

Suneesh vs State of Kerala

Suneesh vs State of Kerala

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Court : Kerala

Decided On : Dec-05-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/5871/2022

Appellant : Suneesh

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
MONDAY, THE 5TH DAY OF DECEMBER 2022 / 14TH AGRAHAYANA,
1944 CRL.MC NO. 5871 OF 2022 CC.NO.1483/2019 OF ADDITIONAL
CHIEF JUDICIAL MAGISTRATE (E&O),ERNAKULAM
PETITIONER/ACCUSED: SUNEESH AGED 35 YEARS S/O.
SUBRAMANIAN, MUDANTANNI HOUSE, SOUHRIDA NAGAR,
KOCHUKADAVANTRA, ERNAKULAM, PIN - 682020. BY ADV JAMES
ABRAHAM (VILAYAKATTU) RESPONDENTS/STATE &
COMPLAINANT: 1 STATE OF KERALA REPRESENTED THROUGH
THE STATION HOUSE OFFICER, ERNAKULAM TOWN SOUTH
POLICE STATION, REPRESENTED BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM - 682031. 2 SHEELA, AGED 55 YEARS S/O. SUBRAMANIAN, MUDANTANNI HOUSE, SOUHRIDA NAGAR, KOCHUKADAVANTRA, ERNAKULAM, PIN - 682020. BY ADVS. M.B.SHYNI JOHN K.GEORGE(K/0000142/1979) PUBLIC PROSECUTOR SRI.G.SUDHEER THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 16.11.2022, THE COURT ON 05.12.2022 PASSED THE FOLLOWING: CrI..M.C No.5871/2022 2 C.R

A. BADHARUDEEN, J.

===== CrI.M.C No.5871 of 2022
===== Dated this the 5th day of
December, 2022

ORDER

Annexure-A1 final report in C.C.No.1483/2019 on the file of

the Additional Chief Judicial Magistrate (E.O), Ernakulam, sought to be quashed in this petition filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as `Cr.P.C' for short). The petitioner herein is the accused in the above case. Respondents herein are the State of Kerala as well as the defacto complainant in the above case.

2. Heard the learned counsel Advocate James Abraham, CrI..M.C No.5871/2022 3 appearing for the petitioner and the learned counsel appearing for the 2nd respondent.

3. The question arises for consideration is, whether non

payment of maintenance allowance in refusal to pay the same based on a monetary relief granted under Section 20 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as `D.V Act' for convenience) would amount to breach of protection order and for which, penal proceedings under Section 31 of the D.V Act can be invoked?

4. The crux of the dispute is that in an application filed

under Section 12 of the D.V Act filed by the 2 nd respondent, who is the mother of the petitioner herein, the learned Magistrate Court directed the petitioner herein to pay Rs.25,000/- as monthly maintenance to the 2nd respondent herein and her daughter, to meet their expenses. Though the petitioner herein paid the same for a

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period of 3 months, thereafter he defaulted the payment. On that premise, acting on the complaint of the 2nd respondent alleging commission of offence punishable under Section 31 of the D.V Act Crime No.66/2018 was registered. On completion of investigation, final report was filed. Subsequently, the learned Magistrate took cognizance for the said offence and the matter has been pending as C.C.1483/2019.

5. The learned counsel for the petitioner zealously argued

highlighting the distinction between 'protections orders' provided under Section 18 of the D.V Act and 'monetary reliefs' provided under Section 20 of the D.V Act. It is argued by the learned counsel for the petitioner further that Section 31 does not provide that an order passed under Section 19 or 20, if it is violated, would enable the Magistrate to take cognizance for the said offence. He has read out Section 31 of D.V Act in this regard.

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6. Whereas the learned counsel for the 2nd respondent

argued that in a decision reported in [2015 KHC 2333 : 2015 (2) KLD 184 : AIR 2015 NOC 557 : 2015 Cri LJ 1874], Vincent Shanthakumar v. Christina Geetha Rani & anr., a Single Bench of the Karnataka High Court held that an order granting maintenance though under Section 23 of the Act, if it is passed ex parte or after hearing the parties to the proceedings and even after suffering that order, with knowledge of the order, if the respondent intentionally violates or abuses such an order, it shall be taken as an order deemed to have been passed to prohibit the

domestic violence and to protect the victim under Section 18 of the Act, such violation is punishable under Section 31 of the Act, as long as such an order is enforceable, unless such order is vacated or cancelled by the competent Court.

