

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE DR.JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 09TH DAY OF APRIL 2021 / 19TH CHAITHRA, 1943

Mat.Appeal.No.739 OF 2014

AGAINST THE ORDER IA 315/2014 IN O.P.NO.506/2013 DATED 07-08-2014
OF FAMILY COURT, MUVATTUPUZHA

APPELLANT/S:

- 1 MAHINKUTTY, S/O.ABDUL KARIM,
KINATTINGALKUDY HOUSE, KARAKKUNNAM KARA,
MULAVOOR VILLAGE.
- 2 ABDUL KARIM, KINATTINGALKUDY HOUSE,
KARAKKUNNAM KARA, MULAVOOR VILLAGE.
- 3 SHEREEFA, W/O.ABDUL KARIM,
KINATTINGALKUDY HOUSE, KARAKKUNNAM KARA,
MULAVOOR VILLAGE.

BY ADVS.
SRI.MATHEW JOHN (K)
SHRI.DOMSON J.VATTAKUZHY

RESPONDENT/S:

ANSHIDA, D/O.IBRAHIM, MALIYAMVEEDAN HOUSE,
PALLIPRAM KARA, MARAMPILLY VILLAGE.

BY ADV.SRI.VIPIN NARAYAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 29-03-2021,
THE COURT ON 09-04-2021 DELIVERED THE FOLLOWING:

'CR'

JUDGMENT

Dated this the 9th day of April 2021

A.Muhamed Mustaque, J.

This appeal arises from the order of the Family Court, Muvattupuzha, in a pending matter regarding the maintainability of the original petition.

2. The respondent herein, who is the wife of the 1st appellant, filed the original petition for recovery of money and gold ornaments. The appellants raised a preliminary objection as to the maintainability of the petition on the ground that very same relief sought by the respondent before the Judicial First Class Magistrate Court, Perumbavoor in a proceeding initiated under the Protection of Women from Domestic Violence Act, 2005 (for short, the 'Act') was rejected, and, hence, the second petition for the same relief before the Family Court is barred by the principles of *res judicata*. The Family Court overruled the

objection as per the impugned order holding that the proceedings under the Act are of a summary nature and the second petition before it, is not barred by the principles of *res judicata*.

3. What is the legal effect of the order passed under Section 20 of the Act granting monetary reliefs is the sole issue to be considered in this matter.

4. Section 20 of the Act refers to monetary reliefs. The Magistrate is conferred with the power to direct the respondent to pay monetary reliefs to the aggrieved person for the losses suffered as a result of domestic violence, including restoration of the property removed from the control of the aggrieved person. Section 26 of the Act enables to claim such reliefs as claimed under Section 20 before the Civil Court, Family Court or Criminal Court.

5. The learned counsel for the appellants Sri. Mathew John, placing reliance on the judgment

in Pandurang Ramchandra Mandlik and another v. Smt.Shantabai Ramchandra Ghatge and others, [AIR 1989 SC 2240] and the judgment of the Madras High Court in CrI.O.P.No.28458/2019 and connected cases submitted that the proceedings under the Act are of a civil nature, that the order passed in proceedings initiated under the Act has to be treated as an outcome of civil proceedings and the conclusive nature of the proceedings determining the rights and obligations of the parties cannot be reopened by filing another petition for the same relief before the Family Court.

6. On the other hand, learned counsel Sri.Vipin Narayan appearing for the respondent, placing reliance on Satish Chander Ahuja v. Sneha Ahuja [AIR 2020 SC 5397], Govindan v. Subaida Beevi [1997 (1) KLT 910], P.G.Eshwarappa v. M.Rudrappa and others [(1996) 6 SCC 96], argued that the order of the Magistrate can only be treated as an order of a criminal Court in a criminal proceedings that the order passed in a proceedings under the Act could, at best, be taken as a relevant piece of

evidence before the Family Court and the Family Court is not bound by the orders under the Act.

