

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 5<sup>TH</sup> DAY OF DECEMBER 2022 / 14<sup>TH</sup> AGRAHAYANA, 1944

WP(C) NO. 23803 OF 2021

**PETITIONERS:**

- 1 RAJESH  
AGED 40 YEARS, S/O. RAGHAVAN,  
INDIRA SADANAM, NELLIMUKAL,  
MUNDAPPALLY MURI,  
PERINGANAD VILLAGE, ADOOR TALUK,  
PATHANAMTHITTA DISTRICT - 691551.
- 2 ARCHANA  
AGED 32 YEARS, W/O. RAJESH,  
INDIRA SADANAM, NELLIMUKAL,  
MUNDAPPALLY MURI, PERINGANAD VILLAGE,  
ADOOR TALUK, PATHANAMTHITTA DISTRICT - 691551.  
  
BY ADV MANU RAMACHANDRAN

**RESPONDENTS:**

- 1 THE STATION HOUSE OFFICER  
ADOOR POLICE STATION,  
PATHANAMTHITTA DISTRICT - 691523.
- 2 MANJU S  
AGED 36 YEARS, D/O. SIVARAJAN,  
SREENANDANAM, MUNDAPPALLY MURI,  
PERINGANAD VILLAGE, ADOOR TALUK,  
PATHANAMTHITTA DISTRICT - 691551.  
  
SRI SANGEETHA RAJ-PP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05.12.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **J U D G M E N T**

Dated this the 5<sup>th</sup> day of December, 2022

An employer and his wife who were saddled with a criminal prosecution initiated at the instance of his erstwhile employee under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the DV Act') are the petitioners.

2. The 2<sup>nd</sup> respondent herein filed an application (Ext.P2) under Section 12 of the DV Act against six persons at the Judicial First-Class Magistrate Court, Adoor (for short, 'the court below'). The petitioners herein are respondents 1 and 2. A vague allegation has been made in the first paragraph of Ext. P2 to bring the application within the ambit of the DV Act that the petitioners are the relatives of the husband of the 2<sup>nd</sup> respondent. However, the entire reading of Ext. P2 application would show that the petitioners are none other than the 2<sup>nd</sup> respondent's employer and wife. The respondents 3 to 5 in Ext.P2 are two of her co-employees and their parents.

3. Admittedly, the 2<sup>nd</sup> respondent was an employee of

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the 1<sup>st</sup> petitioner in a business concern run by him under the name and style 'M.R.Enterprises' at Adoor. The 2<sup>nd</sup> petitioner is the wife of the 1<sup>st</sup> petitioner. The 2<sup>nd</sup> respondent worked in the said business concern as collection agent for a short period from November 2014 to March 2016, and thereafter, she resigned from the job. In Ext. P2, it is alleged that the 1<sup>st</sup> petitioner had ill will towards the 2<sup>nd</sup> respondent following her resignation from his business concern in 2016. It is further alleged that during their employee-employer relationship, the 2<sup>nd</sup> respondent had given a sum of Rs.3,00,000/- (Rupees Three Lakhs only) to the 1<sup>st</sup> petitioner at his instance. It is also alleged that the 1<sup>st</sup> petitioner has ill-treated, abused, and intimidated the 2<sup>nd</sup> respondent by various means, and he has even tried to assault her sexually. There is also an allegation that after the resignation of the 2<sup>nd</sup> respondent, the petitioners, along with the remaining respondents in Ext. P2, trespassed into the house of the 2<sup>nd</sup> respondent as well as her place of employment and criminally intimidated her. It is also alleged that while the 2<sup>nd</sup> respondent was working at the business establishment of the 1<sup>st</sup> petitioner, he took away cheque leaves belonging to her. The prayer in Ext.

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P2 is to grant a protection order in favor of the 2<sup>nd</sup> respondent to prohibit the petitioners and the remaining respondents in Ext. P2 from entering into her house as well as at her place of employment, namely 'Micro Finance,' and making any disturbances. There is a further prayer to give a direction to the 1<sup>st</sup> petitioner to return the cheque leaves belonging to the 2<sup>nd</sup> respondent.

4. On receipt of Ext.P2 application, the court below issued a notice of appearance to the petitioners and others under section 13 of the DV Act. It also passed *ex parte* interim protection and residence orders under section 23(2). The petitioners seek to quash Ext. P2 application on the ground that it is not maintainable under section 12 of the DV Act as there is no domestic relationship between them and the 2<sup>nd</sup> respondent.

5. I have heard Sri. Manu Ramachandran, the learned counsel for the petitioners and Sri.Sangeetha Raj, the learned Public Prosecutor. Even though notice has been served to the 2<sup>nd</sup> respondent, there is no appearance.