7. Similarly, the learned counsel for the 2nd respondent CrI..M.C No.5871/2022 6 placed a Division Bench ruling of the Madhya Pradesh High Court reported in [2018 KHC 3751 : 2018 Cri LJ 2545], Surya Prakash v. Rachna to buttress the said point. In the said decision, the Division Bench of the Madhya Pradesh High Court considered the definition of 'Domestic Violence', as provided under Section 3 of the D.V Act and finally held in para.16 as under:

S.20 of the Act deals with grant of monetary relief to meet the expenses incurred and the losses suffered by aggrieved person and any child of the aggrieved person as a result of domestic violence. Such provision enlarges the scope of domestic violence as defined in S.3 of the Act. In terms of S.3 of the Act, the economic abuse includes deprivation of all or any economic or financial resources, payment of rental related to shared household and maintenance. Whereas S.20 includes a loss of earnings, medical expenses, loss caused due to destruction, damage or removal of any property as also the maintenance. The grant of

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monetary relief under S.20 does not exclude the amount of maintenance which can be awarded in terms of S.18 of the Act as part of affirmative order in respect of the domestic violence as defined in S.3 of the Act. Therefore, we find that non-payment of maintenance is a breach of protection order; therefore, S.31 of the Act can be invoked. Therefore, in respect of first question, it is

held that non-payment of maintenance allowance is a breach of

protection order for which proceedings under S.31 of the Act can be invoked.

8. Per contra, the learned counsel for the petitioner placed

a decision of this Court reported in [2009 (3) KHC 377], Velayudhan Nair v. Karthiayani, wherein this Court held that Section 31 would apply when there is violation of an order passed in terms of Section 18 and an order under Section 19 or 20 is not an

order in terms of Section 18 and hence cannot be a protection

order. Para.6 of the above judgment is relevant and the same is CrI..M.C No.5871/2022 8 extracted as under: 6. Section 31 does not provide that an order passed under Sections 19 or 20, if violated, would enable the Magistrate to take cognizance of the offence. On the other hand, sub-section

(1) of Section 31 restricts the power in respect of breach of a protection order or an interim protection order alone. Protection

Order is defined under sub-section (o) of Section 2 as an order

made in terms of Section 18. Therefore, only if an order, which is allegedly broken by the petitioner, is a protection order as defined under Section 2(o), cognizance could be taken under Section 31 of the Act. Such an order should be made in terms of Section 18. An

order under Section 19 or 20 is an order made in terms of Section

18 and hence, cannot be a protection order.

9. Similarly, the learned counsel for the petitioner placed another decision reported in [2013 KHC 2115 : 2013 (2) KHC SN 27 : 2013 (1) KLD 810 : 2013 Cri LJ 85 : 2013 (3) KLT SN 11], CrI..M.C No.5871/2022 9

Kanchan v. Vikramjeet Setiya, wherein the Rajasthan High Court also affirmed the view in Velayudhan Nair v. Karthiayani's case (supra). So, the judicial precedents placed by the petitioner would go to show that only when there is violation of order passed under Section 18, the penalty provided under Section 31 of the D.V.Act

would apply and in relation to orders passed under Sections 19 or 20, Section 31 would not apply.

10. Whereas the decisions highlighted by the learned

counsel for the 2nd respondent would go to show that Section 31 would apply in cases covered by Sections 18 and 20 also. In this context, it is relevant to refer Sections 18, 19, 20 and 31 of the D.V Act for easy reference and the same are extracted hereunder: 18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the

respondent, including her stridhan or any other property held

either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in

any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;
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(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of

alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved Crl..M.C No.5871/2022 13 person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-

section (2) or sub-section (3), the court may also pass an order

directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to CrI..M.C No.5871/2022 14 the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection

order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.-(1) While disposing of an

application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses; Crl..M.C No.5871/2022 15

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as

her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an

appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require. (4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the Crl..M.C No.5871/2022 16 local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted

to the aggrieved person within the period specified in the order

under sub-section (1).

(6) Upon the failure on the part of the respondent to

make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent,

which amount may be adjusted towards the monetary relief payable by the respondent. xxxx xxxx xxxx xxxx xxxx

31. Penalty for breach of protection order by respondent.

-(1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for CrI..M.C No.5871/2022 17 a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the

Magistrate may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

A plain reading of Section 31 would go to show that a breach of protection order or interim protection order by the respondent shall be an offence under this Act and is punishable. Section 18 deals with protection orders categorised as (a) to (g) referred to in Section 18 herein above extracted. Section 19 deals with residence

CrI..M.C No.5871/2022 18 orders and Section 20 deals with monetary reliefs and Section 20(d) authorises a Magistrate to grant maintenance for the

aggrieved person as well as her children, if any, including an order

under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. Thus it could be noticed that while incorporating provisions under Section 31 to

impose penalty on violation of breach of `protection order', the legislature never intended to impose penalty for violation of `residence orders' or

`monetary reliefs'. Based on this principle, this Court in Velayudhan Nair v. Karthiayani's case (supra) held that Section 31

of the D.V Act would apply only on violation of the interim order

or final protection order passed under Section 18 of the D.V Act and it was held further that in case of violation of any order passed other than an order passed under Section 18 of the D.V Act, the Crl..M.C No.5871/2022 19

provisions of the Cr.P.C can be resorted to. In this connection, it is apposite to refer Rule 6(5) of Protection of Women from Domestic Violence Rules, 2006, which provides that the application under Section 12 of the D.V Act shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure, 1973 (2 of 12974).

