

K.E. Jose Vs. State of Kerala and anr.

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Court : Kerala

Decided On : Mar-27-2007

Reported in : 2008(1)KLJ871

Judge : R. Basant, J.

Acts : [Protection of Women from Domestic Violence Act, 2005](#) - Sections 12, 23, 24 and 29

Appeal No. : W.P.C. No. 9018 of 2007

Appellant : K.E. Jose

Respondent : State of Kerala and anr.

Advocate for Def. : Gikku Jacob, G.P.

Advocate for Pet/Ap. : Manjeri Sunderraj and; B. Premnath, Adv.

Disposition : Petition dismissed

Judgement :

R. Basant, J.

1. The petitioner is the respondent in an application filed under Section 12 of the [Protection of Women from Domestic Violence Act, 2005](#) (hereinafter referred to as Domestic Violence Act). The second respondent herein, admittedly the wife of the

petitioner, had filed the said application before the learned Magistrate. A copy of the said application is produced as Ext. P1. An interim order was prayed for under Section 23 of the Domestic Violence Act. The petitioner entered appearance and resisted the claim. He filed Ext. P2 counter statement. The learned Magistrate proceeded to pass an interim order under Section 23 of the Act.

2. The petitioner came rushing to this Court on 15-03-2007 after the said order was passed on 14-3-2007 complaining that copy of the order has not been furnished to him by the learned Magistrate as mandated under Section 24 of the Domestic Violence Act.

3. Section 24 of the Domestic Violence Act reads as follows:

Court to give copies of order free of cost.- The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer-in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

4. The report of the learned Magistrate was called for. The learned Magistrate reports that there was delay in furnishing the copy of the order in view of administration bottlenecks in the office of the learned Magistrate. He reports that the copy has been furnished and the same has been received by the Advocate for the petitioner on 17-03-2007.

5. The grievance of the petitioner is now redressed to the extent that he has got the copy of the order and has filed an appeal under Section 29 of the Domestic Violence Act. He has got an interim order of stay also. The learned Counsel for the petitioner submits that in the light of the mandate under Section 24 of the Domestic Violence Act, there should not have been such delay in the furnishing of copies.

6. I do find merit in the contention of the learned Counsel for the petitioner. Section 24 of the Domestic Violence Act evidently of furnishing copies of the orders passed by the court. In the light of Section 24 of the Domestic Violence Act which is already extracted above, the burden is certainly on the learned Magistrate to ensure that the copy is furnished to the parties as well as others specified in Section 24. The learned Magistrate must certainly ensure that the copies are also prepared and are ready to be furnished to the persons concerned including the adversary in the litigation before the order is pronounced. That would be the only manner in which the mandate of Section 24 can be complied with in letter and spirit. If the mandate that the judgment of conviction and sentence must be furnished to the accused can be complied by courts scrupulously, I can find no administrative bottleneck or difficulty which can stand in the way of the courts furnishing copies of orders passed under the Domestic Violence Act as stipulated under Section 24. For the proper administration of justice, the day cannot be too far when all courts shall furnish copies of the orders in all proceedings at the time of pronouncement of the orders itself to all the parties concerned free of cost. It appears to me to be odd that the parties ordinary must await and apply for copies of all orders when it is too well known (or can be assumed) that all parties in the proceedings would certainly be interested in obtaining copies of the order. The relic of the past and the unnecessary procedural tangles do even now compile the courts to wait for application for copies after the order is passed. I cannot imagine a situation where a party would not want or need a copy of the order. Therefore it must be the endeavour of law undoubtedly to insist that the copies of all orders are furnished free of cost at least to the parties to the litigation as soon as (I mean simultaneously with) the order is passed. A user friendly system cannot relegate the party to make a subsequent application for copy, wait for the court to call for stamp papers, produce the stamp papers and wait uncertainly and indefinitely for the copies to be made ready and issued. The earlier we give up the anachronistic and archaic procedure and ensure that the copy is furnished to all contestants free of cost and simultaneously on pronouncement of the order, the better for the system. No further payments or procedures can or need be insisted by any system which is reasonable and humane. The development in technology must make it easily possible in the near future, if not now, for any court to hand over copies

simultaneously to the litigants when the court signs the original order.

7. Be that as it may, it is only an ideal. But in the light of Section 24, there can be no doubt on the obligation of the learned Magistrate to furnish copies to the parties concerned when the orders are passed. The learned Magistrates must ensure that such copies are furnished.

8. In as much as the petitioner has already received the copies though after a short delay, I am satisfied that no further directions need be issued in this writ petition. This writ petition is accordingly dismissed with the above observations.

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