6. The learned counsel for the petitioner Sri. Manu

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Ramachandran submitted that the 2<sup>nd</sup> respondent is not an 'aggrieved person' as defined under Section 2(a) of the DV Act, and even on the face of Ext.P2 application, there is no domestic relationship between the petitioners and the 2<sup>nd</sup> respondent, and hence, the application under section 12 of the DV Act is not maintainable. The learned counsel further submitted that the institution of the proceedings under the DV Act has an oblique motive and is a fallout of the strained employer-employee relationship and as such, it is nothing but an abuse of the process of law.

7. The DV Act was enacted with the avowed object of protecting women against the violence that occurs within the family and for matters connected therewith. The DV Act, therefore, conceives the scheme of protective measures with the object of protecting women in a domestic relationship. The statement of objects and reasons of the Act record that civil law does not address the phenomenon of domestic violence and, therefore, a law be enacted to provide a remedy in civil law for the protection of women from being victims of domestic violence. Thus, the very objective of the DV Act is to provide remedies to

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the woman who is the victim of domestic violence. The legislature's intention was certainly not to provide a forum and remedy to every aggrieved woman, irrespective of their relationship with the offender or the nature of the grievance. The statutory scheme reveals that the provisions of the DV Act can be invoked only by an aggrieved person, which is defined to mean any woman who is, or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent. Any attempt to bring any other dispute not connected with the domestic violence within the DV Act's ambit would defeat the legislation's very purpose.

8. Section 12 of the DV Act deals with an application to Magistrate. It says that an aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the Act. Thus, a complainant who moves an application under section 12 of the Act must either be a Protection Officer or an aggrieved person. As per section 2(a), a person who is, or has been, in a domestic relationship with the

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respondent alone can be an aggrieved person. In other words, an aggrieved person and abuser shall always be linked through a domestic relationship. A reading of the definition of "domestic relationship" contained in section 2(f) makes it clear that it is a relationship between two persons who live or have lived together in a shared household and are related in any one of four ways - consanguinity, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. The "respondent", as defined in section 2(q), means any adult male person who has been in a 'domestic relationship' with the aggrieved person and against whom the complainant or aggrieved person seeks any relief under this Act. The proviso of this section further clarifies that an aggrieved wife or a female member living in a relationship in the nature of a marriage can also file a complaint against a relative of the husband or the male partner, so the respondent requires to be in a domestic relationship with the complainant - wife or any female member alleging domestic violence.

9. The existence of a domestic relationship between the complainant and the respondent is the *sine qua non* for seeking

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relief under the DV Act. The complainant should be a woman who is, or has been, in a domestic relationship with the respondent against whom there is an allegation of domestic violence. No relief under the DV act can be granted unless a domestic relationship between the complainant and the respondent is established. Domestic relationship, as statutorily defined, presupposes that the respondent and the complainant lived or have lived together in a shared household when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. A "shared household" is defined in section 2(s) as a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or with the respondent. The fact, as stated in Ext.P2 application itself, explicitly discloses that the petitioners are not related either with the 2<sup>nd</sup> respondent or with her husband by consanguinity, marriage or through a relationship in the nature of marriage or adoption, or not even a member of the joint family of the 2<sup>nd</sup> respondent's husband, rather she was an erstwhile employee of the 1<sup>st</sup> petitioner. As stated already, it is vaguely

pleaded in Ext. P2 that the petitioners are the relatives of the husband of the 2<sup>nd</sup> respondent. But, what exactly is the nature of the relationship has not been stated. At the same time, it is pleaded in paragraph 5 that while the 2<sup>nd</sup> respondent was working as an employee in the business establishment of the 1<sup>st</sup> petitioner, they became family friends, and the petitioners used to visit her house and stay there. The definition of 'domestic relationship' speaks of living together in a shared household at any point of time. Staying together occasionally by two family friends who are not related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or as members of a joint family is not sufficient to create a domestic relationship.

10. Even if the averments in Ext.P2 application are accepted at its face value, it is apparent that the petitioners and the 2<sup>nd</sup> respondent were not in a domestic relationship. At no point did the petitioners and the 2<sup>nd</sup> respondent live together in a shared household. Even if it is assumed, as is averred in the application, that the petitioners visited the house of the 2<sup>nd</sup> respondent, had food together, and stayed overnight, by no

stretch of the imagination can it be said that they lived together in a shared household. Hence, it can safely be concluded that there are absolutely no averments in Ext.P2 application to bring it within the purview of the DV Act. The records would suggest several disputes between the petitioners and the 2<sup>nd</sup> respondent. It is clear from the reading of the application that the 2<sup>nd</sup> respondent wanted to convert some financial dispute between her and the 1<sup>st</sup> petitioner that arose out of the employer-employee relationship into a domestic violence complaint. It is nothing but an abuse of the process of law.

