IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 22ND DAY OF APRIL 2022 / 2ND VAISAKHA, 1944

CRL.REV.PET NO. 1353 OF 2017

AGAINST THE ORDER IN MC 39/2011 OF JUDICIAL MAGISTRATE OF FIRST CLASS , SASTHAMCOTTA

CRA 27/2015 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - IV, KOLLAM

REVISION PETITIONERS/RESPONDENTS 1 & W/PETITIONERS 1 & 2:

1. SHAMEENA SIDDIQUE
AGED 34 YEARS
D/O.RAHEEDA BEEGUM, PUTHIYA VEEDU, PUTHENSANKETHAM EDAYILA, MURIYIL, THEVALAKKARA VILLAGE.

2. AJMA SIDDIQUE
D/O.SHAMEENA (MINOR), AGED 8 YEARS, RESIDING AT PUTHIYA VEEDU, PUTHENSANKETHAM EDAYILA, MURIYIL, THEVALAKKARA VILLAGE, REPRESENTED BY THE NEXT FRIEND & GUARDIAN SHAMEENA SIDDIQUE, AGED 34 YEARS, D/O.RAHEEDA BEEGUM, PUTHIYA VEEDU, PUTHENSANKETHAM EDAYILA, MURIYIL, THEVALAKKARA VILLAGE.

HIGH COURT OF KERALA

BY ADVS.
SRI.P.HARIDAS
SRI.RENJI GEORGE CHERIAN
SRI.P.C.SHIJIN

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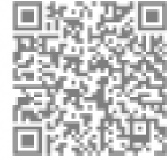
RESPONDENTS/APPELLANTS 1 TO 4 & 3RD RESPONDENT/RESPONDENTS:

1. M.ABUBEKHAR SIDDIQ
AGED 44 YEARS, S/O.MOHAMMED KUTTY, KANDOLIL VEEDU, PALACKAL, THEVALAKKARA VILLAGE, KARUNAKAPPALLY TALUK-690524, (NAME AND FATHER'S NAME WRONGLY STATE IN THE LOWER COURT ORDER AS MOHAMMED



ABOOBAKKER SIDDIQUE AND MOHAMMED KUNJU),
REPRESENTED BY POWER OF ATTORNEY, M.A.SALAM,
S/O.MOHAMMED KUTTY, AGED 62 YEARS, ADVOCATE,
RESIDING AT DARUL SALAM, -D0-

2 M.A.SALAM
S/O.MOHAMMED KUTTY, AGED 62 YEARS, ADVOCATE,
RESIDING AT DARUL SALAM, -DO- 690524.(FATHERS
NAME WRONGLY STATED AS MOHAMMED KUNJU IN THE
ORDER)

3 ANWAR SASDATH
S/O.MUHAMMED KUTTY, AGED 41 YEARS, KANDOIL VEEDU,
-DO- 690524. (FATHER'S NAME WRONGLY STATED AS
MOHAMMED KUNJU IN THE ORDER)

4 ASSANARU KUNJU
AGED 61 YEARS, KATTIL PUTHEN VEEDU, VADUTHALA,
PANMANA, PUTHENCHANTHA, KARUNAGAPPALLY TALUK-
691583.

5 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI-682031.

BY ADV SRI.B.MOHANLAL
PUBLIC PROSECUTOR SRI.SANGEETHA RAJ

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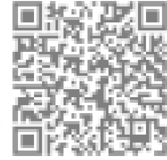
THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 6.04.2022, THE COURT ON 22.04.2022 DELIVERED THE FOLLOWING:



O R D E R

Dated this the 22nd day of April, 2022

This Criminal Revision Petition has been filed challenging the judgment of the Additional Sessions Court IV Kollam in Crl.Appeal No.27/2015 dated 9th June, 2017.

2. The first revision petitioner is the wife of the first respondent. The second revision petitioner is their minor daughter. The second and third respondents are the brothers, and the fourth respondent is the maternal uncle of the first respondent. The revision petitioners filed MC No.39/2011 at the Judicial First-Class Magistrate Court, Sasthamcotta (for short, 'the trial court') claiming various reliefs u/s 12(1) of the Protection of Women from Domestic Violence Act, 2005 (for short, the DV Act). It was alleged that at the time of marriage, the parents of the first petitioner gave 100 sovereigns of gold ornaments to her. Moreover, her parents entrusted ₹5,00,000/- to the first and second respondents. It was further alleged that later on 15/4/2008, the father and brother of the first revision petitioner

