



2025:KER:14541

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

THURSDAY, THE 20TH DAY OF FEBRUARY 2025 / 1ST PHALGUNA, 1946

OP(CRL.) NO. 720 OF 2023

AGAINST THE ORDER DATED 13.07.2023 IN MC NO.115 OF 2019 OF
JUDICIAL MAGISTRATE OF FIRST CLASS ,CHITTUR

PETITIONER:

RIYASUDHEEN
AGED 30 YEARS
S/O. KAMALUDHEEN RAWTHER, RESIDING AT DHEEN MANZIL,
PERUMCHIRA, POTHENPADOM, MUTHALAMADA, CHITTUR, PIN -
678507

BY ADVS.
S.K.ADHITHYAN
ALTHAF NABEEL

RESPONDENTS:

- 1 SULFIYA
 AGED 23 YEARS
 D/O. ABDUL KHADER BISMI HOUSE, VELLANARA,
 KOLLENGODE, CHITTUR, PALAKKAD DISTRICT, PIN - 678706.
- 2 UMMUKULSU
 W/O. KAMALUDHEEN RAWTHER,
 RESIDING AT DHEEN MANZIL, PERUMCHIRA,
 POTHENPADOM, MUTHALAMADA, CHITTUR, PIN - 678507.
- 3 SALIM
 S/O. KAMALUDHEEN RAWTHER,
 RESIDING AT DHEEN MANZIL, PERUMCHIRA,
 POTHENPADOM, MUTHALAMADA, CHITTUR, PIN - 678507.
- 4 MUSTHAFA



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S/O. KAMALUDHEEN RAWTHER, RESIDING AT DHEEN
MANZIL, PERUMCHIRA, POTHENPADOM, MUTHALAMADA,
CHITTUR, PIN - 678507.

5 RAZOOL,
S/O. KAMALUDHEEN RAWTHER, RESIDING AT DHEEN
MANZIL, PERUMCHIRA, POTHENPADOM, MUTHALAMADA,
CHITTUR, PIN - 678507.

BY ADV
JAYARAM P

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
20.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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J U D G M E N T

Dated this is the 20th of February, 2025

The petitioner herein is the 1st respondent in M.C. No.115/2019, pending before the Judicial First Class Magistrate Court-I, Chittur. He is aggrieved by Ext.P5 Order, which was one passed in modification of Ext.P3 Order. Several reliefs were sought for in the M.C., including a relief for declaration that the petitioner in the M.C. (1st respondent herein/wife) is the exclusive owner of the gold ornaments, which are kept in locker No.49 of the Federal Bank, Kollengode Branch. Along with the M.C., an interlocutory application was filed, in which the Ext.P3 Order was passed, which restrained the 1st respondent from alienating the gold ornaments in the said locker. Subsequently, Ext.P4 application was filed by the 1st respondent/wife seeking modification of Ext.P3 Order, under Section 25(2) of the Protection of Women from Domestic Violence (in short, 'D. V. Act'). The same



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was allowed, and Ext.P5 Order was passed, as per which, the 1st respondent/wife is permitted to operate the locker.

2. Heard the learned counsel for the petitioner and 1st respondent. Perused the records.

3. Learned counsel for the petitioner submits that, if the 1st respondent is permitted to operate the locker, the gold ornaments kept therein are likely to be taken away, which will defeat the subject matter of the pending M.C, wherein the 1st respondent, herself, had sought a declaration as regards her ownership over the gold ornaments in the locker.

4. Learned counsel would point out that, going by Section 18(e) of the 'D.V.Act', all what the petitioner in M.C. can seek is a restraint Order from alienating the assets, including the gold ornaments; and not one, which will have the effect of enabling the petitioner to appropriate the assets, pending



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litigation, especially when a declaration as to the ownership over the asset is sought for.

