



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 5<sup>TH</sup> DAY OF JULY 2024 / 14<sup>TH</sup> ASHADHA, 1946

OP(CRL.) NO. 56 OF 2024

AGAINST THE ORDER DATED 06.01.2024 IN CMP NO.1093/2022 IN  
MC NO.54 OF 2022 OF SPECIAL COURT OF JUDICIAL MAGISTRATE OF  
FIRST CLASS FOR TRIAL OF CASES U/S.138 NI ACT (JMFC XI),  
THIRUVANANTHAPURAM

PETITIONER/PETITIONER:

VIJAYAKUMARI  
AGED 50 YEARS  
JJ NIVAS,  
MADHAVAPURAM, KARIKKAKOM P.O,  
THIRUVANANTHAPURAM, PIN - 695542

BY ADVS.  
SRI.SYAM KUMAR A.G.  
SMT.S.AJITHA KUMARI  
SMT.GOURI NAIR  
SMT.KRIPA ANNS ABRAHAM

RESPONDENTS/RESPONDENTS:

1 JAYAKUMAR  
JJ NIVAS,  
MADHAVAPURAM, KARIKKAKOM P.O,  
THIRUVANANTHAPURAM, PIN - 695542

2 SAJI K.  
PANAVILAKATHU VEEDU,  
POOZHICKUNNU, VENKADAMBU,  
NEYATTINKARA,  
THIRUVANANTHAPURAM, PIN - 695506

BY ADVS.  
SRI.G.SUDHEER



2024/KER/49552

O.P.(CrI.) No.56/24

-:2:-

SRI.GIGIMON ISSAC  
SRI.R.HARIKRISHNAN  
SMT.SMRITHI S.S.  
SRI.TOBIAS TOGI MATHEW  
SRI.S.MANIKANTAN NAIR  
SRI.VAISHAKH M.S.

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON  
12.06.2024, THE COURT ON 05.07.2024 DELIVERED THE  
FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----  
O.P.(CrI.) No.56 of 2024  
-----**Dated this the 5<sup>th</sup> day of July, 2024**JUDGMENT**

Can an interim order protecting a woman in a domestic relationship from being dispossessed from the shared household, qualify as a protection order? The above question arises for consideration in this original petition under Article 227 of the Constitution of India.

2. Petitioner's attempt to enjoy living in a shared household has been in vain for the last almost two years, despite an order to that effect issued by the Magistrate in a proceeding initiated under the Protection of Women from Domestic Violence Act, 2005 (for short 'the DV Act'). The application for initiating proceedings to impose penalty under section 31 of the DV Act, for breach of an interim order has been dismissed, stating that the order under consideration was a residence order and not a protection order.

3. Petitioner filed a complaint under Section 12 of the DV Act seeking appropriate orders against her husband and his brother and to



restrain them from committing domestic violence against her. The learned Magistrate by an interim order dated 23.07.2022 in CMP No.764/2022 restrained the first counter-petitioner from harming or injuring or endangering the health or safety of the petitioner and also from dispossessing her from the shared household specifically named therein.

4. Subsequently, since the aforementioned order was not being complied with, petitioner approached the local police seeking their assistance to enter the household. When the police went with her to provide assistance, the house was found locked and later, the first respondent informed that the house belonged to the second respondent – the brother of the husband of the petitioner. Since the petitioner was unable to enjoy the benefit of the order which was being flouted by the respondent, a petition was filed as CMP No.1093/2022 before the learned Magistrate seeking to initiate prosecution proceedings under section 31 of the DV Act. However, the learned Magistrate dismissed the said petition by an order dated 27.01.2023, after observing that the order could not be executed because the house was locked by the second respondent and since the first respondent had not intentionally violated the order apart from there being nothing to show that both respondents had colluded to oust the complainant from the shared household.

5. Petitioner challenged the aforesaid order in O.P.(CrI.) No.176/2023 and by judgment dated 24.03.2023, this Court set aside the



said order and directed a reconsideration. Subsequently, by an order dated 10.05.2023, the learned Magistrate held that there was no prima facie case under Section 31 of the DV Act and in view of the decision in ***Suneesh v. State of Kerala and Another*** (2022 (7) KHC 577), the penalty under Section 31 of the Act will be applicable only where an order of protection under section 18 of the Act is violated.

