

(2012) 11 KL CK 0145
In the High Court Of Kerala
Case No : Criminal M.C. No. 3665 of 2012

Abdul Samad C.A. and Mrs. Kamar Jahan	APPELLANT
Vs	
Ritha and State	RESPONDENT

Date of Decision : 28-11-2012

Acts Referred:

Protection of Women From Domestic Violence Act, 2005 — Section 12, 31

Citation : (2012) 11 KL CK 0145

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : S. Nirmal Kumar, for the Appellant; R. Ranjith, Public Prosecutor for R2, for the Respondent

Judgement

S.S. Satheesachandran, J.—Petitioners are two among the respondents in a proceeding under the Protection of Women from Domestic Violence Act, for short the Act, pending on the file of the Judicial First Class Magistrate Court, Chalakkudi. That proceeding arose on a petition filed u/s 12 of the Act by the 1st respondent against her husband and his close relatives. Husband and his mother, two among the respondents, are the petitioners herein. In the application wife claimed various reliefs covered under the Act. She also moved an application for interim relief to restrain her husband and his mother, petitioners, from alienating some immovable properties specified. Learned magistrate passed an exparte order prohibiting the petitioners from alienating such properties. Subsequently, the wife moved an application to prosecute the petitioners alleging that violating Annexure A3 order passed by the court the property had been alienated. Taking cognizance of offence alleged magistrate recorded statement of the wife and issued process to petitioners for the offence u/s 31 of the Act. Annexure A8 is copy of the proceeding sheet of the magistrate in the aforesaid proceedings. Summons issued to the petitioners were not served on them even after two or three postings. Learned magistrate thereupon ordered issue of non-bailable warrant for their arrest and production. Petitioners have filed the above petition to quash the proceedings arising from the application u/s 12 of the Act and also

those taken on the complaint to proceeded against them u/s 31 of the Act. Learned counsel for petitioners adverting the annexures produced with the petition contended that long before passing of Annexure A3 interim order prohibiting them from alienating the property, it had been transferred in favour of another by a registered document and as such there was no violation of Annexure A3 order passed by the magistrate. Summons issued by the court were not served on them, is the further submission of the counsel to contend that issue of non-bailable warrants for their arrest was not proper and correct. Whatever defences/challenges available to the petitioners can be canvassed by them before the magistrate, and this court cannot be called upon to decide disputed questions when the proceedings are pending before the magistrate. Learned counsel for petitioners submitted that the petitioners are now outside the country and in view of the warrants issued by the court pending execution they apprehend of their arrest immediately on their arrival. They are prepared to surrender before the court and canvass the challenges available to them to resist the proceedings, is the further submission of the counsel seeking for an opportunity to do so. Learned counsel also submitted that applicant has now filed another application today for impounding passports of petitioners.

2. Having regard to the proceedings involved and also submissions made and, further, noting that prosecution steps are taken against petitioners on the basis of an exparte order passed against them, following directions are issued:

(i) In case the petitioners appear before the magistrate within a period of one month from today, learned magistrate shall enlarge them on bail on executing a bond of Rs. 10,000/- (Rupees Ten thousand only) with one solvent surety for each of them, to his satisfaction.

(ii) To enable the petitioners to appear and seek for bail as indicated above learned magistrate is directed to keep in abeyance execution of non-bailable warrants issued against them for the aforesaid period.

(iii) Further proceedings from the complaint numbered as C.C. No. 504/2012 and also from the application u/s 12 of the Act (M.C. 29/2011) both of them, shall be kept in abeyance for a period of one month.

Crl. M.C. is disposed of as above.