7. The Act was enacted by the Parliament based on the larger interest of human rights concomitant with various declarations made in international conventions. The very objective of the Act is to protect the women as against the violence that occurs within the family and for matters connected therewith. The Act, therefore, conceives a scheme of protective measures with an object to protect women. The scheme of the Act on a close scrutiny, would reflect the intention of the parliament, that it was not enacted to create another platform for adjudication of disputes arising out of any matrimonial dispute, but to take measures to protect the women. The proceedings are therefore, understood as supplemental provisions besides the right to adjudicate any dispute arising out of a matrimonial relationship as conferred under law before the competent civil court or Family Court or criminal court. The protective measures as required to be passed may include residential orders,

monetary reliefs, custody orders etc. The objective criteria in such proceedings is to protect the women and not to adjudicate upon the dispute. The proceedings are ordained for the welfare and well being of the women. When the welfare statute is made with the single focus of protection of women, such Act has to be interpreted as remedial provisions to benefit the women alone. The proceedings, therefore, cannot be meant to understand, as an extension of platform for a dispute resolution of anything connected to or related with the objective to be secured. That is the reason the legislature consciously preserved the right of the aggrieved to seek such relief referable under the Act (Section 26 of the Act) before the appropriate forum.

8. The issue involved in this case with regard to the application of the principles of *res judicata* will have to be addressed in the light of the scheme of legislation of the Act. The principles of *res judicata* as embodied in Section 11 of the Civil Procedure Code is having a

universal application in the larger public interest. No man should be vexed twice for the same cause more than once. This Rule evolved as a public policy to put an end to the litigation.

9. As stated in the statement of objects and reasons in the Act, the Act intends to accord protection to women who are victims of domestic violence. Section 3 of the Act defines domestic violence in the nature of harm or injury whether physical or mental to the aggrieved person. The “aggrieved person” is defined under Section 2(a). Women only can be an aggrieved person under Section 2(a). The aggrieved person must be subjected to any domestic violence. The duties of Protection Officers and Service Providers are enumerated in Chapter III itself. These provisions would show that the Protection Officers and Service Providers will have to provide legal aid, medical, financial or any other assistance to the aggrieved person. Chapter IV, Section 12 of the Act refers to filing an application before the Magistrate for any reliefs referred to under the Act. These reliefs

include residence orders, monetary reliefs, custody orders and compensation orders. These reliefs cannot be claimed by women unless women establish the occurrence of domestic violence.

10. The statutory scheme confers the power on the Magistrates to grant such relief if the woman is able to establish domestic violence. The predicate acts of domestic violence is *sine qua non* for granting any reliefs as referable under the Act. No relief as referable under the Act is maintainable unless the predicate act of domestic violence is established.

11. To understand the nature of the proceedings under an enactment, the court has to cull out from the provisions of the text of the Act to find out whether it is intended to adjudicate any dispute between the parties or not. If there are no provisions for adjudication of rights and obligations of the parties, the proceedings cannot be called as adjudicatory proceedings. 'Adjudication' is defined in the Black's Law

Dictionary as follows:

“The legal process of resolving a dispute; process of judicially deciding a case.”

The adjudicative process is always governed by the Formal Rules of Evidence by allowing both parties to adduce evidence.

12. If no right of the parties is decided conclusively in a proceedings, any outcome of such proceedings cannot be treated as an outcome of adjudication. The Act being a beneficial legislation to protect women, it does not contemplate any other form of adjudication of the rights and obligations of the parties. Section 28 of the Act allows the Magistrate to follow the provisions under the Code of Criminal Procedure in respect of the proceedings under Sections 12, 18, 19, 20, 21, 22, and 23 of the Act. The Magistrate has necessary power to hold an inquiry other than trial under the Criminal Procedure Code. Section 2(g) of the Criminal Procedure Code defines “inquiry” as, every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

Thus, in the absence of any provision to penalise the respondent, such proceedings under the Act, can only be treated as proceedings of inquiry. The Black's Law Dictionary defines 'inquiry' as follows:

“a request for information, either procedural or substantive.”

The procedure thus contemplated under the Act is in the nature of inquiry akin to the inquisitorial procedure. The Magistrate, while exercising the powers under the Act, is actually not deciding any dispute in like manner as involved in adversarial system, but only taking measures to protect the aggrieved person/women. The monetary reliefs mentioned under section 20 is more in the nature of restoration of what have been deprived to the women. That means, as a result of domestic violence, if women is deprived, the Magistrate is competent to grant such reliefs as referable under section 20. The inquiry in such proceedings is limited to find whether women consequent upon domestic violence has suffered to raise claim for restoration by way of such reliefs or not.

13. The nature of the proceedings for the reliefs referable under the Act is a point of serious debate in this country.

14. In the light of the arguments raised at the Bar, we need to decide whether the proceedings are in the nature of criminal proceedings or not.