6. Petitioner again approached this Court in O.P.(CrI.) No.554/2023 and by judgment dated 18.10.2023, the order of the learned Magistrate was set aside, after observing that the name of the house had been surreptitiously changed to make it appear that the petitioner is not entitled to reside in the shared household. This Court also observed that the important documents like the secondary school leaving certificate of petitioner's daughter, marriage invitation card, ration card, utility bills etc., which indicated that the house now claimed to be under the exclusive ownership of the second respondent was actually the shared household were not even considered by the learned Magistrate and hence a reconsideration was ordered. Thereafter, by the impugned order dated 06.01.2024, the learned Magistrate again dismissed the application after holding that the order restraining the first respondent from dispossessing the complainant was only a residence order under Section 19 and not a protection order and hence the question of violation does not arise.

7. Adv. Kripa Anns Abraham, the learned counsel for the petitioner



vehemently contended that the impugned order is perverse as the order of the learned Magistrate dated 23.07.2022 was a protection order and not a mere residence order. It was further submitted that the impugned order goes contrary to the object of the DV Act and the attempts to deny the enjoyment of the fruits of an order passed by the court ought not even be entertained. It was also submitted that every endeavour should be made to enable the women in a domestic relationship to enjoy the orders issued by the court. The learned counsel further submitted that domestic violence includes even restriction of access to a shared household as an economic abuse, and therefore the conclusion arrived at by the learned Magistrate is liable to be interfered with.

8. Sri. G. Sudheer, the learned counsel for the first respondent and Sri. Gigimon Issac, learned counsel for the second respondent contended that the impugned order does not warrant any interference and that Section 31 of the DV Act contemplates penalty only for breach of a protection order and not that of a residence order. It was further submitted that the attempt of the petitioner is to mislead the court to treat 'JJ Nivas' - a demolished building as the shared household and under the cover of the order dated 23.07.2022, to enter into the house of the second respondent, which cannot be permitted under any account.

9. I have considered the rival contentions.

10. The question that arises for consideration is whether the order



dated 23.07.2022 in CMP No. 764/2022 in MC No. 54/2022 is a protection order or a residence order. The significance of the answer to the said question arises since an order falling within the category of a residence order does not qualify for being proceeded against under section 31 of the DV Act, as observed in **Velayudhan Nair v. Karthiayani** [(2009) 3 KHC 377] and **Suneesh v. State of Kerala and Another**, [(2022) 7 KHC 577].

11. In **Velayudhan Nair's case** (supra), it has been held that section 31 does not provide that an order passed under section 19 or section 20 if violated, would enable the Magistrate to take cognizance of the offence and the power is restricted to the breach of a protection order or an interim protection order alone. The learned Single Judge had however held that, notwithstanding the absence of power under section 31 of the DV Act, non-compliance of an order passed under section 19 and section 20 can result in an action as provided under the Code of Criminal Procedure, 1973 as per section 28 of the DV Act. The aforesaid decision has been followed in a recent judgement in **Suneesh v. State of Kerala and Another**, [(2022) 7 KHC 577].

12. The DV Act was enacted with the avowed purpose of providing more effective protection for the rights of women who are victims of violence of any kind occurring within the family. The Statement of Objects and Reasons specifically mention that the Act intends to provide a right for women to secure housing and their right to reside in the matrimonial home



or shared household, which right is secured through a residence order.

13. The term 'protection order' is defined under section 2(o) as an order made in terms of section 18, while a residence order is defined in section 2(p) as an order granted in terms of section 19(1). Therefore, only an order under section 18 of the DV Act can qualify as a protection order, the violation of which would entitle the Magistrate to take cognizance under section 31 of the DV Act. Does it mean that when the right of residence of a woman in a shared household is mentioned in an order, it automatically falls only within the purview of a residence order or can it not qualify as a protection order as well?

