

Suresh Babu, vs Anupama,

Suresh Babu, vs Anupama,

SooperKanoon Citation : sooperkanoon.com/1734965

Court : Kerala

Decided On : Jul-30-2020

Judge : Honourable Mr. Justice P.B.Suresh Kumar

Appeal No. : Crl.MC/672/2020

Appellant : Suresh Babu,

Respondent : Anupama,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
THURSDAY, THE 30TH DAY OF JULY 2020 / 8TH SRAVANA, 1942
CMP NO.3615/2018 IN MC NO.36/18 ON THE FILE OF THE JUDICIAL
Ist CLASS MAGISTRATE II, SULTHAN BATHERY
PETITIONER/RESPONDENT: SURESH BABU, AGED 46 YEARS S/O.
BALAN, PUSHPALAYAM HOUSE, DOTTAPPANKULAM, BEENACHI,
SULTHAN BATHERY, WAYANAD-673592. BY ADVS.
SRI.T.G.RAJENDRAN SRI.T.R.TARIN RESPONDENT/PETITIONER:

1 ANUPAMA, AGED 42 YEARS W/O. SURESH BABU, PUSHPALAYAM
HOUSE, DOTTAPPANKULAM, BEENACHI P.O., SULTHAN BATHERY
WAYANAD-673 592. 2 STATE OF KERALA REPRESENTED BY

PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. BY ADVS. SRI.JESWIN P.VARGHESE SRI.BASANT BALAJI SRI.B.JAYASURYA -SR.PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30.07.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Crl.M.C.No.672 of 2020 -----

ORDER

Petitioner is the respondent in M.C.No.36 of 2018 on the files of the Judicial Magistrate of the First Class II, Sulthan Bathery. The proceedings aforesaid was one initiated under the Protection of Women from Domestic Violence Act, 2005 (the Act) instituted by the first respondent claiming various reliefs. Along with the

proceedings, the first respondent preferred an Interlocutory Application as C.M.P.No.3615 of 2018 seeking, among others, a direction to the petitioner to remove himself from the house where she is presently residing which is stated to be the shared household of the parties. C.M.P.No.3615 of 2018 was disposed of by the court below in terms of Annexure II order directing the petitioner to secure an alternative accommodation of the same level as enjoyed by the first respondent in the shared household or to pay rent for the same, if she procures such an accommodation. Aggrieved by Annexure II order, the petitioner has preferred Crl.Appeal No.77 of 2018 before the Sessions Court, Wayanad and the same is pending. This Criminal M.C. is filed in the meanwhile, alleging that the petitioner has arranged, as an interim measure, alternative accommodation for the first respondent, and when he approached

the court below for appropriate directions in this regard, since the alternative accommodation arranged by the petitioner was not acceptable to the first respondent, the court below was not inclined to direct the first respondent to accept the said accommodation provided by the petitioner. The case set out by the petitioner in the Criminal M.C. is that, if the said accommodation arranged by the petitioner is not acceptable to the first respondent, the petitioner is prepared to pay rent for a similar accommodation, if the first respondent is prepared to secure a similar accommodation on rent. It is also the case of the petitioner that the first

respondent is

neither prepared to accept the alternative accommodation arranged for her nor taking steps to secure an alternative accommodation, as permitted in terms of Annexure II order. The petitioner, therefore, seeks appropriate directions in this regard, in this proceedings.

2. Heard the learned counsel for the petitioner, the learned counsel for the first respondent as also the learned Public Prosecutor.

3. When this matter was taken up, the learned counsel

for the first respondent submitted that in so far as the petitioner has challenged Annexure II order in an appeal filed under Section 29 of the Act, it is inappropriate for the petitioner to approach this court

in a matter like this, for the relief sought by the petitioner in this proceedings can certainly be claimed by him in the pending appeal. In addition, it was also pointed out by the learned counsel for the first respondent that even the first respondent is also aggrieved by Annexure II order and she has also preferred an appeal challenging the said order, and the same is also pending before the very same court as Criminal Appeal No.44 of 2020.

4. In so far as both parties to the proceedings have challenged Annexure II order in appeal under Section 29 of the Act

and in so far as the said appeals are pending, it may not be appropriate for this court to deal with a matter like this, in exercise of the powers under Section 482 of the Code of Criminal Procedure. In the circumstances, the Crl.M.C is disposed of with a direction to the Sessions Court, Wayanad to dispose of Criminal Appeal Nos.77 of 2018 and 44 of 2020 after affording the parties an opportunity of hearing, within six weeks.

Sd/- P.B.SURESH KUMAR, JUDGE PV APPENDIX PETITIONER'S EXHIBITS:
ANNEXURE I COPY OF THE PETITION FILED BY THE IST RESPONDENT
UNDER SECTION 12 OF THE ACT DATED 20.6.2018. ANNEXURE II COPY OF

THE ORDER IN CMP 3615/18 IN MC CLASS MAGISTRATE-II, SULTHAN BATHERY. ANNEXURE III COPY OF THE APPEAL MEMORANDUM FILED BY THE PETITIONER BEFORE THE HON'BLE DISTRICT & SESSIONS COURT, WAYANAD IN CRL.A 77/18 DATED 11.12.18. ANNEXURE IV COPY OF THE AFFIDAVIT FILED BY THE PETITIONER DATED 4.12.2018. ANNEXURE V COPY OF THE COUNTER STATEMENT OF THE 1ST RESPONDENT IN MC 36/18. ANNEXURE VI COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED 1.1.2019. RESPONDENTS' EXHIBITS: NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com