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Court : Kerala

Decided On : Jul-29-2011

Reported in : 2011(3)KLJ780; 2011(4)KLT259; 2011(4)KHC769; 2012(1)KLT37SN

Judge : S.S. Satheesachandran

Appeal No. : Crl.R.P.No.3215 of 2010

Appellant : Mohanakumar

Respondent : Santhamma and Another

Judgement :

1. Challenge in the revision is by the husband, who was proceeded on an application by the wife under the provisions of the Protection of Women from Domestic Violence Act (for short “the Act”) against the order passed by the Judicial Magistrate of the First Class, Ranni prohibiting him from committing any domestic violence, with other directions also, as confirmed by the Additional Sessions Judge, Pathanamthitta, who has turned down his appeal.

2. The respondent/wife had moved an application under Section 12 of the Act imputing domestic violence by the revision petitioner-her husband. While they were having a shared household she was manhandled and necked out with her children and thereafter, she is living separately with the children in a rented house and, still, there is interference and perpetration of violence against her; even of

preventing her from enjoying the collection of usufructs from her property and also various other abuses against her and her children, was her case.

3. The revision petitioner/husband, in his objections, refuted the allegations imputed. In the enquiry on the petitioner, the wife alone was examined as PW.1. Though she was subjected to cross-examination by the counsel for the husband, the order passed by the magistrate would disclose that when the matter came up for hearing, it was submitted on behalf of the respondent that he has no objection in granting the reliefs claimed by his wife. On the basis of that submission and also on the evidence let in the case, the magistrate passed the order prohibiting the husband from doing any act of domestic violence against the wife and the children. He was also prohibited from entering the school where the children studied, and the work place of the wife. A further prohibition order was made interdicting him from having any form of communication with the applicants. The magistrate passed two more orders of prohibition: (i) injuncting the husband from dispossessing the wife/applicant and her children of their shared household and, (ii) in any manner of causing obstruction to her in taking yield from 1.5 acres property owned and possessed by her, at Arayanjilimannu. The aforesaid order of the magistrate was challenged by the husband in appeal and the learned Sessions Judge, after hearing the submissions made by the counsel on both sides and reappraising the materials on record, came to the conclusion that some of the prohibitory orders issued cannot be sustained. The two children born to the spouses by the time the application was filed have already become majors and none of them then attended any school. One of the children, a daughter, has already been given away in marriage. Taking note of the above circumstances, which was not disputed, prohibitory orders passed against the husband from entering the school of the children was vacated. The rest of the orders of the magistrate was confirmed, which no doubt, included a prohibitory order against the husband from committing any acts of domestic violence against the wife and children and also from interfering with her enjoyment over the property, which is referred to in the order of the magistrate.

4. The learned counsel for the husband raised a two fold challenge to impeach the orders passed by the magistrate, which has been confirmed by the learned

Sessions Judge, to contend that such orders cannot be sustained. It is the submission of the counsel that since the domestic violence imputed in the case by the petitioner as to the assault on her person, even on her own admission, occurred after the commencement of the Act, the provisions of the Act cannot be resorted to, and as such prohibitory orders passed by the magistrate against the husband is unsustainable. Application filed by the wife was not in tune with the form mandated by the Rules as covered by Section 12(3) of the Act, is the further challenge mooted by the counsel. The learned counsel also contended that the magistrate was not correct in expressing the term ‘owned and possessed’ in relation to the property involved, in respect of which a prohibitory order was issued against the husband, as there was no material to hold that such property was owned by the wife.

5. I have perused the orders passed by the learned magistrate and also the learned Sessions Judge. Whatever be the challenges canvassed, the first and foremost aspect to be taken note of is that the husband had no objection in allowing the application of the wife. When that be so, to the merit of the reliefs canvassed in the application and that being allowed, cannot be assailed by way of appeal or revision. The learned Sessions Judge, perhaps, taking note of the undisputed facts, interfered with the order of the magistrate and vacated that part of the prohibitory order, which could not be sustained even on the basis of the reliefs canvassed, or otherwise not allowable under law.

6. The challenge raised that the Act applies only to a ‘domestic violence’ which had occurred after the statue came into force deserve to be taken note of only for its rejection. The definition of ‘shared household’ as covered by Section 2(s) of the Act clearly spells out that it means a ‘household where a person aggrieved lives or at any stage has lived in a ‘domestic’ relationship with the respondent’. That gives an indication that even in respect of domestic violence prior to the coming into force of the Act, the grievance, if it satisfies other conditions, would lie for seeking the reliefs under the Act. As regards the other challenge mooted that the complaint was not filed in the proper form, it need only be stated that it is not the form, but the substance that has to be looked into. The purpose behind the enactment cannot be lost sight of in its application and it is not the form in which the

application is filed, but the grievance whether it falls under the Act and if so, which order to be passed for its redressal, that is the concern of the court. In the context, it has also to be taken note that Section 12 itself spells out that ‘a proceeding in relation to domestic violence’ can be commenced even on the basis of a report from the protection officer. By no stretch of imagination, it can be stated that a protection officer should file an application in a prescribed form as spelt out under Section 12(3) of the Act. So much so, there is no merit in that challenge also.

7. Lastly, that the expression used by the magistrate with respect to the property covered by the application as ‘owned and possessed’ by the wife, which is taken exception to by the husband, it is only to be pointed out that no adjudication over the proprietary title or possession is done by the magistrate, and the rights of the parties to adjudicate the disputes, if any, thereof, for resolving them, are still available to them. Such expression made by the learned magistrate in passing the prohibitory orders, will not cause any prejudice or injury to the respondent.

8. I do not find any impropriety, leave alone any infirmity, in the order passed by the magistrate, as modified and confirmed by the learned Sessions Judge.

There is no merit in the revision, and, it is dismissed.