2025:KER:33830

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

MONDAY, THE 19TH DAY OF MAY 2025 / 29TH VAISAKHA, 1947

CRL.REV.PET NO. 1197 OF 2023

AGAINST THE ORDER/JUDGMENT DATED 31.07.2023 IN MC NO.43 OF 2022 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O),ERNAKULAM ARISING OUT OF THE ORDER/JUDGMENT DATED 18.10.2023 IN Crl.A NO.286 OF 2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT - VIII, ERNAKULAM / IV ADDITIONAL MACT, ERNAKULAM

REVISION PETITIONER/RESPONDENT/PETITIONER/AGGRIEVED PERSON:

OMANA THOMAS
AGED 84 YEARS
W/O. LATE K.J THOMAS, 9 A, MATHER DOVER COURT,
SREEKANDATH ROAD, RAVIPURAM, KOCHI, PIN - 682016

BY ADVS.
MANU ROY
A.K.NESLIN
S.SREEKUMAR (SR.)(S-571)

RESPONDENTS/APPELLANT/RESPONDENTS:

1 AJITH PRAKASH
AGED 64 YEARS
S/O. LATE K.J THOMAS, PRAKASH BHAVAN, VATTAKKAT LANE,
AZAD ROAD, KALOOR, KOCHI, PIN - 682017

2 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031



**BY ADVS.**
**CP Udayabhanu**
**NAVANEETH.N.NATH(K/1002/2016)**
**RASSAL JANARDHANAN A.(K/000960/2018)**
**ABHISHEK M. KUNNATHU(K/000637/2020)**
**BOBAN PALAT(B-234)**
**P.R.AJAY(K/001102/2016)**
**P.U.PRATHEESH KUMAR(K/304/2016)**
**K.U.SWAPNIL(K/001328/2023)**
**M.RAMESH CHANDER (SR.)(R-284)**

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 19.05.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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**"C.R."**

**O R D E R**

*Dated this the 19th day of May, 2025*

Under challenge in this Revision Petition is the judgment of the Additional Sessions Court – VIII, Ernakulam, in Crl.Appeal No.286/2023, which appeal was carried from the judgment in M.C.No.43/2022, of the Additional Chief Judicial Magistrate's Court (E.O), Ernakulam, a proceeding initiated under the provisions of the Protection of Women from Domestic Violence Act, 2005 ('D.V. Act', for short). The petitioner in the M.C, a woman aged 84 years, sought relief against her son in terms of Section 18 and 19 of the D.V. Act. Finding domestic violence, the learned Additional Chief Judicial Magistrate granted reliefs, both under Sections 18 and 19, including the relief compelling the respondent/son from removing himself from the shared household, within a period of two weeks. However, in Appeal, all the reliefs, except the one under Section 19(1)(b) - which mandated the respondent/son from removing himself from the shared household - was confirmed. As

regards that relief, the appellate court, in the impugned judgment, found that the relief under Section 19(1)(b) of the D.V. Act cannot be resorted to by the petitioner (revision petitioner herein) as a short cut to get the respondent evicted from the shared household, especially when a civil suit for the same relief of eviction is pending consideration before a competent civil court. The first appellate court also frowned upon the evidence adduced by the revision petitioner through her daughter/power of attorney (both of whom were the plaintiffs in the civil suit) for the reason that the power holder had no personal knowledge of the facts involved in the case. Accordingly, relief under Section 19(1)(b) of the D.V. Act is refused, while the relief under Section 18(a) and (b), as also, under Section 19(1)(a) were confirmed.

**2.** Heard **Sri.S.Sreekumar**, learned Senior Counsel duly instructed by **Adv.Manu Roy**, on behalf of the revision petitioner; and **Sri.Ramesh Chander**, learned Senior Counsel,

duly instructed by **Adv.C.P.Udayabhanu**, on behalf of the respondent. Perused the records.

