

Mini Shanmughan Vs. Shanmughan and Another

Mini Shanmughan Vs. Shanmughan and Another

SooperKanoon Citation : sooperkanoon.com/947843

Court : Kerala

Decided On : Aug-02-2012

Reported in : 2012(3)KLT916; 2012(4)ILR(Ker)32; 2012(4)KLJ1

Judge : S.S. Satheesachandran

Appeal No. : Crl.MC.No. 2217 of 2012

Appellant : Mini Shanmughan

Respondent : Shanmughan and Another

Judgement :

1. Annexure A3 order passed in a proceeding under the Protection of Women from Domestic Violence Act {for short “PWDV Act”} is challenged in this petition, invoking the inherent jurisdiction of this court under Section 482 of the Code of Criminal Procedure {for short ‘the Code’}. Petitioner is the applicant in the proceedings under the Act before the magistrate. In the application moved under Section 12 of the Act, she claimed for some interim reliefs - a prohibitory order against the husband to insulate her peaceful occupation of the residence, and a claim for interim maintenance for her and two children from the respondent/husband.

2. After hearing the respondent/husband on the claim so made, the magistrate passed Annexure A1 order. The respondent/husband was restrained by an order of injunction from dispossessing the wife from the house and he was also directed

to pay her a sum of Rs.5000/- per month from the date of petition. After the above orders were passed directing payment of interim maintenance a fixed, the respondent failed to comply with such order was the case of the wife to move Annexure A2 petition for its enforcement. The magistrate turned down the application by Annexure A3 order holding that in a proceeding under the Act, he has no jurisdiction to enforce the order awarding interim maintenance by recourse to the provisions of Section 125(3) of the Code. Questioning the correctness and legality of that order, the petitioner has filed the above petition.

3. I heard the counsel on both sides.

4. Though learned counsel for the respondent/husband strenuously contended that after passing of the interim order, enquiry in the case is indefinitely delayed and the respondent is vexed and harassed by the prohibitory residence order. I find, that circumstance is not material or relevant in examining the propriety and correctness of Annexure A3 order passed by the magistrate. The question for consideration is whether in a proceeding under the Act the magistrate has competency and empowerment to enforce an order of interim maintenance passed by resort to the provision covered by Section 125(3) of the Code.

5. When claim for maintenance is awarded under Section 125 of the Code in the proceedings under PWDV Act, then, its enforcement is governed by sub-section (3) of the aforesaid Section, where no separate provision for execution such order has been provided under the Act. The learned magistrate has gone wrong in holding that he is incompetent to proceed under Section 125(3) of the Code to enforce the order of interim maintenance granted to the petitioner.

6. Second proviso added to sub-section (1) of Section 125 of the Code by the Code of Criminal Procedure Amendment Act, 2001 which came into effect on 24.9.2011 empowers the magistrate during the pendency of the proceedings to pass orders on interim maintenance directing the person liable to pay such sum to the claimants. Even before such amendment, the Supreme Court in Savitri V. Govind Singh Rawat {AIR 1986 SC 984} has held that such interim maintenance can be awarded in a deserving case ex parte. Where the magistrate has jurisdiction or empowerment to pass interim maintenance during the pendency of

the proceedings there cannot be any doubt that he has the power to enforce such orders in the event of failure of the person to comply with such order, taking steps as provided under sub-section (3) of Section 125 of the Code. Since interim maintenance has been passed in a proceeding under the PWDV Act, he has no competency and empowerment to take steps under the aforesaid sub-section of the Code, is the view taken by the magistrate for not taking steps to enforce the order awarding interim maintenance. Procedure to be followed in respect of an application under the PWDV Act is spelt out by Section 28 of the Act, which reads thus:

“28. Procedure

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offence under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23”.

Sub-section (1) of Section 28 referred to above which unambiguously spells out that in respect of a proceeding under various sections referred to, the magistrate shall be governed by the provisions of the Code is sufficient to dispel any doubt over the competency of the magistrate in enforcing an order of interim maintenance. If there was non-compliance of the order by the party directed to do so, the magistrate has to execute such order following the procedure under Section 125(3) of the Code.

7. Annexure A3 order is set aside, directing the magistrate to pass appropriate orders on Annexure A2, taking note of the observations made above, within a period of three weeks from the date of receipt/production of a copy of this order.

8. Considering the submission of the learned counsel for the respondent that there is delay in completion of the proceedings, there will be a further direction to the magistrate to expedite the completion of the proceedings within a time limit to six

weeks from the date of receipt/production of a copy of this order.

Crl.M.Cis disposed of as above.

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