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**(2012) 05 KL CK 0035**  
**In the High Court Of Kerala**  
**Case No : WP(C) No. 20850 of 2011**

C.K. Vasu

APPELLANT

Vs

Circle Inspector Of Police

RESPONDENT

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**Date of Decision :** 25-05-2012

**Acts Referred:**

Maintenance and Welfare of Parents and Senior Citizens Act, 2007 — Section 4,  
Section 5, Section 6

**Citation :** (2012) 05 KL CK 0035

**Hon'ble Judges :** P.N. Ravindran, J.

**Bench :** Single Bench

**Advocate :** Sri. M.P. Ashok Kumar, Advocate, for the Respondents No. 4 to 6;  
Smt. M.P. Sheeba, Government Pleader, for the Respondents No. 1 to 3; Sri. K.A.  
Shamsudeen, Smt. Bhama G. Nair, Sri. V.K. Meethiankunju, Advocates, for the  
Petitioners

**Final Decision :** Dismissed

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## Judgement

P.N. Ravindran, J. - The petitioner, a senior citizen aged 85 years has filed this writ petition seeking the following reliefs -

i. issue a writ of mandamus directing the respondents 1 & 2 to enquire into Ext.P1 & P4 complaints and to take necessary action to ensure the peaceful living of the petitioner in his house.

ii. issue a writ of mandamus directing the respondent 1 & 2 to remove the 4th respondent and his family from the house of the petitioner to save him from their harassment and threat to life and also to register a case and investigate into the matter.

iii. issue a writ of mandamus directing the 3rd respondent to enquire into Ext.P2 complaint as enjoined by law.

2. Alleging that respondents 4, 5 and 6 who are his sons, are likely to evict him from his residence and cause bodily harm to him, the petitioner filed Ext.P2

complaint before the Revenue Divisional Officer, Palakkad invoking the provisions contained in the Maintenance and Welfare of Parents and Senior Citizens Act 2007, herein after referred to as 'the Act' for short. He also alleged in Ex.P2 complaint that his sons are not maintaining him but are demanding partition of the immovable properties. He further alleged that on 29.4.2011 his sons manhandled him and forcibly took away the sum of Rs. 1,50,000/-. The petitioner had earlier filed Ext.P1 complaint dated 6.4.2010 before the Sub Inspector of Police, Vadakkanchery Police Station against his wife Smt.Devaki and his son Sri.Sivadasan (the fourth respondent herein) alleging that his son and wife are not looking after him. He had also leveled various other allegations therein. In Ext.P2 complaint dated 12.5.2011 filed under the Act, the petitioner sought an order restraining his sons from trespassing into his house or from harassing him. He also sought an order directing the fourth respondent and his family members to vacate the building where he is admittedly residing with his family members. By Ext.P3 letter dated 1.7.2011 the Tribunal constituted under the Act informed the petitioner that the application filed by him is not maintainable and that if he has any complaint against his son, he may complain before the Police. The petitioner had even earlier filed Ext.P4 complaint dated 14.6.2011 before the Sub Inspector of Police, Vadakkanchery alleging that his sons are threatening and manhandling him and that for the past three days he is residing with his sister. The instant writ petition was thereupon filed on 29.7.2011 seeking the aforesaid reliefs.

3. The fifth respondent has filed a counter affidavit dated 17.9.2011 on his own behalf and on behalf of respondents 4 and 6. In paragraph 4 it is stated that the fourth respondent is working as High School Assistant in the Sarvajana High School, Puthukode, that his wife is a post graduate, that they have two school going children and that they are residing with the petitioner and are looking after him. The fifth respondent has stated that he is the Managing Director of two reputed companies, that his daughter is studying at Ootty and his son at Manjapra and that he is residing in his own property, two kilometers away from his father's house. He has also stated that the sixth respondent is residing at Poonkunnam in Thrissur with his family. The fifth respondent has in the counter affidavit also stated as follows :

6. The petitioner is aged 86 and financially very rich. He own above 20 acres of landed property including the Rubber Plantation. The monthly income earned from the rubber plantation is around Rs. 75,000/-. But not even a single Rupee is being given to any of the family members. But unfortunately he is leading very shameful, indecent and immoral life. He is diverting his earnings to satisfy his strange sensual requirements. All though the life he was harass mentally and physically torturing our mother. He never cared his wife and children in his life. He was always fond of the company of "woman with shady characters". Any woman between the age of 15-50 are dear to him. Now he is using his age as a protective shield to cover up his immoral and shameful life. The ill reputation caused by my father is now haunting our entire family. Our children are even

ashamed and afraid to pay a visit to the petitioner in his residence because of the stories of his immoral life.

