

P.T. Hamza Vs. State of Kerala, Represented by Public Prosecutor, High Court of Kerala, Ernakulam and Another

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SooperKanoon Citation : sooperkanoon.com/947677

Court : Kerala

Decided On : Feb-01-2012

Judge : P.S. Gopinathan

Appeal No. : CRMC.No. 4507 of 2011

Appellant : P.T. Hamza

Respondent : State of Kerala, Represented by Public Prosecutor, High Court of Kerala, Ernakulam and Another

Judgement :

P.S. Gopinathan, J.

1. In this petition under Section 482 of the Code of Criminal Procedure, the respondent in M.C.No.323/2011 on the file of the Judicial Magistrate of the 1st Class, Parappanangadi, a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, seeks an order to quash all further proceedings in the above petition. The plea is that the above petition is not in the Form-II as contemplated under Rule 6. The 2nd ground urged is that the above petition was filed suppressing the lodging of complaint alleging offence under Section 498A IPC.

2. Per contra, the learned counsel for the 2nd respondent, who is the petitioner before the trial court, would submit that though the application is not in the prescribed form, necessary particulars are there in the complaint to proceed with and that Rule 6 is not mandatory but directory. It was also submitted that there is no suppression of any material facts.

3. As regards the first ground urged, I find that the matter is covered by the decision of this Court in *Preceline George v. State of Kerala* (2011(4)KLT 657). At para 5 the learned Single Judge held as follows:

"It is not the form that has to be looked into in determining the reliefs canvassed under the Act, but as to whether the allegations set out in such application make out a case for commencement of a proceeding under the Act, which is intended to prevent domestic violence. No prejudice has been caused to the revision petitioner in meeting the claim of maintenance is borne out in the case where it is conceded that the interim maintenance awarded ex parte, on his challenge, had been set aside by this Court."

Having gone through the argument advanced and the ruling referred, I find no reason to diverge with the above ruling. Therefore, following the said ruling, the first objection raised by the petitioner is over ruled.

4. As regards the second count of allegation, it is not at all specified as to what all are the particulars omitted and how it has prejudicially affected the right of the petitioner in defending the petition. Therefore, I find no material to come to a conclusion that there is any omission in the petition in respect of any material particular or that the petitioner was anyway prejudiced because of that omission. Adding to that, bonafide omissions in the pleadings can be cured by amendments for which opportunity is to be given to the second respondent. Proceedings before the trial court can no way be interfered under Section 482 Cr.P.C. on vague plea of omissions which is disputed. Therefore, I find that this petition is devoid of any merit.

In the result, this petition is dismissed.