

IN THE COURT OF THE ADDL. DISTRICT AND SESSIONS JUDGE, MUVATTUPUZHA

Present :

SRI. TOMI VARGHESE, ADDL. DISTRICT AND SESSIONS JUDGE.

Monday, 13<sup>th</sup> day of November, 2023/ 22<sup>nd</sup> Karthika, 1945

**CRIMINAL APPEAL No.22/2021**

From which Court the appeal is preferred : Gram Nyayalaya,  
Vadavucode.

Number of case in that Court : CMP 193/2020 in  
MC 23/2020

Appellants :

- 1 Manoj, aged 39 years, S/o Sukumaran, Alackakkunnel House, Nellappara Bhagam, Kurinji Kara, Ramapuram Village, Meenachil Taluk.
- 2 Sukumaran, aged 63 years, S/o Kunjan, Alackakkunnel House, Nellappara Bhagam, Kurinji Kara, Ramapuram Village, Meenachil Taluk.
- 3 Leela, aged 60 years, W/o Sukumaran, Alackakkunnel House, Nellappara Bhagam, Kurinji Kara, Ramapuram Village, Meenachil Taluk.

By Adv. Pious Ramapuram.

Respondents/Complainants :

Priya, aged 36 years, W/o Manoj, Padukkachikunnel House, Valamboor Kara, Mazhuvannoor Village, Kunnathunadu Taluk.

By Adv. Ieans C. Chamakkala

The sentence and the provision of law under which it was imposed by the lower court:-

Petition u/S.23 of DV Act was allowed.

Whether confirmed, reversed or modified and if modified, the modification :-

Appeal dismissed. No costs.

This appeal coming for hearing on 06.11.2023 and the court on this the 13<sup>th</sup> day of November, 2023 passed the following.

#### JUDGMENT

1. This is an Appeal filed against the Order dated 27.10.2020 passed by the Gram Nyayalaya, Vadavukode, Kolenchery u/s. 23 of the Protection of Women from Domestic Violence Act in C.M.P.193/2020 in M.C.23/2020.

2. The Respondents in C.M.P. 193/2020 are the Appellants herein. The Petitioner filed M.C.23/2020, under S. 12 of Protection of Women from the Domestic Violence Act against the Respondents, three in number, for various reliefs under the Act. Along with the above Petition, the Petitioner filed C.M.P.193/2020 under S. 23 of the Act for interim Protection Order and also for an Order for interim Maintenance. On 27.10.2020, learned Nyayadhikari passed an ex-parte order

under S.23 of the Protection of Women from Domestic Violence Act restraining the Respondents from committing any physical cruelty to the Petitioner and also directing the 1<sup>st</sup> respondent to pay Rs.3,000/- per month as maintenance to the petitioner. Notice of the above Petition was also ordered to the Respondents. On receipt of the Notice in the above Petition, the Respondents/Appellants did not file any objection in C.M.P.193/2020 before the Lower Court. But the Respondents/Appellants herein have filed the present Appeal challenging the above Ex-parte Order passed u/s 23 of the Protection of Women from Domestic Violence Act in C.M.P 193/2020. For the sake of convenience, the Parties are referred to hereinafter in this Appeal also, as they are referred to in the Order in C.M.P. 193/2020 of the Lower Court.

3. The Petitioner's case, in short, is as follows: The marriage between the 1<sup>st</sup> Respondent and the Petitioner was solemnized on 25.01.2006 and Respondent Nos. 2 and 3 are the parents of R1. After the marriage, the petitioner was residing with the respondents till June, 2020. 1<sup>st</sup> respondent is a drunkard. The respondents used to ill-treat and commit acts of domestic violence against the petitioner, demanding her to bring more money from her house. The respondents used to commit cruelty to the petitioner stating that she has illicit relations with other

men. Because of the cruelty committed by the respondents to the petitioner, she was forced to shift her residence to her parental home, from 20.06.2020. The petitioner has no job or income to maintain herself. The 1<sup>st</sup> respondent is a Painter by Profession and he used to take contract works for Painting and from that he is getting Rs.25,000/- per month. But the 1<sup>st</sup> respondent is not providing anything for the maintenance of the petitioner. Rs.7,500/- is required for the monthly maintenance of the petitioner. In the above circumstance, the petitioner has prayed for an ex-parte protection order restraining the respondents from committing any acts of domestic violence against her and also for an interim maintenance Order directing the R1 to pay Rs.7,500/- per month towards her maintenance, u/S.23 of the Protection of Women from Domestic Violence.

4. The Respondents did not file any objection on the above C.M.P.193/2020 before the Lower Court. The main grounds stated by the Respondents/Appellants for the Appeal in the Appeal Memorandum are that the Order of the Lower Court is against facts and evidence, the Lower Court has passed the above order only on the basis of the petition, without taking any evidence, that the lower Court ought to have found that R1 is a coolie and has no regular job, that the Lower court ought to have found that R1 has to look after his aged parents, that the Lower

Court ought to have found that the petitioner has purposefully renounced the cohabitation with the 1<sup>st</sup> respondent, that the Lower Court ought to have found that there is no evidence to prove the domestic violence, that the amount of maintenance ordered by the lower Court is very huge and is not affordable to R1 and that the Lower court ought to have dismissed the above petition. Hence, according to the Appellants/ Respondents, the above interim Order dated 27.10.2020 in C.M.P 193/2020 is to be set aside, allowing the appeal.

