IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

Monday, the 5th day of August 2024 / 14th Sravana, 1946

OP(CRL.) NO. 223 OF 2024(FILING NO.)

ORDER DATED 25/10/2021 IN MC 28/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-I,ERNAKULAM

JUDGMENT DATED 22/07/2023 IN CRA 269/2021 OF ADDL. DISTRICT AND SESSIONS COURT - VII, ERNAKULAM

PETITIONER(S)/APPELLANT IN CRIMINAL APPEAL:

C.K KUNJUMON, AGED 64 YEARS, SON OF MR. LATE RAGHAVAN, CHERIPARAMBIL HOUSE. NEAR MANAPATTY PARAMBU, KALOOR (PO), ERNAKULAM DISTRICT, PIN - 682017.

BY ADVS.SHAJI CHIRAYATH,RAJU JOSEPH,JIJI M. VARKEY,M.K.SAFEELA BEEVI,SAVITHA GANAPATHIYATAN,M.M.SHAJAHAN

RESPONDENT(S):

1. **STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031**
2. **GEETHA, AGED 59 YEARS, DAUGHTER OF MR. P.A PARAMU, PRESENTLY RESIDING AT PULLAMVELIL HOUSE (4/209) KAPPAKKATTU, IRIMPANAM (PO), TRIPUNITHURA, ERNAKULAM DISTRICT, PIN - 682309.**

VIVEK VENUGOPAL (AMICUS CURIAE), PUBLIC PROSECUTOR

This OP Unnumbered (Criminal).../2024(Filing No.223/2024) again coming for orders on 05.08.2024 and this court's order dated 25/03/2024, the court on the same day passed the following:

P.T.O

"C.R."

BECHU KURIAN THOMAS, J

.....….....

Unnumbered O.P.(Crl) of 2024
[Filing No.223 of 2024]

….....

Dated this the 5th day of August, 2024

ORDER

Can an original petition under Article 227 of the Constitution of India be preferred against a judgment in an appeal filed under Section 29 of the Protection of Women from Domestic Violence Act, 2005 [for short, 'DV Act'] is the question that arises for consideration in this original petition.

2. Petitioner is the husband in a domestic relationship. The wife preferred an application under Section 12 of the DV Act and a final order was issued directing payment of monthly maintenance. The appeal preferred against the said order under Section 29 of the DV Act, before the Sessions Court, Ernakulam was dismissed by the impugned order. Petitioner has preferred this original petition under Article 227 of the Constitution of India challenging the order of the appellate court. The Registry of this Court noticed a defect that the original petition is not maintainable. Instead of curing the defect, petitioner requested the matter to be placed before this Court for consideration.

3. Sri. Shaji Chirayath, the learned counsel for the petitioner, contended that the jurisdiction under Article 227 of the Constitution of India

can be exercised by this Court since the jurisdiction is all comprehensive and can be invoked, notwithstanding any other remedy available under law. It was submitted that though the order of the Sessions Court issued under Section 29 of the DV Act is final, recourse can be made to Article 227 of the Constitution of India since no other remedy exists. It was further submitted that Section 28 of the DV Act, indicates that Cr.P.C has no application beyond the stage of the court of first instance and therefore, the remedies provided under Cr.P.C cannot be followed after that stage.

4. Since the issue was brought up as a defect, this Court requested Adv.Vivek Venugopal to assist the Court as an Amicus Curiae. The learned Amicus Curiae submitted that recourse to Article 227 of the Constitution of India is not maintainable as the power of superintendence can be exercised only in respect of matters that are pending before the trial court. In the instant case, since the challenge is against a final order, recourse to Article 227 of the Constitution of India ought not be permitted. Adv. Vivek Venugopal further submitted that section 28 of the DV Act clearly indicate that the legislature had thought it fit to make Cr.P.C applicable to all proceedings and therefore only a revision will lie against a final order under section 29 of the DV Act.

5. The two issues that arise for consideration are (i) Can Article 227 of the Constitution of India be invoked against final orders or judgments

passed by the Sessions Court in an appeal? and (ii) Can a revision petition be filed against a final order of the Sessions Court issued under section 29 of the DV Act?

Issue No. (i). *Can Article 227 of the Constitution of India be invoked against final orders or judgments passed by the Sessions Court in an appeal?*

6. The scope of power under Article 227 of the Constitution is no longer *res integra*. Though the power under Article 227 is exhaustive and vast, it has to be exercised only as a measure of superintendence over the Courts and Tribunals, and that too, when there is perversity or if the order is capricious. The extraordinary power is not a substitute for the appellate or revisional powers. As held in the decision in **M/s. Filmistan (P) Ltd. v. Balkrishna Bhiva** [(1972) 4 SCC 200], and **Satyanarayan Laxminarayan Hegde and Others v. Mallikarjuan Bhavanappa Tirumale** [AIR 1960 SC 137], the High Court cannot substitute its own judgment for that of the trial court or the District Court under Article 227 of the Constitution, whether on a question of fact or of law, unless it is arbitrary or capricious or there was no evidence at all for arriving at the conclusion. It was also observed in the above decisions that when alternative remedies are available under the Statutes, recourse to the power under Article 227 of the Constitution of India cannot be resorted to.

7. In the decision in **Bathutmal Raichand Oswal v. Laxmibai R.**

Tarta and Another, [(1975) 1 SCC 858] it was observed that the power under Article 227 is limited to seeing that the subordinate court functions within the limits of its authority and does not extend to correction of mere errors of fact by examining the evidence and appreciating it. In the guise of exercising its jurisdiction under Article 227, the High Court cannot convert itself into a court of appeal or revision when the Legislature has not conferred such a right.