7. The allegation that the respondents 4 to 6 are engaged in conspiracies to get the properties of the petitioner is totally incorrect and denied. There is no property dispute between under section and the petitioner. Our only prayer to the God is to lead a descent life and not for any property owned by our father.

8. We are unconcerned about the property of our father. We are concerned about our own dignity and the dignity of our children. An old man aged 85 bringing young girls cannot bring happiness to his wife, children and grand children. We have never persuaded or compelled the petitioner to partition his property among the family members and we have never harassed our father at any point in our life. The allegation that on 10.1.2011 we insisted for partition of the property is totally incorrect. The allegation that we tried to push him in to the pond is nothing but his wild imagination.

9. There are 5 or 6 farm servants to the petitioner. My mother is also staying with him. My brother and family are also staying in the same residence. But he deliberately refused to take food in the house and brought food from nearby tea shops with an objective to tarnish our image and reputation. He was creating evidence against us for filing such a writ petition (civil) before the High Court. Recently the petitioner has brought a young girl arranged some secret dens. My mother elder brother and family are ashamed of the said of the petitioner at this old-age. Naturally my mother and elder brother objected the body massage and associated activities of our aged father. As my brother openly objected the body massage, the petitioner is attempting to throw him to the street. That is why the 2nd prayer is made the writ petition (Civil). The 4th respondent and his family have got every right to reside in the house. Once my brother and family leaves the house the life of my mother will end in tragedy. My mother is living in that house only because of protection and security extended by my brother and family.

10. Section 20 of the Maintenance and Welfare and Parents and Senior Citizens Act, 2007 is not applicable in the instant case. Under the Act a senior parent is entitled to get maintenance only if he is unable to maintain himself from his own earning or the income from property. The petitioner's monthly income is above Rs. 75,000/- and he own large extent of property. He does not require any assistance from us. Still we hereby undertake that we are ready and willing to pay Rs. 10,000/- per month to him as pocket money. We are also ready to appoint any male servant of his choice, at our expense for preparing food exclusively for him. We are ready to meet his entire expenditure including medical expenses. We are ready to provide a driver and car for his exclusive travel. In return we only want a peaceful atmosphere to enable us, lead a descent and dignified life before general public. He should not harass our sick mother who is aged above 70.

4. The third respondent has filed a counter affidavit dated 18.10.2011 wherein it

is stated that Ext.P1 petition filed by the petitioner is not maintainable under the Act. The second respondent, Sub Inspector of Police, has filed a counter affidavit dated 22.3.2012. In paragraph 2 thereof it is stated that on enquiries made he came to know that the petitioner is residing with the fourth respondent and respondents 5 and 6 are residing separately with their family. He has in paragraph 3 and 4 of the counter affidavit stated as follows:

3. It is hereby submitted that as part of the above enquiry the respondents 4 to 6 were summoned to the Police Station and they stated that they are not creating any problem for the petitioner and they are ready and willing to look after the affairs of the petitioner. Petitioner's wife Devaky and neighbours by name Raju and Rajamani were also questioned. The petitioner's wife Devaky stated that there is no basis for the allegations levelled against respondents 4 to 6. The true photocopy of the statement given by Devaky W/O Vasu is produced herewith and marked as Ext.R2(a). Respondents 4 to 6 also furnished their statements before the 2nd respondent. The statements given by respondents 4 to 6 are produced herewith and marked as Ext.R2(b) (c) & (d). The statement furnished by the witnesses Raju, S/o.Pailee, Kunnumpurathe House, Aringalpadam, Kannampara and Rajamani, W/o.Narayanan, Aringalpadam, Kannambra are produced herewith and marked as Ext.R2(e) & (f).

4. It is respectfully submitted that respondents 4 to 6 were strictly warned and instructed that they shall not make any harassment or disturbance to the petitioner. On my enquiry it is revealed that now there is no problem for the petitioner. In the event of any complaint regarding harassment/ill-treatment of the petitioner by respondents 4 to 6, this respondent will take prompt action against them.