**3.** Learned Senior Counsel for the revision petitioner would submit that the appellate court grievously erred in refusing the relief under Section 19(1)(b), despite finding the requirements of (i) shared household and (ii) domestic violence committed therein in favour of the revision petitioner. Learned Senior Counsel pointed out that both the premises creased out to refuse relief under Section 19(1)(b) are erroneous. Insofar as the power of attorney is concerned, it is the submission of the learned Senior that the power holder is not a stranger, but the daughter herself of the executant of the power of attorney, wherefore, the contention that the power holder had no direct knowledge about the domestic incidents/violence, is bereft of any *bonafides*. Learned Senior Counsel would hasten to add that when relief is liable to be granted on the basis of documentary evidence adduced, the contention of the power of attorney holder lacking personal knowledge

of the facts should not have weighed much with the learned Additional Sessions Judge, more so when the petitioner is an 84 years old woman, who had suffered domestic violence at the hands of her own son. The second finding of the appellate court that, on granting relief under Section 19(1)(b), the civil suit will become infructuous, is completely misconceived, according to the learned Senior Counsel. The parameters for grant of reliefs in a civil suit are completely different from those for granting reliefs under the D.V. Act. In support of his contention, learned Senior Counsel would rely upon a judgment of the Hon'ble Supreme Court in ***Sathish Chander Ahuja v. Sneha Ahuja [2020(5) KHC 496 (SC)]***. On such premise, learned Senior would seek interference by this Court in the instant revision, so as to restore the relief under Section 19(1)(b) of the D.V. Act.

**4.** Learned Senior Counsel for the respondent would first remind this Court of its limited jurisdiction in a revision to interfere with the impugned judgment of the appellate

court. Learned Senior Counsel would submit that the proceedings under the D.V. Act was resorted to only as a ruse to evict the respondent from the building, after the plaintiffs in the suit became unsuccessful to secure an interim order to that effect. Learned Senior Counsel would contend that the mother was made a tool by her daughter by name Anitha Prakash, who is claiming title to the subject property/shared household on the strength of a settlement deed, which deed also contemplates a life interest in favour of the mother/revision petitioner. The incidents of domestic violences are all incorrect and alleged only to create a cause of action for a proceeding under the D.V. Act. Secondly, learned Senior would submit that the evidence adduced by the said Anitha Prakash in her capacity as the power holder of the revision petitioner, cannot be taken stock of to grant any relief under the D.V. Act, for, she has no direct and personal knowledge in respect of the incidents allegedly constituting domestic violence. The power of attorney holder is residing at Qatar and the power of attorney was executed immediately before evidence was

adduced. In respect of the incidents, which allegedly took place in the shared household at Ernakulam, the power holder has no direct knowledge. Therefore, as per the settled law, the power of attorney holder - though can institute a legal proceeding - cannot depose on behalf of the principal, except in respect of matters witnessed by the power holder and thus having direct knowledge over the same. In this regard, learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court in ***Janki Vashdeo Bhojwani and Others v. Indusind Bank Ltd. and Others*** [AIR 2005 SC 439], ***A.C.Narayanan v. State of Maharashtra and another*** [2014(11) SCC 790], ***Manisha Mahendra Gala and Others v. Shalini Bhagwan Avatramani and Others*** [AIR 2024 SC 1947] and ***Mohinder Kaur v. Sant Paul Singh*** [AIR 2019 SC 4780]. Learned Senior Counsel would add that the revision petitioner/mother has no serious inconvenience in appearing before the court, as disclosed by her conduct in giving evidence before the criminal court in the criminal case filed against the respondent herein, besides appearing in person for mediation. Even if it is assumed that she has