14. To answer the above question and to comprehend the concept and the type of orders that can qualify as protection orders, it is essential to refer to section 18 of the DV Act, which reads as follows:

**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

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank





accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

15. The above provision indicates that the protection order can even relate to a prohibition of the commission of any act of domestic violence or the commission of any other act specified in the order. The term domestic violence is defined in section 3 of DV Act as including economic abuse as well. Economic abuse is defined in Explanation I (iv) to section 3 of the DV Act as including prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship, including access to the shared household. Therefore if the order directs prohibition of the commission of any act of domestic violence, such an order can also take within its fold, the provision for access to shared household as per section 18(a). Similarly, if the order prohibits the commission of any specific act that can also qualify to be treated as a protection order as per section 18(g), provided it is issued as an order of protection. The concept of a protection order and a residence order is determined by the nature and



the terms of the order issued by the court. If the order of the court is termed as a protection order, the nature of such an order will have to be regarded as a protection order. While granting protection to a woman in a domestic relationship, if her right to the shared household is protected expressly, such an order can qualify as a protection order also. Merely because a right of residence in the shared household is protected in the order, it does not mean that it cannot qualify as a protection order. A right of access to a shared household can be treated as a protection order if the terms of the order treat it as a measure of protection for a woman in a domestic relationship. Thus the nature and content of the order issued by the Magistrate determines its character as a protection order or as a residence order.

16. On a perusal of the order dated 23.07.2022 in CMP No.764/2022 in MC No.54/2022, It is noticed that the learned Magistrate had used the following words: "*Hence, interference of this court is highly necessary for the protection of the petitioner/aggrieved person from domestic violence. Hence invoking power u/s.23 of Protection of Women from Domestic Violence Act 2005, the following *exparte ad-interim order is passed*". It is further observed that "*the first counter-petitioner is restrained from dispossessing the petitioner from the shared household at JJ Nivas, Madhavapuram, Karikkakom P.O, Veli, Kadakampalli Village, Thiruvananthapuram.*" (emphasis supplied).*



17. The above-extracted portion clearly indicates that what the learned Magistrate has ordered is a measure of protection. The petitioner has been protected from being dispossessed from the shared household. The respondent has been specifically prohibited/restrained from dispossessing the petitioner from the shared household as part of a protection order, invoking the power under section 23 of the DV Act.

18. The order issued by the learned Magistrate is therefore a protection order, and violation of such an order will entail the consequences contemplated in section 31 of the DV Act. The impugned order to the extent it observes that the order dated 23-07-2022 in CMP No. 764/2022 in MC No. 54/2022 is a residence order, is perverse and is liable to be set aside.

19. In view of the above finding, the impugned order dated 06-01-2024 is set aside, and the learned Magistrate is directed to initiate appropriate action as contemplated under law as per the provisions of section 31 of the DV Act on the basis of CMP No.1093/2022 in MC No.54/2022, filed by the petitioner.

20. Before parting with this case, it must be observed that section 31 of the DV Act has created an anomaly which requires the attention of the law makers. The penalty provided under section 31 is curiously confined only to protection orders while the said section is not made



applicable to residence orders under section 19. The Act envisages protection of the right of a woman to a shared household but has unfortunately omitted to provide an effective remedy through section 31. Of course, under section 19(4) of the DV Act, the residence order can be treated as an order under Chapter VIII of the Cr.P.C. However, recourse to the said chapter of the Code cannot be an effective remedy as has been seen over the years and the objective of the statute is not being met.

With the above observations, this original petition is allowed.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps

APPENDIX

## PETITIONER'S/S' EXHIBITS

- Exhibit P1 THE COPY OF THE MC 54/2022 FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-XI, THIRUVANANTHAPURAM UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
- Exhibit P2 THE TRUE COPY OF MEMORANDUM OF ORIGINAL PETITION (CRIMINAL) IN OP (CRL.) 554/2023 ALONG WITH THE DOCUMENTS FILED BEFORE THIS HONORABLE COURT
- Exhibit P3 TRUE COPY OF JUDGEMENT IN OP (CRL.) 554/2023
- Exhibit P4 THE COPY OF THE ORDER IN CMP 1093/2022 DATED 06-01-2024
- Exhibit P5 THE COPY OF THE FIR ALONG WITH THE COPY OF THE FINAL REPORT TOGETHER WITH SCENE MAHAZAR IN CRIME NO. 48/2004
- Exhibit P6 THE COPY OF THE ELECTRICITY BILL
- Exhibit P7 THE COPY OF THE POSTAL RECEIPT DATED 05-12-2023
- Exhibit P8 THE COPY OF THE ONLINE CONSIGNMENT TRACKING REPORT PUBLISHED IN THE OFFICIAL WEBSITE OF DEPARTMENT OF POST
- Exhibit P9 THE COPY OF THE ARGUMENT NOTE