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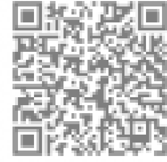

entrusted ₹13,00,000/- to the first respondent and his mother. It is the case of the petitioners that utilizing the entire gold ornaments and money given by the parents of the first petitioner, the first respondent constructed a house on his property viz., Ajma Manzil. According to the petitioners, they along with the first respondent resided in the said house and it is their shared household. It was further alleged that on 9/12/2009 at around 9.30 p.m, the second and third respondents criminally trespassed into the above said shared household and assaulted the first petitioner. It was further alleged that thereafter on 28/12/2009 at 8.30 p.m., all respondents assaulted the first petitioner as well as her father and brother at Ajma Manzil and the first respondent stabbed the first petitioner with a knife on her head. It was also alleged that the respondents disconnected the electrical connection of the house and removed household articles from the house. It was in these circumstances the petitioners approached the trial court invoking the provisions of the DV Act claiming protection, residential and monetary orders. The petitioners have also sought for the return of gold ornaments and money entrusted to respondents and for reinstating the electricity

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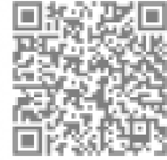

connection.

3. The first and second respondents entered appearance. The third and fourth respondents were set *ex parte*. The first respondent alone filed objection statement. The marriage between the first petitioner and first respondent and the paternity of the child was admitted by the first respondent. However, he contended that he divorced the first petitioner on 28/12/2009 by pronouncing triple *talaq*. The allegations in the petition that the parents of the petitioners entrusted gold ornaments and money to him and utilizing the same he constructed the house were denied by the first respondent. He has also denied the various instances of domestic violence allegedly exercised by him and the remaining respondents on the first petitioner pleaded in the petition. He contended that Ajma Manzil is a house constructed by him with his own funds and it is not a shared household. According to him, the petitioners never resided in the house along with him. It is his case that in fact the first petitioner along with her father and brother trespassed into the house of the second respondent on 8/12/2009 and attacked him. It was further contended that the matrimonial relationship between the

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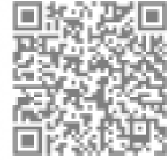

first petitioner and first respondent existed for just one week and they never lived together in the shared household. He sought the dismissal of the petition.

4. PWs1 to 4 were examined on the side of the petitioners and Exts.P1 to P9 were marked. DW1 to DW8 were examined and Exts.D1 to D22 were marked on the side of the respondents. Exts.C1 and X1 were marked as court exhibits. After trial, the trial court passed the following order in favour of the petitioners.

> *"In the result,*
>
> *a) This M.C. is allowed in part.*
>
> *b) The respondents are restrained from committing any act of domestic violence against the petitioners under section 18(a) of the Act.*
>
> *c) The petitioners are entitled to get residential order in Kandolil Puthanveedu alias Ajma Manzil bearing house No.XVII/903 of the Chevalakkara Grama Panchayat. The petitioners can reside in that house until the first respondent secures a same level of alternative accommodation to the petitioners.*
>
> *d) The first respondent shall pay Rs.25,000/- to the first petitioner as compensation u/s 22 for the mental torture and emotional distress.*
>
> *e) The first respondent u/s 20(3) of the Act shall pay Rs.3,000/- each as monthly maintenance to the first and the second petitioner on or before the 5th day of each month.*

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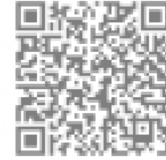

f) The prayer for return of gold ornaments and money, and the prayer for reinstating electricity connection are not allowed.

g) The first respondent shall also execute bond for Rs.2 lakhs for not committing the domestic violence in future."

5. The respondents herein challenged the above order at the Additional Sessions Court IV, Kollam (for short, 'the appellate court'). The appellate court allowed the appeal and dismissed the MC. Aggrieved by the said judgment, this revision petition has been preferred.

6. I have heard Sri.Shijin P.C., the learned counsel for the revision petitioners, Sri.B.Mohanlal, the learned counsel for respondents 1 to 4 and Sri.Sangeetha Raj, the learned Public Prosecutor.

