

(2011) 06 KL CK 0194
In the High Court Of Kerala
Case No : OP (Criminal) No. 2037 of 2011 (Q)

Suryakumari

APPELLANT

Vs

Miss, Lakshmi Ravindran and Varun Chandransekharan

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125

Hindu Marriage Act, 1955 — Section 13(1)

Protection of Women From Domestic Violence Act, 2005 — Section 12, 18, 19, 20, 21

Citation : (2011) 06 KL CK 0194

Hon'ble Judges : Thomas P. Joseph, J

Bench : Single Bench

Advocate : P.S. Krishna Pillai, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

Thomas P. Joseph, J.—Petitioner's son, the second Respondent is married to the first Respondent on 08.04.2010 at Prasannalakshmi Kalyana Mandapam. They stayed together for a few days at the house of Petitioner and the second Respondent at Palakkad. Thereafter they went to Bangalore from where the second Respondent went to the United Kingdom where he is employed. Petitioner and first Respondent came back to Palakkad and stayed in separate houses. In the meantime according to first Respondent, trouble started. First Respondent complained of cruelty by the Petitioner and second Respondent in one way or the other as narrated in Ext.P1, petition she preferred before learned Judicial First Class Magistrate-II, Palakkad u/s 12 of the Protection of Women from Domestic Violence Act (for short, "the Act"). In that petition she claimed reliefs such as an order of prohibition restraining Petitioner and second Respondent from committing domestic violence, direct the second Respondent to secure the same level of alternate accommodation to which she is accustomed to, direct the second Respondent to pay cost incidental to the proceeding and interim maintenance at the rate of Rs. 1,00,000/-, order monthly maintenance to first

Respondent of Rs. 50,000/- and other reliefs. That petition was preferred before the learned Magistrate, as the learned Counsel submits on 16.05.2011. Simultaneously first Respondent is said to have filed Ext.P2, petition u/s 125 of the Code of Criminal Procedure and Ext.P3, petition for divorce u/s 13(1) of the Hindu Marriage Act, both before Family Court, Palakkad. Contention of Petitioner is that the simultaneous filing of Ext.P1, petition before learned Magistrate on the same day she filed Exts.P2 and P3, petitions in the Family Court when the law enabled her to seek all the reliefs she has claimed in Ext.P1, in those proceedings is intended to harass Petitioner and hence Ext.P1, proceeding is an abuse of process of the court. Petitioner has prayed for a declaration that in the circumstances Ext.P1, petition filed before the learned Magistrate is intended to embarrass, harass and annoy Petitioner and the second Respondent and to quash Ext.P1, the petition for interim relief (Ext.P1(a)), and the notice (Ext.P1(b)) issued by the learned Magistrate on Ext.P1, petition. Learned Counsel has invited my attention to Section 26 of the Act to contend that whatever reliefs that has been claimed by the first Respondent in Ext.P1, petition could be granted by the Family Court even in Ext.P3, petition provided those reliefs are incorporated in the petition. Learned Counsel has also placed reliance on the decisions in Vineed T. v. Manju S. Nair 2008 (1) KLT 845 and Sunitha v. State of Kerala 2011 (1) KLT 210.

2. There could be no doubt that first Respondent is entitled to file application u/s 12 of the Act before the learned Magistrate. Exhibit P1, petition is filed u/s 12 of the Act claiming reliefs which I have above stated. Section 26 of the Act states that any relief available under Sections 18 to 22 of that Act may also be sought in any legal proceeding before a Civil Court, Family Court or a Criminal Court affecting the aggrieved person and the Respondent whether such proceeding was initiated before or after commencement of the Act and that any relief referred to in Sub-section (1) of Section 26 may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a Civil or Criminal Court, the only rider being that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under the Act, she shall be bound to inform the Magistrate of the grant of such relief. In view of Section 26 it leaves me in no doubt that the first Respondent could have sought reliefs under Sections 18 to 22 of the Act in the Family Court as well. Question is whether because she has chosen to file a separate petition - Ext.P1, before learned Magistrate u/s 12 of the Act, it could be said that Ext.P1, petition before learned Magistrate is an abuse of the process of the court or intended to harass Petitioner and the second Respondent and this Court is required to declare so.

