

Muhammad Navas vs Rasiya

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Court : Kerala

Decided On : Aug-05-2024

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/869/2023

Appellant : Muhammad Navas

Respondent : Rasiya

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR
MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946
CRL.REV.PET NO. 377 OF 2022 AGAINST THE JUDGMENT DATED
26.02.2022 IN CRA NO.232 OF 2016 OF ADDITIONAL SESSIONS
COURT - III, ALAPPUZHA ARISING OUT OF THE ORDER DATED
06.10.2016 IN MC NO.18 OF 2013 OF THE JUDICIAL MAGISTRATE
OF FIRST CLASS -I, ALAPPUZHA REVISION
PETITIONERS/RESPONDENTS 1 & 3/PETITIONERS 1 & 3: 1 RASIYA
AGED 48 YEARS WIFE OF MUHAMMED NAVAZ, PALLIVEEDU
HOUSE, SOUTH ARYAD, AVALOOKKUNNU P.O., ALAPPUZHA, PIN -
688006. 2 FAIROOSA, AGED 13 YEARS, DAUGHTER OF

MUHAMMED NAVAZ, PALLIVEEDU HOUSE, SOUTH ARYAD, AVALOOKKUNNU P.O., ALAPPUZHA, PIN - 688 006, REPRESENTED BY HER MOTHER, THE 1ST PETITIONER HEREIN, RASIYA, AGED 48 YEARS, W/O. MUHAMMED NAVAZ, PALLIVEEDU HOUSE, SOUTH ARYAD, AVALOOKKUNNU P.O., ALAPPUZHA, PIN - 688006.

BY ADVS. GOKUL DAS V.V.H. E.RAFEEK RESPONDENTS/APPELLANTS, R4 & R2/RESPONDENTS & STATE & PETITIONER NO.2: 1 MUHAMMED NAVAS AGED 50 YEARS SON OF HAMEED, SOUDA MANZIL, CIVIL STATION WARD, ALAPPUZHA DISTRICT, PIN - 688012. 2 SOUDA BEEVI, AGED 79 YEARS, WIFE OF HAMEED, SOUDA MANZIL, CIVIL STATION WARD, ALAPPUZHA DISTRICT, PIN - 688012. 3 SHAHIDA, AGED 46 YEARS, WIFE OF MIDHILAJ, VYLITHARA, NORTH OF VELLAKINAR JUNCTION, ALAPPUZHA DISTRICT, PIN - 688001. 4 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031. 5 FATHIMA, AGED 21 YEARS, DAUGHTER OF MUHAMMED NAVAZ, PALLIVEEDU HOUSE, SOUTH ARYAD, AVALOOKKUNNU P.O., ALAPPUZHA, PIN - 688006. R1 & R3 BY ADV.S.SHANAVAS KHAN SHAHUL HAMEED R1 & R3 BY ADV.S.INDU R4 BY SMT SHEEBA THOMAS, PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 29.07.2024, ALONG WITH Crl.Rev.Pet.869/2023, THE COURT ON 05.08.2024 DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR MONDAY, THE 5TH DAY OF AUGUST 2024 / 14TH SRAVANA, 1946 CRL.REV.PET NO. 869 OF 2023 AGAINST THE JUDGMENT DATED 26.02.2022 IN CRL.APPEAL NO NO.232 OF 2016 OF ADDITIONAL SESSIONS COURT - III,