5. Since in spite of repeated direction the Appellants did not turn up for hearing, the appeal was taken for judgment, after hearing the learned Counsel appearing for the Respondents. Perused the records.

6. Now the Points that arise for consideration are as follows:

1. Whether the Order dated 27.10.2020 of the Gram Nyayalaya, Vadavukode, Kolenchery in C.M.P. 193/2020 in M.C.23/2020, under challenge, warrant any interference?
2. Reliefs and costs?

7. **Point No. 1:-** As per Section 23(1) of the Protection of Women from Domestic Violence Act, 2005, if the Magistrate is satisfied that an Application prima facie discloses that the Respondent is committing or has committed an act of

Domestic Violence or that there is a likelihood that the Respondent may commit an act of Domestic Violence, he may grant an Ex-parte Order on the basis of the Affidavit in such Form, as may be prescribed, of the aggrieved person u/s. 18, 19, 20, 21 or as the case may be u/s. 22 of the Act, against the Respondent.

8. In this case, the fact that the 1<sup>st</sup> Respondent and the Petitioner are husband and wife and that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are the parents of 1<sup>st</sup> respondent, are not in dispute.

9. The case of the Petitioner in the petition and the Affidavit filed along with the Petition, is that the marriage between the 1<sup>st</sup> Respondent and the Petitioner was solemnized on 25.01.2006 and Respondent Nos. 2 and 3 are the parents of R1. After the marriage, the petitioner was residing with the respondents till June, 2020. 1<sup>st</sup> respondent is a drunkard. The respondents used to ill-treat and commit acts of domestic violence against the petitioner, demanding her to bring more money from her house. The respondents used to commit cruelty to the petitioner stating that she has illicit relations with other men. Because of the cruelty committed by the respondents to the petitioner, she was forced to shift her residence to her parental home, from 20.06.2020. The petitioner has no job or

income to maintain herself. The 1<sup>st</sup> respondent is a Painter by Profession and he used to take contract works for Painting and from that he is getting Rs.25,000/- per month. But the 1<sup>st</sup> respondent is not providing anything for the maintenance of the petitioner. Rs.7,500/- is required for the monthly maintenance of the petitioner. In the above circumstance, the petitioner has prayed for an ex-parte protection order restraining the respondents committing any acts of domestic violence and also for an interim maintenance order directing the R1 to pay Rs.7,500/- per month towards her maintenance u/S.23 of the Protection of Women from Domestic Violence.

10. As per Sec. 18 of the Protection of Women from Domestic Violence Act, the aggrieved person is entitled for a protection order restraining the respondent from committing any acts of domestic violence against the Petitioner, if the Magistrate is prima facie satisfied that domestic violence has taken place or is likely to take place.

11. Then as per Section 20(1)(d) of the Protection of Women from Domestic Violence Act, while disposing of an Application under sub Section (1) of section 12, the Magistrate may direct the Respondent to pay monetary relief including the maintenance for the aggrieved person as well as her children, if any, including an Order under or in addition to an Order of

maintenance u/s 125 Cr.P.C. or any other law for the time being in force. Then as per section 20(2) of the Act, the monetary relief granted under the section 20 shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

12. Considering the fact that the Petition and the Affidavit filed by the Petitioner/ aggrieved person prima facie discloses that the Respondents have committed acts of domestic violence to the Petitioner and that the Petitioner has no means of income for her livelihood, and also considering the needs of the petitioner and the financial capacity of R1, who is the husband of the petitioner, it can be seen that there is no ground to interfere with the interim Protection Order and the Order for interim maintenance passed by the Lower Court u/s. 23 of the Protection of Women from Domestic Violence Act.

13. From the above discussion, it can be seen that there is no ground to interfere in the Order under challenge and this Appeal is only liable to be dismissed. Point No. 1 is found accordingly against the Appellants/ Respondents.

14. **Point No. 2:-** From the finding on Point No. 1, it can be seen that the Appeal is devoid on merits and the same is only liable to be dismissed, confirming the Order of the Lower Court dated 27.10.2020 in C.M.P.193/2020. Considering the

facts and circumstance of the Appeal, it appears that the parties are to be directed to bear their respective costs.

*In the result, the Appeal is dismissed. No costs.*

*(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open Court on this the 13<sup>th</sup> day of November, 2023).*

Sd/-  
TOMI VARGHESE  
ADDITIONAL DISTRICT & SESSIONS JUDGE.

Appendix : Nil

Id/-  
ADDITIONAL DISTRICT & SESSIONS JUDGE

Dtd:- 13.11.2023