

Vijesh P.K. Vs. Divya

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SooperKanoon Citation : sooperkanoon.com/1127381

Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Vijesh P.K.

Respondent : Divya

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID FRIDAY, THE 14TH DAY OF FEBRUARY 2014 25TH MAGHA, 1935 CrI.MC.No. 380 of 2013 ----- AGAINST MC422012 of THE JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYOLI PETITIONERS/ACCUSED: ----- 1. VIJESH P.K, AGED 32 YEARS, S/O.GOVINDA KURUPU, THANANL HOUSE, PEEDIKAKKANDI, CHINGAPURAM.

2. GOVINDA KURUPU, AGED 72 YEARS, THANANL HOUSE, PEEDIKAKKANDI, CHINGAPURAM.

3. KARTHYAYANI, W/O.GOVINDA KURUPU, -DO- -DO- 4. BINDU, AGED 35 YEARS, W/O.VINAYAN, PULIKKACHALIL HOUSE, KOONAMVALLIKKAVE, MEPPAYYUR.

5. VINAYAN, S/O.CHATHUKKUTTI, PULIKKACHALIL HOUSE, KOONAMVALLIKKAVE, MEPPAYYUR. BY ADV. SRI.P.M.HABEEB

RESPONDENTS/COMPLAINANT & STATE: ----- 1. DIVYA,,
AGED 23 YEARS, D/O.SADANADAN, PARAPPIL HOUSE, VILAYATTUR,
IRINGATH.

2. STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA ERNAKULAM. R1 BY ADV. SRI.P.R.SREEJITH R1 BY ADV.
SRI.M.PROMODH KUMAR BY PUBLIC PROSECUTOR SRI.A.J.JOSE
AEDAIODI THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 1402-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.MC.No. 380 of 2013 APPENDIX PETITIONERS' ANNEXURES: ANNEXURE
A- THE PHOTOCOPY OF THE PETITION MC NO.42/2012 FILED BY THE 1ST
RESPONDENT BEFORE THE JUDICIAL 1ST CLASS MAGISTRATE COURT
PAYYOLI UNDER SECTION 12 OF DV ACT. ANNEXURE B- THE INTERIM

ORDER

PASSED BY THE JUDICIAL MAGISTRATE COURT PAYYOLI IN CMP NO.797
OF 2012 ANNEXURE C- THE COPY OF THE CRIMINAL MC NO.74/2012
BEFORE THE FAMILY COURT VADAKARA. ANNEXURE D- THE PHOTOCOPY
OF THE COUNTER FILED BY THE PETITIONER. RESPONDENTS'
ANNEXURES: NIL //TRUE COPY// P.A TO JUDGE ab P.UBAID, J.

----- Crl.M.C No.380 of 2013 ----- Dated
this the 14th day of February, 2014

ORDER

The petitioners herein are the respondents in M.C No.42/2012 brought by the 1st
respondent herein before the Judicial First Class Magistrate Court, Payyoli,
seeking various reliefs under the Protection of Women from Domestic Violence
Act. The relief she sought included a claim for maintenance also, as against the
1st petitioner herein. The petitioners now seeks an order from this Court under
Section 482 of the Code of Criminal Procedure quashing the said proceedings on
the ground that the 1st respondent has already filed a petition for maintenance
before the Family Court, Vadakara against the 1st petitioner herein, as
M.C.No.74/2012, and the said case is pending.

2. On a perusal of the provisions contained in Section 26 of the Protection of Women from Domestic Violence Act this Court finds that parallel proceedings for maintenance under the said Act and under Section 125 of the Code of Criminal Procedure are permissible. CrI.M.C No.380 of 2013 2 Pendency of a claim for maintenance before the Family Court will not preclude the petitioners therein from seeking relief including maintenance under the Protection of Women from Domestic Violence Act. Section 26 of the said Act provides that any relief available under Sections 18 to 22 of the Act may also be sought in any legal proceedings, before a Civil Court, Family Court or a Criminal Court, and Sub Section 2 provides that any relief referred in sub-section (1) 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. Sub-section (3) further provides that in case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief. Thus we find that parallel proceedings for maintenance are possible, and one proceeding cannot be set aside or quashed on the ground that there is another proceeding before a different forum. The 1st respondent herein has CrI.M.C No.380 of 2013 3 the right to claim maintenance under the Protection of Women from Domestic Violence Act or under Section 125 of the Code of Criminal Procedure. Of course, when a decision is taken in one proceeding, the other court will have to consider such decision while granting the relief in the second proceeding. The court also will have to follow the decision of this Court in Preceline George (Dr.) V. State of Kerala and another reported in (2011(4) KHC502. In view of the clear provisions contained in Section 26 of the the Protection of Women from Domestic Violence Act and also the decision of this Court covering the legal issue, this Court does not find any merit in this application, and it is liable to be dismissed. In the result, this CrI.M.C is dismissed.

P.UBAID JUDGE ab