5. The petitioner has filed an affidavit dated 21.11.2011 in reply to the counter affidavit filed by respondents 4 to 6. In paragraph 2 the petitioner has admitted the fact that he owns about 15 acres of land including paddy fields. He was however denied the averment in the counter affidavit filed by respondents 4 to 6 that he earns a monthly income of Rs. 75,000/-. The petitioner has also denied the allegation that he is leading a shameful, indecent and immoral life. In paragraph 3 of the reply affidavit he has stated that the fourth respondent and his family members who are residing with him are not looking after him, that he was thrown out of his house and that he is now residing with his elder sister. He has also stated that his wife is residing with their daughter under the compulsion of respondents 4 to 6.

6. I heard Sri. K.I. Abdul Rasheed, learned counsel appearing for the petitioner, Smt. M.P. Sheeba, learned Government Pleader appearing for respondents 1 to 3 and Sri.M.P.Asok Kumar, learned counsel appearing for respondents 4 to 6. The first relief sought in the writ petition is to direct respondents 1 and 2 to enquire into Exts.P1 and P4 complaints and to take necessary action to ensure the peaceful living of the petitioner in his house. The second relief sought in the writ petition is for an order directing respondents 1 and 2 to remove the fourth

respondent and his family members from the house where the petitioner is residing, to save him from their harassment and threat. He also seeks an order directing the registration of a criminal case and its investigation. From the averments in the counter affidavit filed on behalf of the second respondent it is evident that upon receipt of Exts.P1 and P4 complaints he had enquired into it and recorded the statements of respondents 4 to 6 and their mother Smt.Devaki aged 74 years. A copy of the said statement is on record as Ext.R2(a). The wife of the petitioner has in Ext.R2(a) stated that the fourth respondent is residing with the petitioner and that their other children residing away and that none of her sons have caused any inconvenience to their father or harassed him. She had also stated that she does not know the reason why her husband has filed a complaint against their children. The second respondent has in the counter affidavit also stated that after enquiry into the complaints, respondents 4 to 6 were warned and instructed not to harass the petitioner or to cause disturbance to him. He has also undertaken that in the event of any complaint regarding harassment/ill-treatment of the petitioner by respondents 4 to 6, he will take prompt action against them. In the light of the stand taken by the second respondent in the counter affidavit and the statement made by the petitioner's wife before the Police, I am of the opinion that a direction as prayed for in reliefs 1 and 2 is not called for in the instant case.

7. That takes me to the question whether the third relief prayed for namely a direction to the third respondent to enquire into Ext.P2 complaint can be granted. The Act was enacted to provide for more effective provision for maintenance and welfare of parents and senior citizens. Under section 4 of the Act a senior citizen including a parent who is unable to maintain himself from his own earning or out of the property owned by him is entitled to make an application under section 5 against one or more of his children not being a minor. Section 2(b) of the Act defines the term maintenance to include a provision for food, clothing and residence and medical attendance and treatment. Section 5 of the Act empowers the Tribunal constituted under the Act to pass an order of maintenance pending the proceedings and to direct the children or the relative as the case may be to make payment of a monthly allowance by way of interim relief.

The Tribunal is also empowered to pass an order of maintenance against the children or the relative as the case may be. It has also got the power to recover the amount awarded as maintenance. The Tribunal constituted under the Act can only pass an order for maintenance of a senior citizen or the parent unable to maintain himself if the Tribunal is satisfied that there was neglect or refusal on the part of the children or relatives to maintain him. The Act does not empower the Tribunal constituted under the Act to grant the reliefs prayed for in Ext.P2, one of which is to evict the fourth respondent and his family members from the residence where the petitioner which he is residing. The only other relief sought in Ext.P2 is to prevent his children from trespassing into his house and from causing bodily injury. That is also a matter on which the Tribunal cannot grant

any relief. It is evident from the pleadings and the materials on record, especially the statement made by the petitioner's wife before the Police that the petitioner is not a person who is incapable of maintaining himself from his own earning or out of the property owned by him. The petitioner admittedly owns 15 acres of land. He has no case that he is not earning any income from his lands. Therefore even if Ext.P2 is treated as an application for maintenance, on the admitted facts the petitioner is not entitled to any relief. The petitioner has alleged in paragraph 5 of Ext.P2 that his children forcibly took away the sum of Rs. 1,50,000/- from the almirah on 29.4.2011. However in Ext.P4 complaint filed before the Police on 14.6.2001, he had no case that his children forcibly took away the sum of Rs. 1,50,000/-. I am therefore of the considered opinion that the reliefs prayed for by the petitioner cannot be granted.

I accordingly hold that there is no merit in the writ petition. The writ petition fails and is dismissed. No costs.