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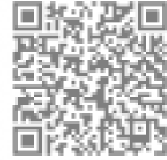
7. The parties are Muslims. It is not in dispute that the first respondent married the first petitioner on 10/7/2006 and the second petitioner was born in the said wedlock. The first respondent took a contention that he divorced the first petitioner on 28/12/2009 by pronouncing *talaq*. The trial court found that the first respondent failed to prove the pronouncement of *talaq*. However, the appellate court found that the Magistrate under the exercise of the power under the provisions of the DV Act cannot



decide the validity of the *talaq* pronounced by the first respondent. It was further held that *prima facie* there is material to show that the first respondent pronounced *talaq* and as such the status of the petitioner is that of a divorced woman and she is not entitled to claim maintenance. The appellate court further found that the first petitioner miserably failed to prove that the first respondent committed acts of domestic violence and that the house in question is a shared household. Accordingly, all the reliefs granted by the trial court were set aside.

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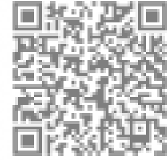
8. As per S.18 of the DV Act, the Magistrate is empowered to pass a protection order in favour of the aggrieved person and prohibit the respondents from committing any act of domestic violence on being *prima facie* satisfied that the domestic violence has taken place or is likely to take place. The term 'domestic violence' has been defined u/s 3 of the Act. It includes physical abuse as well as verbal emotional abuse and economic abuse. The specific instances of various domestic violence on the part of the respondents have been clearly pleaded in the petition. The first petitioner was examined as



PW1. She deposed before the trial court about the said specific instances of domestic violence. There was no successful cross-examination on those aspects. On the side of the petitioners, Exts.P5 and P5(a), the copy of the FIR and FIS in Crime No.586/2019 of Thekkumbhagam Police Station were produced in order to substantiate their contention that the respondents assaulted the first petitioner on 28/12/2009. In order to prove the injury sustained in the said incident, the petitioners have also produced a wound certificate dated 28/12/2009 issued by the Taluk Headquarters Hospital, Sasthamcotta as Ext.P6. As against this positive evidence given by the petitioners, no rebuttal evidence has been adduced by the respondents. The first respondent did not mount the box. It has come out in evidence that the first respondent failed to maintain the petitioners. The term 'domestic violence' as defined u/s 3 does not mean any physical harassment alone. As already stated, it includes emotional or economic abuse as well. The term 'economic abuse' has been defined u/s 3(iv) of the Act. It includes deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom and maintenance.

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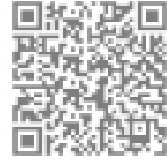

Thus, the non-payment of maintenance alone would constitute domestic violence. The appellate court without considering this positive evidence adduced on the side of the petitioners relying on a flimsy ground that in Ext.P4 petition filed by the petitioners there was no averment of domestic violence held that the petitioners failed to prove that the first respondent has committed domestic violence. The said finding of the appellate court, no doubt, is perverse and cannot be sustained.

9. The first respondent for the first time in the objection statement took a contention that he divorced the petitioner by pronouncing *talaq* on 28/12/2009. He relied on Exts.D2, D12 and D13 to prove the factum of *talaq*. Ext.D2 is the copy of *talaqnama*. Ext.D12 is the certificate dated 7/5/2010 issued by Kottukadu Jamaath and Ext.D13 is the certificate dated 21/1/2010 issued from the said Jamaath. It has been produced to prove that the fact that the first respondent pronounced *talaq* was communicated to the local Jamaath. Apart from the said document, no evidence has been produced. Exts.D12 and D13 were not proved in accordance with law by examining their authors. The first respondent did not mount the box to prove that

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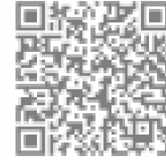

he pronounced *talaq*. Ext.D2 is only a copy, the original has not been produced. The first petitioner has even denied the signature of the first respondent in Ext.D2. Admittedly the first respondent pronounced triple *talaq*. The Apex Court in ***Shamim Ara v. State of U.P.*** (2002 KHC 829) has held that a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself at all be treated as a pronouncement of *talaq* by the husband on the wife and *talaq* to be effective must be for a reasonable cause and be preceded by attempts of reconciliation between the husband and wife by two arbitrators, one chosen by the wife from her family and the other by the husband from his family. The valid forms of *talaq* recognized in Muslim law viz *talaq ahsan* and *talaq hasan*, both contemplated a period (*iddat*), immediately after the pronouncement of *talaq*, whether such pronouncement is only once or thrice over three successive lunar months, when the husband can revoke the *talaq*. It comes into effect only after the said period. T*alaq-i-biddat* or triple *talaq* which instantaneously severs the marital tie is not valid or legal under Muslim Personal Law. The Constitution Bench of the Apex Court ***in Shayara***

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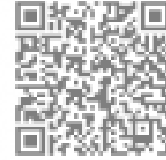

Banu and Others v. Union of India and Others [(2017) 9 SCC 1] examined the constitutional validity of the triple *talaq* and held that the said form of *talaq* is violative of fundamental right under Article 15 and declared as unconstitutional. Even according to the first respondent, he pronounced triple *talaq* at a go without following any of the procedures mentioned above. Hence, it is invalid. In a petition filed by the wife under the DV Act, if the husband disputes the marital status on the ground that he has divorced the wife by the pronouncement of *talaq,* the Magistrate has every power to decide whether the said plea is valid or not. The finding of the appellate court that the Magistrate has no power to decide the validity of the *talaq* is wrong and only to be set aside.

