

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl MC No. 969 of 2007()

1. AHAMMED,S/O.LATE KUNHABDULLA,AGED 60
2. MOITHU,S/O.LATE KUNHABDULLA,AGED 50

... Petitioners

Vs

1. LAILA,D/O.ASSAINAR,AGED 28 YEARS,
2. STATE OF KERALA REPRESENTED BY PUBLIC

... Respondents

For Petitioner :SRI.P.P.RAMACHANDRAN

For Respondent : No Appearance

The Honble MR. Justice R.BASANT

Dated :27/03/2007

O R D E R

R.BASANT, J.

Crl.M.C.No.969 of 2007

Dated this the 27th day of March 2007

O R D E R

The petitioners are brothers and the first respondent is said to be the wife of their brother. The first respondent filed an application under Section 12 of the Protection of Women from Domestic Violence Act before the learned Magistrate. The learned Magistrate received the said petition and ordered notice to the petitioners herein. The petitioners have now entered appearance before the learned Magistrate. Proceedings before the learned Magistrate are going on. It is at that stage, the petitioners have come before this court with a prayer to invoke the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C to quash the proceedings under the Domestic Violence Act.

This judgement was collected from Judis and / or other websites of Govt. of India, or other public websites and posted here by Vinayak. All rights with original website owners. This version is posted to spread awareness of India laws.

Vinayak is a member of SIF - Save Indian Family Foundation. SIF is committed to fighting FALSE dowry cases and elder abuse. SIF supports gender equality and a fair treatment of law abiding Indian men. Should you find the dictum in this judgement or the judgement itself repealed or amended or would like to make improvements or comments, please write to e _ vinayak @ yahoo . com (please remove spaces)

2. What is the ground? The learned counsel for the petitioners submits that the petitioners apprehend that the learned Magistrate may pass interim order under Section 23 or final order under Section 18 of the Domestic Violence Act which may be sought to be executed by initiation of steps for prosecution under Section 32 of the Act. This would jeopardise the position of the petitioners. The learned counsel for the petitioners raises the further objection that the procedural requirements of rule 6 has not been complied with and proper application in the prescribed formate has not been filed. The learned counsel further raises a contention that the learned Magistrate has secured an ex parte report of the Commissioner deputed by the court. This procedure is unknown to law and in these circumstances the interests of justice would fail if the learned Magistrate were permitted to proceed with the matter and pass orders.

3. I do not find any substance in the grievance raised. It is for the petitioners to appear before the learned Magistrate and raise all their objections before the learned Magistrate. They can raise all objections including the objections that are referred to above that the procedural formalities have not been complied with and that no reliance should be placed on the ex parte report of the Commissioner. I have no reason to assume that the learned Magistrate would not consider all the objections of the petitioners and pass appropriate and correct orders whether interim order under Section 23 or final order under Section 18 of the Domestic Violence Act. At the moment and with the available inputs, I find no reason to invoke the extraordinary inherent jurisdiction available to this court under Section 482 Cr.P.C.

4. This Criminal Miscellaneous Case is, in these circumstances, dismissed but I may hasten to observe that the learned Magistrate must consider all objections raised by the petitioners and pass appropriate orders - whether under Section 23 or under Section 18 of the Domestic Violence Act. Copy of such order must be furnished to the petitioner on the date of pronouncement of the order itself, as directed under Section 24 of the Domestic Violence Act to enable him to seek remedy, if necessary before the Appellate Court under Section 29.

(R.BASANT, JUDGE)

jsr

This judgement was collected from Judis and / or other websites of Govt. of India, or other public websites and posted here by Vinayak. All rights with original website owners. This version is posted to spread awareness of India laws.

Vinayak is a member of SIF - Save Indian Family Foundation. SIF is committed to fighting FALSE dowry cases and elder abuse. SIF supports gender equality and a fair treatment of law abiding Indian men. Should you find the dictum in this judgement or the judgement itself repealed or amended or would like to make improvements or comments, please write to e _ vinayak @ yahoo . com (please remove spaces)