3. I shall refer to the decisions learned Counsel has relied. In Vineed T. v. Manju S. Nair (supra) the Division Bench while referring to the necessity for settlement of matrimonial disputes observed that the recent litigation trend in matrimonial disputes indicates that a matrimonial dispute between the parties could generate at least half-a-dozen cases, access to justice shall not be a handle to

multiplication of litigations by taking recourse to all possible legal remedies before all available forums, easy access to the remedies shall not be permitted to be used as a weapon for harassing the other party and that the attempt and effort should be to avoid a possible litigation, but unfortunately the trend seems to be as to how to multiply the litigation between the parties. These observations were made not regarding proceedings which the parties were legally entitled to institute as per the existing law but regarding the tendency to initiate unnecessary and vexatious litigations.

4. In *Sunitha v. State of Kerala* (supra) the learned Judge observed in paragraph 6 that "every person in authority dealing with victims of domestic violence has to approach the problem with a spirit of gender sensitivity. There is nothing wrong in the repositories of power showing empathy towards women in distress except in cases where the provisions of the Act are abused for self aggrandizement or for obtaining undue advantage over the opposite party."

5. These observations cannot affect the right of first Respondent to file a petition u/s 12 of the Act before the learned Magistrate even as she chose to file Exts.P2 and P3, petitions before the Family Court seeking other reliefs. Section 26 of the Act as I understood only enables the aggrieved person to seek reliefs available to her under the Act in a proceeding before the learned Magistrate in a proceeding before a Civil Court, Family Court or a Criminal Court as well. I am not persuaded to think that Section 26 casts obligation on the aggrieved person to file a single petition before a Family Court or other competent court seeking all the reliefs which she is otherwise entitled under provisions of the Act. Nor does the said provision curtail her right to seek reliefs from the Magistrate having jurisdiction over the matter. This is clear from Section 26 itself that if the aggrieved person has got reliefs from one forum, she is to inform that in the other forum. If the first Respondent has a statutory right to file a petition before the learned Magistrate for reliefs under the Act even when she moves other proceedings before the Family court for other reliefs, she cannot be asked to consolidate all her claims in the proceedings filed in the Family Court. Nor could the exercise of a statutory right be described as an abuse of the process of law unless it is prima facie false and vexatious, until the court concerned says so, ultimately. Merely for the reason that applications are filed in different forums on the same day (I must also bear in mind that there is no duplication of the reliefs sought in the various forums) I think it not possible to find that attempt of first Respondent is to embarrass, harass or annoy Petitioner and second Respondent. Certainly, learned Magistrate has to consider in the course of enquiry, whether the allegations made by the first Respondent in Ext.P1 are true or not or the attempt on her part was to embarrass, harass or annoy Petitioner and second Respondent as alleged. The observations in the decisions relied by learned Counsel do not touch upon exercise of statutory right by a litigant or maintainability of the petitions filed by the first Respondent before separate forums but only referred to the alarming situation being generated following matrimonial disputes. I think there could be no quarrel on the proposition stated. But those observations do not affect

maintainability of Ext.P1, petition filed before learned Magistrate and cannot afford ground to the Petitioner to seek reliefs prayed for in this proceeding. Having heard learned Counsel and perused relevant decisions I am inclined to think that reliefs sought for in this proceeding cannot be granted. But I make it clear that the observations made above or disposal of this petition will not affect right of Petitioner to raise all her contentions before learned Magistrate and the learned Magistrate deciding whether allegations in Ext.P1, petition are correct or are merely intended to embarrass, harass or annoy the Petitioner and second Respondent.

Original Petition is dismissed with the above observations.