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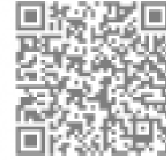
10. That apart, the wording ‘aggrieved person’ as laid down in S.2(a) of the DV Act clearly provided any woman, who is or has been in a domestic relationship with the respondent. The definition of ‘domestic relationship’ [S.2(f)] also means the relationship between two persons, who live or have, at any point of time, lived together in the shared household. The definition of ‘shared household’ [S.2(s)] also means where the person



aggrieved lives or at any stage has lived in a domestic relationship. Therefore, none of the definitions contemplate that on the date of filing such application, for the reliefs under the DV Act, the party should be actually residing or living together. The very word, 'has lived together at any point of time' necessarily covers even the past cohabitation or past living together. This court in ***Priya v. Shibu and Others*** (2008 (3) KHC 125) has held that even if there is a past relationship or experience with the parties concerned, the applicant will have *locus standi* to invoke the jurisdiction of the Magistrate under the DV Act. It was specifically held that even a divorced wife is entitled to file a petition u/s 12(1) of the DV Act claiming the return of dowry and ornaments and for maintenance payable u/s 125 of Cr.P.C. The said decision was followed in ***Bipin v. Meera D.S. and Others*** (2016 (5) KHC 367), and held that to obtain relief under the Act, it is not required that the domestic relationship should continue as on the date of the application. The Apex Court in ***Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and Another*** (2014 KHC 4645) has held that an act of domestic violence once committed, the subsequent decree of divorce will not absolve the liability of

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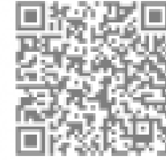

the respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the DV Act. Here is a case where even according to the first respondent, the alleged *talaq* was on 28/12/2009. All the allegations of domestic violence pertain to the period prior to the said date. Admittedly in those days, the matrimonial relationship was in existence.

11. The definite case of the petitioners is that Ajma Manzil is a shared household and they along with the first respondent resided therein. In order to prove the same, the 1st petitioner herself gave evidence as PW1. To corroborate the evidence of PW1, PW3 who is the neighbour of PW1 also gave evidence. The evidence of PWs1 and 3 clearly prove that the petitioners resided in the said house. There is no contra evidence. The 1st respondent did not mount the box. The appellate court went wrong in holding that Ajma Manzil is not a shared household relying on electricity bills showing trivial consumption. The appellate court failed to take note of the fact that the specific case put forward by the petitioners is that they were forcefully evicted from the shared household by the respondents and the

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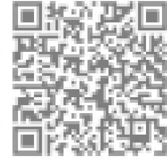

electricity connection was disconnected. Whether the electricity was consumed or not is not relevant in deciding the right of residence in the shared household. Even the continued residence or occupation of the shared household is not all required for the entitlement of a wife to get a residential order.

12. The petitioners have satisfactorily proved that they were entitled for protection, residence, monetary and compensation orders which were rightly granted by the trial court. The first appellate court on flimsy reasons set aside the reasoned order of the trial court. It is true that this court is not supposed to reappreciate the evidence in a revision petition. But this is not a case of reappreciation of evidence. It is a case where the appellate court without appreciating the evidence in the correct perspective set aside the well-reasoned order of the trial court. The powers vested with this court u/s 397 r/w 401 of Cr. P.C are inherent in nature to correct the judgments of the courts below which suffers from gross illegality. The findings in the impugned judgment of the appellate court have been arrived at by ignoring the relevant materials and evidence on record. The entire approach of the appellate court in dealing with evidence

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and law on the point was patently wrong. The appellate court has committed gross illegality in reversing the order of the trial court and dismissing the petition. For these reasons, I hold that it is a fit case where the discretionary power vested with this court u/s 397 r/w 401 of Cr.P.C could be exercised.

In the result, the criminal revision petition is allowed. The impugned judgment of the appellate court is set aside, and the order of the trial court is restored.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp

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