some genuine inconvenience, a commission could have been taken, which is also not done. According to the learned Senior, the revision petitioner/mother was purposefully kept away from the proceedings, since Anitha Prakash, her daughter, was sure that the mother did not want to give evidence against her son/respondent, who will be thrown to street, if the relief sought for is granted. Learned Senior Counsel then submitted that the criminal case filed against the respondent on a complaint preferred by the daughter of the said Anitha Prakash ended in an acquittal on 23.05.2024, in which case the mother/revision petitioner gave evidence before the court on 15.11.2023. On law, learned Senior would propound the distinction between a relief under Section 18 and the one under Section 19. In the case of a protection order under Section 18, the Magistrate need only be '*prima facie*' satisfied that domestic violence has been taken place; or is likely to take place. Whereas, for the purpose of a residence order under Section 19, the language employed is 'satisfied' – not '*prima facie*', but fully – that domestic violence has

taken place. Thus, according to the learned Senior Counsel, a relief under Section 19 is harsher than the relief under Section 18, which explains the mandate of the learned Magistrate being satisfied - in contradistinction to the requirement of being *prima facie* satisfied for relief under Section 18 – to grant a relief under Section 19. The evidence adduced in the instant facts would not meet the above-said requirement to grant a relief under Section 19, is the submission made. Learned Senior Counsel would elaborate that a relief under Section 19 will not automatically follow grant of relief under Section 18. Learned Senior would finally submit that in the proof affidavit, there is no claim that the power holder has direct knowledge of the facts stated therein, which obviates the necessity of a cross examination in that direction.

**5.** In reply, learned Senior Counsel for the revision petitioner would submit that the evidence of the power holder is accepted by the first court as well as the

appellate court to grant reliefs under Section 18 and 19, wherefore, no legal lacuna can be fastened to such evidence by the power holder, only for the purpose of grant of relief under Section 19(1)(b), especially when relief under Section 19(1) (a) has been confirmed by the appellate court. Relying on Section 12(1) of the D.V. Act, it was pointed out that an application can be preferred either by the aggrieved person or by the protection officer or by any other person on behalf of the aggrieved person. Again, the term 'domestic violence' is defined under Section 2(g), read with Section 3, with the widest amplitude. Even an activity which tends to harm or injure or endanger the health, safety, life, limb or well being of the aggrieved person will fall within the definition of domestic violence. Thus, based on the above referred provision, it is the submission of the learned Senior Counsel that evidence has to be appreciated accordingly, keeping in mind the purpose of the beneficial piece of legislation. Learned Counsel then referred to Section 36 of the Act, to point out that the provisions of the D.V. Act shall be in

addition to, and not in derogation of, the provisions of any other law, wherefore, parallel proceedings in the civil court, as also, before the Magistrate Court under the D.V. Act, is quite permissible and conceivable. It was emphasised by the learned Senior that, when PW1 was examined on behalf of the principal on the strength of the power of attorney, there was not even a suggestion that the power holder has no personal knowledge of the facts stated in the proof affidavit. My attention was also invited to the opening paragraph of the proof affidavit, wherein the deponent would state that she knows the facts of the case, despite which there is no cross examination in that aspect. It was pointed out that the application under the D.V. Act was preferred by the mother herself. The factum of domestic violence is substantiated by Ext.P5 F.I.R. and Ext.P6 final report. Once the commission of domestic violence is established as above against a woman aged 84 years, a court of law should lean in favour of affording reliefs to the aggrieved person, rather than refusing it on technical grounds. It is the final submission of the learned Senior

that 'satisfaction' for the purpose of Section 19 cannot be split up and segregated as between the reliefs under Section 19(1)(a) and the one under Section 19(1)(b).

**6.** Having heard the learned Senior Counsel appearing for the respective parties, this Court will now address the contentions raised. The attack against the finding of the learned Additional Sessions Judge that grant of relief under Section 19(1)(b) of the D.V. Act will render the civil suit infructuous deserves considerable merit. The findings of the learned Additional Judge cannot be sustained; nor could the refusal to grant relief under Section 19(1)(b) on that premise be sustained. It is important to point out that the parameters of consideration of the civil suit and the application under the D.V. Act are quite different altogether. In the civil suit, the relief of mandatory injunction is sought for based on the title espoused by the plaintiff therein, who is Anitha Prakash (the present Power of Attorney holder of the revision petitioner). The title so espoused is resisted by

