learned Sessions Judge re-appreciated the evidence and came to the conclusion that the respondents committed domestic violence. Therefore, the

challenge of respondent No.1 that there was only a prima facie satisfaction by the Trial Court while granting reliefs under Section 19 of the DV Act is not sustainable.

22. The learned counsel for the petitioner submitted that the term domestic violence has wider meaning, as is evident from Section 3 of the DV Act. The oral evidence tendered by PW1, the credibility of which is not successfully refuted, establishes the ingredients of domestic violence as defined in Section 3 of the DV Act.

23. The learned counsel for respondent No.1 submitted that as the marital tie between the parties was dissolved on 08.04.2014, as per a decree of divorce passed by this Court in Mat Appeal No. No.360/2009, the petitioner is not entitled to the benefit of the residence order after 08.04.2014. The learned counsel submitted that after divorce, a woman cannot be in domestic relationship with her husband and relatives as per Section 17 of the DV Act.

24. The learned counsel for the petitioner submitted that the

course open to the respondent is to make an application under Section 25 of the DV Act for alteration of the residence order passed.

25. The learned counsel for the revision petitioner/respondent No.1 relied on **Ramachandra Warrior v. Jayasree and Another [2021 (2) KHC 504]** in support of his contentions. In **Ramachandra Warrior,** while answering a reference with respect to the rights of the divorced woman to invoke the provisions of the DV Act, the Division Bench held thus:

> "23. On the above reasoning, we answer the reference as follows:
> (i) A divorced wife would not be entitled to the right of residence conferred under S.17 under the Protection of Women from Domestic Violence Act, 2005, for reason of that right being available only to a woman in a domestic relationship.
> (ii) A divorced wife would be included under the definition 'aggrieved person'. A divorced wife occupying a shared household can be evicted only in accordance with law. A divorced wife can approach the Magistrate's Court for an order under S.19 if she is residing in the shared household. The residence orders passed in such cases, would be subject to any proceeding for eviction in accordance with law, initiated by the husband, as contemplated under S.17(2).
> (iii) There can be no order to put a divorced woman in possession of a shared household, from where she had separated long back, and the relief can only be of

restraining dispossession."

26. In the present case, the petitioner is not residing in a shared household. The Court directed respondent No.1 to provide an alternative accommodation. Therefore, though she can be an 'aggrieved person' under the DV Act, she is not entitled to the benefit provided in this case after 08.04.2014.

27. The submission of the learned counsel for the petitioner is that this Court cannot take note of the subsequent events in the revisional jurisdiction, and the remedy of the parties is to approach the Trial Court by invoking Section 25 of the DV Act.

28. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind

to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice — subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. For making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed {Vide: **Pasupuleti Venkateswarlu v. Motor and General Traders [(1975) 1 SCC 770]**} .

29. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable, or there is nonconsideration of any relevant material, or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 Cr.P.C is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction. {Vide: **Sanjaysinh Ramrao Chavan v.**

Dattatray Gulabrao Phalke [(2015) 3 SCC 123], Munna Devi v. State of Rajasthan & Anr [(2001) 9 SCC 631)] and **Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation [(2018) 16 SCC 299)]}**.

30. In the present case, admittedly as per judgment dated 08.04.2014 in Mat. Appeal No.360/2009 a Division Bench of this Court dissolved the marital tie between the parties. There are no special circumstances that prevent this Court from taking cognizance of the divorce effected in determining the rights of the parties. Therefore, I hold that the petitioner is not entitled to the benefit of the residence order under Section 19 of the DV Act after 08.04.2014.

31. The findings of the Trial Court require no interference in revisional jurisdiction.

32. This Court is of the view that the order impugned is not affected by any patent error of jurisdiction.

33. Taking into account the subsequent event that the

marriage between the parties has been dissolved, the petitioner is entitled to the benefit of the residence order only till 08.04.2014.

The Criminal Revision Petition is disposed of as above.

Sd/-
K.BABU,
JUDGE

KAS