11. Whereas in Surya Prakash v. Rachna's case (supra), a

Division Bench of the Madhya Pradesh High Court considered the term `economic abuse' defined under Section 3(iv) of the D.V Act and it was held that the same includes deprivation of all or any economic or financial resources, payment of rental related to shared household and maintenance. It was further held that grant of monetary relief under Section 20 does not exclude the amount of maintenance under Section 18 of the D.V Act as part of affirmative

order in respect of the domestic violence as defined under Section

Crl..M.C No.5871/2022 20 3 of the D.V Act. Therefore, it was found that non payment of maintenance is a breach of protection order and hence Section 31 of the D.V Act can be invoked.

12. In this context, it has to be held that when the plain meaning of the words in the Statute is clear and unambiguous, the

meaning of the said words shall be understood on its plain meaning; so as to accord the wisdom of the legislature. In such cases, the application of doctrine of ejusdem generis as well as noscitur a sociis have no application. According to Black's Law Dictionary the expression noscitur a sociis means thus: A canon of construction holding that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. The expression ejusdem generis, according to Black's Law Dictionary, means thus: CrI..M.C No.5871/2022
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A canon of construction that when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed. For example, in the phrase horses, cattle, sheep, pigs, goats, or any other barnyard animal, the general language or any other barnyard animal - despite its seeming breadth - would probably be held to include only four - legged, hooved mammals (and thus would exclude chickens).

13. Indubitably the Latin expression 'ejusdem generis'

which means of the same kind or nature is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises from the linguistic implication by which words having literally a wide meaning (which taken in isolation) are treated as reduced in scope by the verbal context. In fact, ejusdem generis principle is a facet CrI..M.C No.5871/2022 22 of the principle of Noscitur a sociis.

14. The Latin maxim Noscitur a sociis contemplates that a

statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in separation. Thus like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary

intention does not appear.

15. Here, the legislature vigilantly included `protection

orders' alone under Section 31 of the D.V Act after specifically categorising the orders which would be given under the head `protection orders' under Section 18 of the D.V Act. Another very pertinent aspect to be noted in this context is the implication and ramification of widening the scope of Section 31. Say for instance, a person when ordered to pay a specified amount on every month

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as maintenance or interim maintenance and under Section 20(4) of the D.V Act, if he fails to pay the same on completion of every month for justified/unavoidable reasons, is it fair to hold that the said failure and omission would be penalised under Section 31 of the D.V Act. Similar is the position inasmuch as other orders excluding the order under Section 18. Moreover, if such a wide interpretation is given, the Courts will be over-flooded with cases under Section 31 of the D.V Act and the said situation cannot said to have intended by the legislature. Therefore, the Court cannot overturn the legislative wisdom to hold that a `monetary relief' such as payment of maintenance, if disobeyed, the same also would attract significant penalty under Section 31 of the D.V Act, treating the same as breach of `protection order' or `interim protection order'. Therefore, it is held that the penalty provided under Section 31 of the D.V Act would attract only for breach of protection orders

Crl..M.C No.5871/2022 24 passed under Section 18 of the D.V Act and the same would not apply to maintenance orders under Section 20 of the Act. Holding so, prayer in this petition is liable to be allowed. Therefore, this petition is allowed and all further proceedings in C.C.No.1483/2019 on the file of the Additional Chief Judicial Magistrate (E.O), Ernakulam pursuant to Annexure-A1 shall stand set aside.

Sd/- (A. BADHARUDEEN, JUDGE) rtr/ Crl..M.C No.5871/2022 25 APPENDIX OF
CRL.MC 5871/2022 PETITIONER'S ANNEXURES Annexure A1 CERTIFIED

COPY OF THE FINAL REPORT IN CRIME NO. 66/2018 OF ERNAKULAM TOWN SOUTH POLICE STATION. Annexure A2 A TRUE COPY OF THE ORDER DATED 18.11.2017 IN M.C. NO. 65/2014. Annexure A3 A TRUE COPY OF THE ORDER DATED 23.12.2021 IN CRL. R.P. NO. 407/2020.

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