11. Unfortunately, the court below, even without ascertaining whether the basic ingredients to attract the provisions of the DV Act are there in Ext. P2 application, simply issued summons to the respondents therein. It also granted an interim protection order under section 23(2). Many petitions are filed before this court invoking section 482 of Cr.P.C. to quash the proceedings before the Magistrate exercising jurisdiction under the DV Act on the ground that those complaints are not sustainable under the DV Act. It is apparent from those petitions that it has become a common practice to convert some other

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dispute into a domestic violence complaint and rope in persons who have not been in a domestic relationship with the complainant as respondents in the applications instituted under the DV Act without any *bona fides* and with oblique motives, on the omnibus and vague allegations. Notice is invariably issued to the respondent in such applications without ascertaining whether the complainant is a woman who is, or has been, in a domestic relationship with the respondent against whom there is an allegation of domestic violence to qualify the status of an 'aggrieved person' as defined under section 2(a).

12. The Apex Court has, on numerous instances, expressed concern over the misuse of section 498A of IPC and the increased tendency of falsely implicating relatives of the husband in matrimonial disputes by way of general omnibus allegations and warned the Courts from proceeding against the relatives and in-laws of the husband when no *prima facie* case is made out against them [See **K. Subba Rao v. The State of Telangana** (2018 KHC 6625), **Preeti Gupta v. State of Jharkhand** (2010 KHC 4571) and **Kahkashan Kausar v. State of Bihar** (2022 (1) KLT OnLine 1177)]. A Single Bench of this

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court in ***Latha P.C and Others v. State of Kerala and Others*** (2020 (5) KHC 428) deprecated the practice of mechanically issuing notice to the respondents named in the application filed under section 12 of the DV Act. It was held that even while taking all endeavours possible to protect the aggrieved persons from domestic violence, the Courts must be extremely cautious and careful to ensure that their powers are not being abused. One of the important steps to be taken towards that direction is to scrutinize the applications meticulously and satisfy that a case of domestic violence as defined in the Act is made out against all the respondents and no one is arrayed as a party to the proceedings on omnibus and vague allegations, so that the Court can refrain from issuing notice to them, it was observed. The Full Bench of the Madras High Court recently in ***Arul Daniel and Others v. Suganya and Others*** [2022 LiveLaw (Mad) 467] has held that it is not necessary to issue notice to all the parties arrayed as respondents in an application under section 12 of the DV Act and the Magistrate must set out reasons to issue notice to the third parties to the matrimonial relationship who have been impleaded as the respondents.

13. When the allegations made in the application filed under section 12 of the DV Act do not disclose the existence of a domestic relationship between the complainant and the respondent/s or the occurrence of domestic violence, the Magistrate has no jurisdiction to receive the application on file and to issue summons to the respondent/s. On receipt of the application filed under section 12, the Magistrate cannot casually and mechanically issue summons to the respondent/s without applying his mind as to whether the complainant before him is an aggrieved person and the pleading in the complaint discloses domestic relationship between the complainant and the respondent/s. The Magistrate should certainly scrutinize the allegations in the application with great care and caution to satisfy himself that it falls within the ambit of the DV Act lest it might become a tool of harassment at the hands of the complainant to obtain reliefs to which she is not entitled to. If the application does not fall within the ambit of the DV Act, necessarily, it must be rejected at the threshold. Only if the application discloses the existence of a domestic relationship between the complainant and the respondent/s and the

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occurrence of domestic violence, summons need be issued to the respondent/s. As stated already, if the application which is not maintainable under the DV Act is entertained and the summons is issued to the respondent/s, the very purpose of the legislation will be defeated.

In the light of the above findings, Ext.P2 application cannot be sustained. Even though respondents 4 to 6 in Ext. P2 are not before me, the proceedings against them can also be quashed since Ext.P2 itself is found to be not maintainable under section 12 of the DV Act. Accordingly, Ext.P2 application hereby stands quashed. The Writ Petition is, accordingly, allowed. The Registry is directed to forward a copy of this judgment to all the Magistrates in the State.

Sd/-

**DR. KAUSER EDAPPAGATH**  
**JUDGE**

**APPENDIX OF WP(C) 23803/2021**

PETITIONER'S EXHIBITS

- Exhibit P1                   THE TRUE COPY OF CMP NO. 1077/2021 FILED BY THE 1ST RESPONDENT AGAINST THE 2ND RESPONDENT UNDER N.I.ACT, BEFORE JFMC.ADOOR.
- Exhibit P2                   THE TRUE COPY OF THE COMPLAINT IN M.C. (DV) NO.70/2021 BEFORE THE JFMC, ADOOR.
- Exhibit P3                   THE TRUE COPY OF THE INTERIM APPLICATION CRL.M.P NO. 1298/2021 IN M.C.(DV) NO.70/2021 BEFORE THE JFMC, ADOOR.
- Exhibit P4                   THE TRUE COPY OF THE INTERIM ORDER DATED 25.08.2021 IN CRL.M.P NO. 1298/2021 IN M.C. (DV) NO. 70/2021 BEFORE THE JFMC, ADOOR.