

Sobha M.R. vs Girish

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Court : Kerala

Decided On : Mar-25-2025

Judge : Honourable Mr.Justice C. Jayachandran

Appeal No. : OP(Crl.)/701/2024

Appellant : Sobha M.R.

Respondent : Girish

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN
TUESDAY, THE 25TH DAY OF MARCH 2025 / 4TH CHAITHRA, 1947
OP(CRL.) NO. 701 OF 2024 AGAINST THE ORDER/JUDGMENT
DATED 04.06.2024 IN CrI.A NO.253 OF 2024 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - VIII, ERNAKULAM / IV
ADDITIONAL MACT, ERNAKULAM ARISING OUT OF THE
ORDER/JUDGMENT DATED IN MC NO.5 OF 2017 OF JUDICIAL
FIRST CLASS MAGISTRATE - VIII, ERNAKULAM
PETITIONER/PETITIONERS:

1 SOBHA M.R. AGED 42 YEARS D/O. V. C. RAGHUNADHA VYDHYAR, MOONNUMOOLAYIL HOUSE, JAWAHAR NAGAR, KADAVANTHRA P.O., ELAMKULAM VILLAGE, KANYANNOOR TALUK, ERNAKULAM DISTRICT, PIN - 682020 2 ADITHYA GIRISH AGED 19 YEARS D/O. GIRISH, C/O. SOBHA M.R., MOONNUMOOLAYIL HOUSE, JAWAHAR NAGAR, KADAVANTHRA P.O., ELAMKULAM VILLAGE, KANYANNOOR TALUK, ERNAKULAM DISTRICT., PIN - 682020 BY ADVS. SEBASTIAN CHAMPAPPILLY GEORGE CLEETUS M.V.LALU MATHEWS SWATHI KRISHNA P.H. :2:

RESPONDENT/RESPONDENT: 1 GIRISH AGED 47 YEARS S/O. MANI, EWS, 654 GANDHI NAGAR, SALIM RAJAN ROAD, KADAVANTHRA, ERNAKULAM DISTRICT, COCHIN- 682 020. NOW RESIDING AT HOUSE NO. 46, JOURNALIST COLONY, KALOOR P.O., PIN - 682017 2 STATE OF KERALA REP.BY THE STATE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682031 BY ADVS. E.VIJIN KARTHIK POOJA P.(K/003924/2023) DEVIPRIYA SATHYASEELAN(K/002841/2022) SMT. SEENA C (PP) THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 25.03.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :3:

C.JAYACHANDRAN, J.

----- Dated this the
25th day of March, 2025

ORDER

The petitioners herein are the wife and daughter of the 1st respondent. They challenge Ext.P5 Order of the Sessions Court, Ernakulam, dated 04.06.2024, as per which, the execution of the Order passed in M.C.No.5/2017 of the learned Magistrate was suspended on condition of payment of Rs.7,500/- per month, from the month succeeding the date of order onwards. The payment is directed to be

made on or before 10th of every month.

2. Heard the learned counsel for the petitioners and the 1st respondent.

3. It is noticed that the Order under challenge before the learned Sessions Judge is Ext.P2 dated :4:

30.04.2024, which was passed in an application filed under Section 12 of the Protection of Women from Domestic Violence Act (D.V. Act, for short) seeking reliefs under Sections 18, 19, 20 and 22 of the Act. M.C.No.5/2017 preferred by the petitioners herein was allowed and the learned Magistrate, interalia, directed to pay a maintenance of Rs.5,000/- to the 2nd petitioner

every month from 08.03.2017 onwards. Besides, the respondent/husband was also directed to pay maintenance at the rate of Rs.10,000/- per month to the 1st petitioner/wife, which also is to take effect from 08.03.2017 onwards. Reliefs pertaining to restraint from harassment and return of gold ornaments were also granted vide Ext.P2. Ext.P2 was challenged before the Sessions Court, Ernakulam. An interlocutory application was filed to suspend the execution of Ext.P2 Order. The same was heard and allowed vide Ext.P5 impugned Order, whereby the execution was suspended on :5: condition of payment of Rs.7,500/- per month from the month succeeding the date of Order.

4. The main grievance of the petitioners is that,

while suspending the execution, the Trial Court has not considered the arrears of maintenance in accordance with Ext.P2 Order, as per which, maintenance was directed to be paid with effect from 08.03.2017 onwards. Without reckoning the arrears, the direction in Ext.P5 is to pay a sum of Rs.7,500/- per month from the month succeeding the date of the Order, without there being

any direction with respect to the arrears. Learned counsel for the appellant would also submit that, going by the scheme of the D.V. Act, there is no provision for passing an interim Order. The jurisdiction conferred is only to consider and pass Orders in the appeal under Section 29 of the D.V. Act. Learned counsel for the appellant would submit that, while there is a provision under Section 29 to deal

with an appeal, there is no :6: corresponding provision to pass any interim Order by an Appellate Court while considering an appeal in terms of Section 29. On facts, learned counsel would submit that more than Rs.14 lakhs is due from the respondent after adjusting the amounts already paid and a blanket interim

order in the nature of Ext.P5, that too, with a direction to

pay Rs.7,500/- from the month succeeding the date of Order, is harsh, illegal and improper.