15. The Apex Court succinctly laid down the difference between the civil and criminal proceedings in **Kunapareddy Alias Nookala Shanka Balaji v. Kunapareddy Swarna Kumari and Another**[(2016) 11 SCC 774] and **Ram Kishan Fauji v. State of Haryana and Others** [(2017) 5 SCC 533]. The Apex Court judgments would clearly show that merely because the jurisdiction is exercised by the Magistrate and provisions of the Criminal Procedure Code are followed, it does not change the character of the proceedings as criminal proceedings. The learned single Judge of the Madras High Court in a batch of cases in CrI.O.P.No.28458/2019 and connected cases, after surveying case laws came to

the definite conclusion that the proceedings under the Act are in the nature of civil proceedings and Section 482 of the Criminal Procedure Code cannot be invoked to quash a complaint under Section 12 of the Act. A learned single Judge of this Court in **Vijayalekshmi Amma v. Bindu [2010 (1) KLT 79]**, took the view that the proceedings under the Act are in the nature of criminal proceedings.

16. The Apex Court in **Regional Provident Fund Commissioner v. The Hooghly Mills Company Ltd. and others [MANU/SC/0036/2012]** succinctly differentiated the remedial statute and penal statute in paragraph 24 as follows:

“The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.”

17. The Apex Court in **Allahabad Bank and Another**

v. All India Allahabad Bank Retired Employees Association [(2010) 2 SCC 44] in paragraph-16, observed as follows:

“We shall proceed to examine the point urged by the learned counsel for the appellant. Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislation. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.”

18. *The Principles of Statutory Interpretation (Ninth Edition, 2004)* by Justice C.P.Singh, refers to distinction between remedial and penal statutes as follows:

“Every modern legislation is actuated with some policy and speaking broadly as some beneficial object behind it. But then there are legislation which are directed to cure some immediate mischief and bring into effect some type of social reform by ameliorating condition of certain class of persons

who according to present-day notions may not have been fairly treated in the past. Such legislation prohibits certain acts by declaring them invalid and provide for redress or compensation to the persons aggrieved. If a statute of this nature does not make the offender liable to any penalty in favour of the state, the legislation will be classified as remedial. Remedial statutes are also known as welfare, beneficent or social justice oriented legislations. Penal statutes, on the other hand, are those which provide for penalties for disobedience of the law and are directed against the offender in relation to the State by making him liable to imprisonment, fine, forfeiture or other penalty. If the statute enforces obedience to the command of law by punishing the offender and not by merely redressing an individual who may have suffered, it will be classified as penal.”

19. The provisions of the Act in relation to monetary relief under Section 20 as such do not intend to penalise the respondent in such proceedings. In such circumstances, the statutory provisions will have to be treated as remedial to protect the women.

20. We have already adverted that the Act does not contemplate adjudication. The proceedings therefore are only to be treated as an inquiry. The question, therefore, arises how far the outcome in

an inquiry in a remedial procedure would have an impact in adjudication between the same parties before the competent court or forum?

21. We mentioned earlier that there must be predicate act of domestic violence to enable the Magistrate to give any relief as referable under section 20. The doctrine of *res judicata* bars the court from adjudicating the same issue which has been conclusively decided by the competent forum or court between the same parties. Inquiry being treated as an ancillary or incidental procedure of the main issue of domestic violence, any outcome of such proceedings itself is not decisive in the subsequent proceedings. The substantial issue in a proceedings under section 20 must be domestic violence. The relief of monetary claims under section 20 is an ancillary relief. Therefore, the outcome in ancillary proceedings, that too in the proceedings in the nature of inquiry itself will not bar the Family Court or any other competent court having power to adjudicate such dispute. The outcome in such inquiry proceedings may be relevant while

deciding the dispute in subsequent proceedings before the competent court under Sections 42 or 43 of the Indian Evidence Act, 1872 (for short, the Evidence Act). The Apex Court in **Satish Chander Ahuja v. Sheha Ahuja [AIR (2020) SC 5397]** opined that such order under the Act is a relevant evidence as contemplated under Sections 40 to 43 of the Evidence Act. We, therefore, find no merit in the appeal. The appeal fails. Accordingly, it is dismissed. No costs.

sd/-

A.MUHAMED MUSTAQUE

JUDGE

sd/-

DR. KAUSER EDAPPAGATH

JUDGE