5. Secondly, it was pointed out that, as per Section 25 of the 'D.V. Act', there should be a change of circumstance, and what is contemplated is a modification or revocation of an Order already passed. Ext.P5 Order will not fit into that category, according to the learned counsel. Nor is there any change of circumstance, so as to invoke section 25. The third aspect highlighted is that, the evidence in the matter has progressed substantially, and petitioner's evidence is over. There can be a direction to dispose of the matter within a time frame, so that there will be a quietus, after which, the rightful incumbent can be permitted to operate the locker, as also, to appropriate the gold ornaments therein. On such premise, petitioner seeks Ext.P5 Order to be set aside.

6. Per contra, learned counsel for the 1st respondent



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would submit that, the petitioner herein had admitted the ownership of the 1st respondent over the gold ornaments in the counter affidavit filed before the trial court, which has been produced as Ext.R1(a) before this Court. Specific attention of this Court is invited to the pleadings in page no.17 of Ext.R1(a).

7. Secondly, it was pointed out that, if Ext.P5 Order is set aside, that will create a situation that throughout the proceedings, the 1strespondent/wife will be disabled from using the gold ornaments. Learned counsel also highlighted the possibility of an appeal and also the continuance of the interim Order, which was in vogue during the original proceedings. On such premise, the petitioner seeks the instant Original Petition to be dismissed.

8. Having heard the learned counsel appearing for the respective parties, this Court finds more force in the submissions made by the learned counsel for the petitioner. It is not disputed that the 1st respondent



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herein had sought for declaration of her ownership rights over the gold ornaments in the locker. If that be so, the subject matter of the property has to be preserved. Ext.P5 Order has the potential of enabling the 1st respondent herein to appropriate the gold ornaments. Even though learned counsel for the petitioner submits that, inventory can be taken, along with the photographs and weight of the individual items of gold ornaments, such a tedious exercise at this belated stage is not recommended, inasmuch as I am given to understand that the petitioner's evidence in the M.C. is already over. The interests of both parties will be protected, if there is a direction to dispose of the M.C. within a time frame, whereafter, the rightful incumbent can take the gold ornaments and appropriate the same. Insofar as the possibility of an appeal and the continuance of the interim Order, this Court is of the opinion that, once the 1st respondent's ownership is declared, there will be substantial equity in favour of the 1st respondent in seeking an



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Order like Ext.P5, if required after photography and also taking the inventory.

9. In the circumstances, Ext.P5 Order is set aside. Ext.P3 Order will remain intact. There will be a direction to the trial court to complete the trial and dispose of M.C. No.115/2019 within a period of four months from the date of receipt of a copy of this judgment. The Original Petition is allowed as indicated above.

Sd/-
C. JAYACHANDRAN
JUDGE

HKH/20.02.2025



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APPENDIX OF OP(CRL.) 720/2023

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE PETITION FILED AS M.C.
NO. 115/2019 DATED 30/11/2019 OF THE
JFCM-I, COURT, CHITTUR

EXHIBIT P2 TRUE COPY OF THE PETITION FILED AS CMP.
NO. 868/2020 DATED 14/2/2020 OF THE
JFCM-I COURT, CHITTUR

EXHIBIT P3 TRUE COPY OF THE ORDER IN CMP NO.
868/2020 IN MC NO. 115/2019 DATED
15/2/2020

EXHIBIT P4 TRUE COPY OF THE PETITION FILED BY THE
1 ST RESPONDENT AS CMP NO. 2879/2023 IN
MC NO. 115/2019 OF JFCM-I, CHITTUR
DATED 13/07/2023

EXHIBIT P5 TRUE COPY OF THE ORDER IN CM.P. NO.
2879/2023 IN MC NO. 115/2019 DATED
13/07/2023

RESPONDENT EXHIBITS

EXHIBIT R1 (A) A COPY OF THE COUNTER STATEMENT FILED
BY THE PETITIONER IN THE ORIGINAL
PETITION IN M.C.NO. 115/2019 ON THE
FILES OF THE COURT OF JUDICIAL FIRST
CLASS MAGISTRATE-I, CHITTUR