8. In the decision in **Deep Industries Ltd. v. Oil and Natural Gas Corporation Ltd.** [(2020) 15 SCC 706], while considering the question regarding the maintainability of a challenge under Article 227 against a judgment dismissing a first appeal under section 37 of the Arbitration and Conciliation Act, 1996, it was observed that *"what is important to note is that though petitions can be filed under Art.227 against judgments allowing or dismissing first appeals under S.37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us herein above so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction".* After referring to the decision in **Nivedita Sharma v. Cellular Operators Association of India and Others** (2011) 14 SCC 337, it was further observed that when a statutory forum is created by law for redressal of grievances, a writ petition should not be

entertained ignoring the statutory dispensation.

9. It is thus evident that recourse to Article 227 is permitted against final judgments or orders of Sessions Court, as there is a possibility of aggrieved persons challenging judgments in criminal appeals under Article 227 of the Constitution of India, as has been done in the present case. Such an interpretation cannot be adopted as it will lead to anomalous results.

10. In this context, the decision in **Virudhunagar Hindu Nadargal Dharma Paribalan Sabai and Others v. Tuticorin Educational Society and Others** [(2019) 9 SCC 538], throws light on the issue, though the question in the above decision related to a civil case. It was observed in the said judgment that "*the courts should always bear in mind a distinction between (i) cases where such alternative remedy is available before Civil Courts in terms of the provisions of Code of Civil procedure and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi-judicial authorities and tribunals. In respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. Otherwise, there is a danger that someone may challenge in a revision under Art.227, even a*

decree passed in a suit, on the same grounds on which the respondents 1 and 2 invoked the jurisdiction of the High court. This is why, a 3 member Bench of this court, while overruling the decision in Surya Dev Rai vs. Ram Chander Rai, 2003 (6) SCC 675 pointed out in Radhey Shyam Vs. Chhabi Nath, 2015 (5) SCC 423 that "orders of civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts." (emphasis supplied).

11. Hence, notwithstanding the power under Article 227 being not circumscribed by any limitation, still, its exercise is limited to exceptional circumstances. When the impugned order is a final order or the judgment in an appeal before the Sessions Court, resort to Article 227 is almost an absolute bar.

Issue No. (ii). *Can a revision petition be filed against a final order of the Sessions Court issued under section 29 of the DV Act?*

12. The DV Act has been enacted with the object of providing an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith. In the decisions in **Indra Sarma v. V.K.V.Sarma** (2013) 15 SCC 755, and **Kunapareddy alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Anr** [(2016) 11 SCC 774] the Supreme Court had observed that the

proceedings under the DV Act are of civil nature, though the forum prescribed to secure the relief under the Act is a criminal court.

13. Despite the civil nature of the relief that can be granted under the DV Act, the forum prescribed and the procedure stipulated is that of a criminal court, as is evident from Section 28 of the DV Act. As per the said provision, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 of DV Act shall be governed by the provisions under the Code of Criminal Procedure, 1973. An appeal against any order in an application under Section 12 of the DV Act is to be preferred before a court of Sessions under Section 29 of the DV Act. Therefore, when the procedure prescribed for an application under section 12 of the DV Act is as per Cr.P.C and the appeal against any such order is also to the Sessions Court, necessarily, the revisional jurisdiction available under the criminal procedure code has to be available to an aggrieved person.

14. In this context, it is necessary to refer to the decision in **Sathyabhama v. Ramachandran** [1997 (2) KLT 503] wherein a Full Bench of this Court considered the question relating to revision petitions against orders in applications under Section 125 Cr.P.C issued by Family Courts. It was held that while exercising the jurisdiction under Section 7(2) (a) of the Family Courts Act, 1984, in respect of an application under

Section 125 of the Cr.P.C, the Family Court acts as a criminal court and not as a civil court. It was observed that the legislative intent is to treat the jurisdiction exercised by the Family Court as one exercisable by a criminal court and to provide a remedy of revision as provided in the Cr.P.C unlike in the case of a suit or proceeding entertainable by the Civil Court and governed by the provisions of the CPC.

15. Further, in **Dinesh Kumar Yadav v. State of Uttar Pradesh** 2018 Cri. LJ 389 a Full Bench of the High Court of Allahabad, held that since there is nothing contrary in the Act of 2005 which may be indicative of exclusion of the application of the provisions of Cr.P.C to an appeal under Section 29, the normal remedies available against the judgment and order issued by a court of sessions in appeal and revisions prescribed under the Cr.P.C before the High Court, are available against an order passed in appeal under Section 29 of Act, 2005. On a perusal of the provisions of the Statute, this Court fully endorses the view expressed by the Full Bench of the High Court of Allahabad.

16. When the intention of the statute, as is evident from Section 28 of DV Act, is to make the provisions of the Cr.P.C applicable to petitions under Section 12 of DV Act, in the absence of any specific exclusion, a challenge against an order under Section 29 of DV Act also has to be through the procedure under Cr.P.C itself. The legislative intention is

obviously to make the provisions of Cr.P.C applicable to all proceedings initiated thereunder.

17. In view of the above discussion, this Court is of the view that a person aggrieved by an order of the Sessions Court under Section 29 of the DV Act can prefer a criminal revision petition.

18. In view of the above, since there is no exceptional situation warranting the exercise of the power under Article 227, the objection raised by the Registry is sustained.

Before parting with the case, this Court places its deepest appreciation to the services rendered by Adv.Vivek Venugopal, the learned Amicus Curiae.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps