

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 13TH DAY OF OCTOBER 2016/21ST ASWINA, 1938

Cr1.MC.No. 2990 of 2016 ()

AGAINST THE ORDER/JUDGMENT IN MC 51/2015 of J.M.F.C.-I, ATTINGAL

PETITIONER/RESPONDENT:

BIPIN,
AGED 36 YEARS, CHANDRASENAN,
RESIDING AT T.C 50/365(3), PANACHAYIL,
KALADI, KARAMANA P.O.,
THIRUVANANTHAPURAM.

BY ADVS.SRI.M.RAMASWAMY PILLAI
SMT.PREETHY R. NAIR

RESPONDENT(S)/PETITIONER AND STATE:

1. MEERA D.S.,
AGED 32 YEARS,
D/O.K. SUSHAMA DEVI,
MANU BHAVANAM, OPP. MUNICIPAL
BUILDING, ATTINGAL P.O.,
THIRUVANANTHAPURAM DISTRICT.
2. GOURAV M. BIPIN, AGED 21/2 YEARS,
REPRESENTED BY HIS NATURAL GUARDIAN MOTHER
MEERA D.S., AGED 32 YEARS, D/O.K. SUSHAMA DEVI,
MANU BHAVANAM, OPP. MUNICIPAL BUILDING,
ATTINGAL P.O., THIRUVANANTHAPURAM DISTRICT.
3. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & 2 BY ADV. SRI.SHAJIN S.HAMEED
BY PUBLIC PROSECUTOR:SMT BINDU GOPINATH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
13-10-2016, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

'CR'

SUNIL THOMAS, J.

=====
Crl.M.C.No.2990 of 2016
=====

Dated this the 13th day of October, 2016

ORDER

The short question that arises for consideration in this case is whether subsistence of the matrimonial relationship is the sine-qua-non for seeking reliefs under Protection of Women from Domestic Violence Act, 2005 ('D.V Act' for brevity, hereinafter). To be more precise, whether a legally divorced wife can seek reliefs under the D.V Act.

2. Shorn of all unnecessary details, the brief facts of the case is as follows. The petitioner in the Crl.M.C had married the first respondent in 2011. Second respondent child was born to them. The matrimonial relationship got strained thereafter and hence the spouses moved family court with a joint petition for divorce invoking section 13B of Hindu Marriage Act. After compliance of statutory formalities, divorce was granted by the Family Court in May 2015. Marriage stood dissolved with effect from the date of judgment. Thereafter in August 2015, respondents 1 and 2 filed the present application before the magistrate court seeking reliefs under sections 18, and 20 of the D.V. Act. The

reliefs sought were a protection order against domestic violence, return of 75 sovereigns of gold ornaments of the first respondent misappropriated by the petitioner or its value, order restraining him from operating the bank locker in which the gold ornaments were kept and for return of the passport of the first respondent, retained by the petitioner.

3. The petitioner has sought to quash the above proceedings, on the ground that the above application is an abuse of the process of law. Three specific grounds were urged by the petitioner. Firstly, divorce on mutual consent was sought by parties on a specific, categorical agreement that wife will not claim money, ornaments or maintenance against husband in future. Secondly that, the reliefs sought can be granted only to a woman who is or has a subsisting matrimonial relationship or a relationship in the nature of a matrimonial relationship and not to a divorced wife. Thirdly, at any rate, even if all other reliefs can be granted, a relief in the nature of protection order cannot be granted to a divorced wife and child born in such relationship, since the matrimonial relationship was brought to an end factually and legally. Otherwise such relief can be sought at any time during the entire life time of wife and child, which was not contemplated by the Statute.

4. Before analysing the above contentions, it is essential to bear in mind the significance of the D.V Act as a progressive and beneficial piece of legislation, intended to protect women from being subjected to domestic violence and to prevent the occurrence of domestic violence in society. The object of the Statute provides that it is to provide for more effective protection of rights of woman guaranteed under the Constitution of India, who are victims of violence of any kind occurring within the family. The wide definition of "aggrieved person", "domestic relationship" and "respondent" in sections 2(a), (f) and (g) and other provisions testimony that they are of wide amplitude and the cause of action for any relief under the Act is not confined to the factors of time and space with regard to the matrimonial relationship, but extends beyond their limits, if it has a rational nexus with the domestic relationship, past or present.

5. Regarding the contention that parties have voluntarily agreed to relinquish the various benefits and claims, I am unable to agree. The joint application for divorce contains a unilateral undertaking by the wife that she will not claim money, ornaments or future maintenance. There is nothing to show that this was in consideration for a mutually satisfactory settlement of all the existing claims. In such circumstances, it can only be treated as

consent obtained from the wife either by coercion or obtained by compulsion of circumstances or as a condition imposed on a desperate wife by the husband for consenting to a divorce. Of course, parties are free to enter into a satisfactory settlement of all their claims, on mutually agreed terms. However, contracting out of the statutory rights conferred on the wife under section 19 to 22 of D.V Act is against public policy and hence cannot be recognized, unless it is proved that there was a mutually satisfactory settlement of all claims. This view is fortified by the settled legal position under section 3 of the Protection of Women from Domestic Violence Act, 2005 and under section 125 of Code of Criminal Procedure [see **Sadasivan Pillai v. Vijayalakshmi (1987 Crl.L.J.765)**, **Ranjit kaur v. Pavittar Singh (1992 Cri.L.J.262)** and **Rajesh R. Nair v. Meera Babu (2013(2) ILR (ker) 9)**].

6. The second contention was resisted by the respondents on the premise that the present status of the applicant in a proceeding under the D.V Act is irrelevant. The respondents herein relied on the decision in **Priya v. Shibu (2008(3) KLT 1)** to buttress the above argument. In that, this Court considered the question whether an application for maintenance and return of the amount paid in cash and gold ornaments under sections 19(8) and 20 of D.V Act was maintainable at the behest of a divorced wife.

The question formulated by the learned Judge was whether applicant should continue to be in a domestic relationship with the respondents on the date of preferring claim and whether the persons who are related by consanguinity, marriage or any of the relationship referred to in section 2(f) of the Act should continue to be in that relationship as on the date of filing the petition. It was contended that the employment of words "either live" or "who have lived" in section 2(s) and correspondingly in section 2(a), 2(f) and 2(q), which were in present perfect continuous tense, rendered it obligatory on the part of the applicant to be in a domestic relationship on the date of preferring the application. Refuting the above contention, the learned Judge held that the words "has lived" and "have lived" are employed for the purpose of showing the past relationship and they cannot be so construed as to mean that unless the "domestic relationship" continues on the date of application, the applicant will have no locus standi to move the magistrate. This view is perfectly in consonance with the object of the Statute and is the most logical and rational interpretation of the Statute. Same principle is embodied in the decision of the Hon'ble Supreme Court in **Juveria Abdul Majid v. Alif Iqbal and Another (2014(2) KLD 693(SC))**, though it deals with a case of spouses obtaining a decree of divorce subsequent to the commission of domestic violence. In

the light of above decisions, the relief sought by the respondents herein under section 20 of the Act is perfectly maintainable.

7. The third limb of argument of the learned counsel for the petitioner was that when the domestic relationship between parties stood severed, any application of the divorced wife thereafter can only be considered as a relief sought against a stranger and does not fall within the ambit of a domestic violence. As mentioned above, the scope of the Act is not confined within the limits of time and space. Even though at blush, it may appear to be paradoxical to argue that protection orders can be sought even after separation of spouses, such a cause of action may not be rare, which arises subsequent to the divorce, but relateable to the earlier matrimonial relationship. It is not unusual that even after divorce, certain obligations arising from past matrimonial relationship continue, like, maintainance, custody of children, liability to pay amounts or assets received, operation of bank accounts and personal safety of divorced wife and children born in the wedlock. It will be illogical and absurd to hold that the moment of divorce is granted, scope of protection order also ceases. It cannot be confined within the barriers of time and space. Further, the scope of section 18 which is wide enough to take in any violence which is likely to take place in the place of employment of aggrieved person, or if the aggrieved

person is a minor, its school or any place frequented by child or attempting to communicate with the aggrieved person by any means, including electronic media, indicates that domestic violence may spread outside, even beyond the four walls of the matrimonial home. Hence, any act of violence which satisfies the definition of section 3 of the Act and has a rational nexus to the past matrimonial relationship, or which arises therefrom or as a sequel to that relationship, should conceptually fall within the provisions of Domestic Violence Act. In the above circumstance, considering the wide scope of the Act, the object of the Act, I find reason to hold that the ratio in Priya's case (supra) will extend to section 18 of the D.V Act and other reliefs also. Hence, even a divorced wife is entitled to initiate proceedings under sections 18, 19, 20, 21 and 22 of D.V Act to seek appropriate reliefs.

8. In the light of the above, the contention that the reliefs sought before the court below is not maintainable is not legally correct and not sustainable.

CrI.M.C fails and is accordingly dismissed.

Sd/-
SUNIL THOMAS
Judge

Sbna/

True Copy /

P A to Judge