5. Per contra, the learned counsel for the respondent would submit that a sum of Rs.3,70,000/- and a further sum of Rs.1 Lakh were paid before the Family Court.

6. Despite a specific direction from this Court calling

upon the counsel for the respondent to specify the arrears, no amount, whatsoever, is stated before this Court by the respondent. Respondent would offer that, he can pay a sum of Rs.1 Lakh within a period of one month. :7:

7. On the question whether a Sessions Court has a

right to pass an interim order while considering an appeal under the D.V. Act, this Court appointed Sri.Jacob P.Alex as Amicus Curiae. Learned Amicus invited the attention of this Court to the judgment in Shalu Ojha v. Prashant Ojha [(2015) 2 SCC 99], wherein the issue is seen posed in paragraph no.20. Learned Amicus pointed out that the Hon'ble Supreme Court noted that there is no express grant of power on the Sessions Court and that such power cannot always be presumed to be inherent in every court. However, the Supreme Court has not decided the issue since the same has not been argued before the Court. Learned Amicus then invited the attention of this Court to a decision on the point by a learned Single Judge of this Court in Farsana P.S. v. Razveen Raffique [2024 (6) KHC 508]. In paragraph no.10, the learned Single Judge concluded that, an appellate court, while considering an appeal under

:8: Section 29 of the D.V. Act is empowered to grant interim

order during the pendency of the appeal to do justice

between the parties. Learned Amicus would opine that the view expressed in Farsana (supra) is just proper and legal and that the same is only to be followed. Finally, learned Amicus invited the attention of this Court to another judgment of the Hon'ble Supreme Court in Savitri w/o Govind Singh Rawat v. Govind Singh Rawat [(1985) 4 SCC 337], there the issue was whether a court exercising jurisdiction under Chapter-IX of the Code of Criminal Procedure has the power to pass interim orders. The question was answered in the affirmative, points out the learned Amicus. Thus according to the learned Amicus, an appellate court has the power to pass interim orders while considering an appeal under the D.V. Act.

8. Having heard the learned Amicus, this Court is in complete agreement with the submissions made. It is :9:

true that there is no specific provision empowering the Appellate Court to pass an interim Order, similar to the power under Section 23 to grant interim and ex-parte Orders conferred on the Magistrate. Section 29 confers power on a Court of Sessions to deal with an appeal, which is extracted herebelow:- Appeal.--There shall lie an appeal to the Court of Session within thirty days from the date on which the

order made by the Magistrate is served on the aggrieved

person or the respondent, as the case may be, whichever is later. Section 28 prescribes the procedure, stipulating that all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and for offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure.

9. It could thus be seen that we are faced with a situation that there is a provision for an appeal, however, without a corresponding enabling power for passing interim Orders. In Shalu Ojha (supra), the question, though considered, was ultimately was left open to be :10: decided later. The relevant findings are extracted herein:-

Whether the Sessions Court in exercise of its jurisdiction under Section 29 of the Act has any power to pass interim orders staying the execution of the order appealed before it is a matter to be examined in an appropriate case. We only note that there is no express grant of power conferred on the Sessions Court while such power is expressly conferred on the Magistrate under Section 23. Apart from that, the power to grant interim orders is not always inherent in every court. Such powers are either expressly conferred or implied in certain circumstances. This Court in *Super Cassettes Industries Ltd. v. Music Broadcast (P) Ltd.*, examined this question in detail. At any rate, we do not propose to decide whether the Sessions Court has the power to grant interim order such as the one sought by the respondent herein during the pendency of his appeal, for that issue has not been argued before us.

10. In *Farsana P.S. v. Razveen Raffique* [2024

(6) KHC 508], *Shalu Ojha* (supra) was referred to in paragraph no.3, wherein the question as to whether an Appellate Court under Section 29 of the DV Act has power :11: to pass interim Order is seen mooted. By a detailed

discussion, the learned Single Judge concluded in paragraph no.10 that an Appellate Court in terms of Section 29 of the DV Act is empowered to grant an interim Order pendente lite.