ALAPPUZHA ARISING OUT OF THE ORDER DATED 06.10.2016 IN MC NO.18 OF 2013 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS- I, ALAPPUZHA REVISION PETITIONERS/APPELLANTS 1 & 3/COUNTER PETITIONERS 1 & 3: 1 MUHAMMAD NAVAS AGED 51 YEARS S/O HAMEED 'SOUDA MANZIL' CIVIL STATION WARD ALAPPUZHA DISTRICT, PIN - 688001. 2 SHAHIDA AGED 46 YEARS W/O MIDHILAJ, 'VYLITHARA', NORTH OF VELLAKINAR JUNCTION ALAPPUZHA DISTRICT, PIN - 688012. BY ADVS. S.SHANAVAS KHAN S.INDU KALA G.NAMBIAR RESPONDENTS/RESPONDENTS/PETITIONERS/STATE: 1 RASIYA AGED 48 YEARS W/O MUHAMMED NAVAS, PALLI VEEDU, HOUSE SOUTH ARYAD, AVALUKKUNNU P.O ALAPPUZHA, PIN - 688006. 2 FATHIMA AGED 21 YEARS D/O MUHAMMED NAVAS SOUDA MANZIL, CIVIL STATION WARD, ALAPPUZHA, PIN - 688001. 3 FAIROOSA AGED 13 YEARS D/O RASIYA, PALLI VEEDU HOUSE, SOUTH ARYAD, AVALUKKUNNU P.O ALAPPUZHA, PIN - 688006. 4 THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031. R1 TO R3 BY ADV.GOKUL DAS V.V.H. R1 TO R3 BY ADV.E.RAFEEK R4 BY SMT SHEEBA THOMAS, PUBLIC PROSECUTOR THIS CRIMINAL REVISION PETITION HAVING COME UP FOR FINAL HEARING ON 29.07.2024, ALONG WITH Crl.Rev.Pet.377/2022, THE COURT ON 05.08.2024 DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 5th day of
August, 2024

ORDER

Petitioners No.1 and 3 in M.C.No.18 of 2013 on the files of the Judicial Magistrate of the First Class-I, Alappuzha filed Crl.R.P.No.377 of 2022. Respondents No.1 and 3 in that M.C. filed Crl.R.P.No.869 of 2023. Parties are referred to as they were arraigned in M.C.No.18 of 2013.

2. The 1st petitioner is the wife of the 1st respondent.

Their marriage was solemnised on 03.11.1996. The petitioners No.2 and 3 are their children. Respondent Nos.2 and 3 are the mother and sister respectively of respondent No.1. The petitioners filed M.C.No.18 of 2013 under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) claiming protection order and monetary reliefs including maintenance. The trial court, after considering the evidence on record, granted reliefs as follows: 1) 1st and 3rd petitioners are restrained from committing any act of domestic violence against the petitions. 2) The 1st and 3rd counter petitioners are restrained from alienating the property comprised in Sy.No.523/26B without the leave of the court concerned. 3) The 1st counter petitioner is directed to return

Rs.1,00,000/- (Rupees one lakh only) and 50 sovereigns of gold ornaments or the market value of the gold ornaments prevalent on the date of this order, to the first petitioner. 4) The 1st counter petitioner is directed to pay an amount of Rs.5,000/- each to the 1st petitioner, 2nd and 3rd petitioners as monthly maintenance from the month of October 2016 apart from the interim maintenance which is in arrears. The 1st petitioner is entitled to receive the amount for and on behalf of the 2nd and 3rd petitioners for 1st CP. 5) The 1st counter petitioner is directed to pay an amount of Rs.15,00,000/- (Rupees fifteen lakhs only) in lump sum as compensation to the 1st petitioner.

3. Both sides went in appeal. The respondents filed

Crl.Appeal No.232 of 2016. The petitioners filed Crl.Appeal No.234 of 2016. While the respondents challenged the correctness and legality of the reliefs granted by the trial court, the petitioners assailed the trial court order insofar as it denied the plea for custody of the 2nd petitioner, the elder daughter and a portion of the monetary claim.

4. The appellate court dismissed Crl.Appeal No.234 of

2016 and allowed in part Crl.Appeal No.232 of 2016. Following is the operative part of the appellate judgment. 1) The 1st and 3rd counter petitioners are restrained from committing any act of domestic violence against the 1 st petitioner. 2) The 1st counter petitioner is directed to pay an amount of

Rs.5,000/- each to the petitioners as monthly maintenance from the month of October, 2016 apart from the interim maintenance which is in arrears. The 1 st petitioner is entitled to receive the amount for and on behalf of the 2nd and 3rd petitioners. The reliefs No.2, 3 and 5 granted by the trial court are hereby set aside.