11. In *Savitri* (supra), the relevant findings of the Honble Supreme Court are extracted herein:-

if an order for payment of interim maintenance is passed by the court. Every court must be deemed to possess by necessary intendment all such powers as are necessary to make its orders effective. This principle is embodied in the maxim "ubi aliquid conceditur, conceditur et id sine quo res ipsa esse non potest" (Where anything is conceded, there is conceded also anything without which the thing itself cannot exist). [Vide *Earl Jowitt's Dictionary of English Law*, 1959 Edn., p. 1797.] Whenever

anything is required to be done by law and it is found impossible to do that thing unless something not authorised in express terms be also done then that something else will be supplied by necessary intendment.

12. It could thus be seen that the issue is not res :12:

integra and stands considered and covered by the judgment

challenge made in this Original Petition as regards the power of the Appellate Court to pass an interim order will stand negated.

13. However, coming to the facts, this Court notice

that, on the one hand the petitioners are claiming arrears to the extent of Rs.14 Lakhs; on the other, the respondent is not specifying any amount as to what is the arrear due, according to the respondents calculation. It is the contention of the learned counsel for the respondent that Rs.7,500/- directed to be paid by virtue of the impugned Ext.P5 Order is being performed meticulously, without default. Such payment, if any, made by the respondent will not serve the purpose. The Honble Supreme Court in Shalu Ojha (supra) had thrown ample light into the question as to how an appeal :13: from a legislation, which is meant for protecting the rights of women, is to be dealt with. The relevant findings are contained in paragraph no.23, which is extracted here below:- In a matter arising under a legislation meant for protecting the rights of women, the High Court should have been slow in granting interim orders, interfering with the orders by which maintenance is granted to the appellant.

14. In the instant case, what has been granted by

the learned Magistrate in terms of Ext.P2 is maintenance to the tune of Rs.5,000/- to the daughter and Rs.10,000/- per mensem to the wife with effect from 08.03.2017

onwards. Therefore, an order suspending Ext.P2 Order

should have atleast directed payment of one-half of the amount as directed in Ext.P2. The stipulation in Ext.P5 impugned Order to the effect that the maintenance has

to be paid from the month succeeding the date of Order

:14: cannot be sustained, especially when substantive amounts are due towards maintenance, that too with

effect from 08.03.2017 onwards. It has to be underscored that what has been directed to be paid is maintenance, which means the very amount required to maintain the petitioners, who are none other than the wife and daughter of the respondent/husband. By virtue of an interpretative process, the Honble Supreme Court has already elated the right of maintenance akin to that

of a fundamental right in *Apurva @ Apurvo Bhuvanbabu Mandal v. Dolly & Ors.* [2024 KLT Online 2944 (SC)]. The above aspect is highlighted only to underscore the significance of a direction to pay maintenance, which cannot be interfered with lightly, except for weighty and lofty reasons.

15. In the circumstances, Ext.P5 Order will stand set aside. There will be a direction to the Sessions Court to consider Crl.M.P.No.2310/2024 afresh on merits, as also, :15: in the light of the findings and observations contained in

this judgment. Needless to say, that while fixing the amount to be paid by the respondent to the petitioners as a pre-condition for staying the execution of Ext.P2 Order, the arrears due to the petitioners will necessarily be borne in mind by the learned Sessions Judge. This Court places on record its sincere appreciation to the efforts taken by the learned Amicus in unfolding the vexed question of a power being read into, albeit in the absence of an express provision.

The Original Petition will stand allowed as indicated above. sd/- C. JAYACHANDRAN, JUDGE. Raj. :16: APPENDIX OF OP(CRL.) 701/2024 PETITIONER EXHIBITS Exhibit P-1 TRUE COPY OF THE ORDER IN CRL.M.P. NO. 327 OF 2017 DATED 10-03-2017 Exhibit P-2 TRUE COPY OF THE ORDER IN M.C. NO. 5 OF 2017 OF THE JUDICIAL MAGISTRATE OF THE FIRST

CLASS-VIII, ERNAKULAM DATED 30-04-2024 Exhibit P-3 CERTIFIED COPY OF
MEMORANDUM OF

CRIMINAL APPEAL NO. 253 OF 2024 DATED 29-05-2024 FILED BEFORE THE
HONBLE DISTRICT AND SESSIONS COURT AT ERNAKULAM Exhibit P-4
CERTIFIED COPY OF CRL. M.P. NO. 2310 OF 2024 IN CRL. APPEAL NO. 253
OF 2024 DATED 29-05-2024 FILED BEFORE THE HONBLE DISTRICT AND
SESSIONS COURT AT ERNAKULAM Exhibit P-5 CERTIFIED COPY OF THE
ORDER DATED 04- 06-2024 IN CRL. M.P. NO. 2310 OF 2024 IN CRL. APPEAL
NO. 253 OF 2024 OF THE HONBLE DISTRICT AND SESSIONS COURT AT
ERNAKULAM RESPONDENT EXHIBITS Exhibit R1 THE TRUE COPY OF THE
POSTAL RECEIPTS EVIDENCING THE PAYMENTS MADE

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