5. Heard the learned counsel for the petitioners and the learned counsel for the respondents No.1 to 3 and the learned Public Prosecutor.

6. The grievance of the petitioners is in regard to the

denial of monetary reliefs such as compensation and return of money and gold ornaments. The grievance of the respondents is essentially in respect of the order of maintenance. The respondents would contend that the 2 nd petitioner, who is the elder daughter, was all along with the 1 st respondent-father. He met all the expenses of the marriage of the 2 nd petitioner. Therefore, an order directing him to pay maintenance to the 2nd petitioner is incorrect. Insofar as the maintenance ordered to be paid to the 3rd petitioner, it is contended that in the light of the contention raised concerning her paternity, the 1 st respondent has no obligation to pay maintenance to her.

7. From the records it is seen that the 1 st respondent was declared exparte on 06.10.2016 for the reason that he did not pay the amount of interim maintenance. He challenged the

order declaring him exparte before this Court. The order was

set aside on the condition that he should pay entire arrears of interim maintenance. He, however, failed to make the payment and therefore he was not allowed to cross-examine the 1st petitioner and the witnesses. The 3rd respondent contested. All the monetary reliefs are against the 1st respondent. As such, the order of the learned Magistrate is essentially based on unchallenged evidence tendered by the petitioner.

8. The appellate court held that there was denial of

opportunity to the 1st respondent and therefore the order of the learned Magistrate was incorrect. Holding further that there was no evidence, the appellate court proceeded to set aside the order of the trial court concerning return of gold ornaments and money as well as compensation. The part of the order relating to domestic violence and monthly maintenance was upheld.

9. The stand of the 1st petitioner from the very beginning

was that the 1st respondent took the elder daughter forcibly into his custody. The 1st petitioner even seeks an order directing the 1st respondent to return to her the custody of the 2nd petitioner. It has come out that the 2nd petitioner attained majority and her marriage was solemnised on the behest of the 1st respondent. In the said circumstances, the 1st petitioner is not entitled to claim maintenance for the 2nd respondent and the 1st respondent cannot be fastened with such an obligation. The remaining part of the order of maintenance, that is, to pay monthly maintenance of Rs.5,000/- each to the 1st petitioner and the 3rd petitioner, does not suffer from any infirmity. Therefore, the said order is confirmed. So also is in regard to the protection order.

10. As stated, directions by the trial court regarding the

monetary reliefs other than maintenance was set aside by the Appellate Court holding that the evidence was insufficient. It was also held that the trial court went wrong in denying opportunity to the 1st respondent. What was available was the unchallenged evidence.

11. It is true that in regard to the claims for return of

gold ornaments and money, the petitioners did not bring in any trustworthy evidence. Therefore rejection of that claim cannot be found fault with. But, in the case of compensation, there occurred miscarriage of justice. The courts below did not make a meticulous scrutiny of the evidence to decide whether or not the petitioners entitled to get compensation, and if yes, its quantum. In my view, the order rejecting the claim for compensation is incorrect. The reasons stated to turn down the claim for compensation are not tenable. In the circumstances, that claim has to be considered afresh by the learned Magistrate. Needless to say, an opportunity to adduce further evidence shall be given to both sides. I am leaving open the question whether or not the defence of the 1st respondent is liable to be struck off. The trial court shall decide that question in the light of the law laid down by the Apex Court in *Rajnish v. Neha and another*[(2021) 2 SCC 324].

12. Accordingly, these revisions petitions are disposed

of confirming the protection order and the order directing the 1st respondent to pay maintenance to petitioners No.1 and 3 at the rate of Rs.5,000/- per month. The order of the appellate court to pay monthly maintenance to petitioner No. 2 is set aside. The order of the appellate court rejecting the claim for return of gold ornaments and amount of Rs.1 lakh is confirmed. M.C.No.18 of 2013 insofar as the claim of compensation of Rs.15 lakhs is remitted to the trial court. The learned magistrate shall consider afresh the said claim alone in the light of the observations made above. Sd/- P.G. AJITHKUMAR, JUDGE dkr

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