the respondent herein in that suit on the strength of his possession, coupled with other claims. Whereas, a relief under the D.V. Act, including the one under Section 19 of the Act, would essentially depend upon establishing the fact that the aggrieved person is a women, who has been subjected to any act of 'domestic violence' by the respondent and that there was a 'domestic relationship' between the aggrieved person and the respondent. If the Magistrate is satisfied of the above referred parameters, a relief under Section 19 should follow based on the facts and circumstances of the case. Therefore, it would be grossly illegal to conclude that grant of a relief under 19(1)(b) so as to remove the respondent from the shared household would render the suit for mandatory injunction infructuous. At the cost of repetition, it may have to be reiterated that the purpose of such relief under Section 19(1)(b) to remove the respondent himself from the shared household is only to ensure that the aggrieved person/woman is not subjected to any further domestic violence. It is preventive in nature. The reliefs under Section 19 also

secures the right of residence of the aggrieved person in the shared household. In both the situations, the title or other legal interest of the respondent in the shared household is of little significance. Instead, what is significant is the right of residence of the aggrieved person in the shared household in terms of the D. V. Act and the protection of that right by shielding her from any act of domestic violence. In this regard, it is relevant to note the enabling provision under Section 26 of the D.V. Act, wherein, it is provided that the reliefs under Sections 18, 19, 20, 21 and 22 of the D.V. Act may also be sought in any legal proceeding before a civil court, a family court or a criminal court. By virtue of Section 26(2), such relief can be sought for in addition to and along with any other reliefs sought for by the aggrieved person in such suit or legal proceeding before a civil or criminal court. However, a perusal of the plaint in the instant suit would not indicate that the plaintiffs therein have not sought for any reliefs in terms of the D.V. Act in that suit. Section 36 of the D.V. Act stipulates that the

provisions of the Act shall be in addition to - and not in derogation of - the provisions of any other law for the time being in force. Therefore, the finding of the Additional Sessions Court that the suit become infructuous upon grant of relief under Section 19(1)(b) cannot be sustained, and the same is hereby set aside.

**7.** Now, the issue boils down to the question whether the evidence adduced is sufficient for the Magistrate to 'satisfy' that domestic violence has taken place, so as to grant the relief under Section 19 of the D.V. Act. The essential evidence adduced in this regard is through the Power of Attorney holder. The respondent/son filed a counter affidavit with a contention that the proceedings under the D.V. Act is a calculated one, seeking a parallel remedy to an unsuccessful civil litigation. The claims were also alleged to be concocted and contrary to the truth, besides being malicious, frivolous and invented for the purpose of creating grounds to agitate the pending civil case filed by Anitha Prakash (Power holder and PW1 herein).

It could thus be seen that the respondent was alleging that the litigation in terms of the D.V. Act was only a camouflage, where the real person behind the same is Anitha Prakash, by making her mother a tool against the respondent/son. In the light of such a contention, this Court is of the opinion that, it was incumbent upon the revision petitioner herein to adduce proper and sufficient evidence to establish that her grievance was genuine and bonafide. In the instant case, the solitary oral evidence available on behalf of the revision petitioner herein (petitioner in the D.V. proceedings) is the one adduced through Anitha Prakash, the Power of Attorney holder of the revision petitioner/petitioner herein. In this regard, it is relevant to note that, apart from the general allegations of harassment by the respondent/son, two specific instances are narrated in the complaint. The first one took place in the year 2019, when the petitioner and her grand daughter Pooja (daughter of Anitha Prakash) went to the shared household, on which occasion, it is alleged that both were attacked and injured by the respondent. The

second instance is when the petitioner went to the shared household on 17.10.2022 and asked the respondent to remove himself from the household, so as to enable the petitioner live there peacefully. The petitioner was abused by the respondent on that occasion also, is the allegation raised. In both these occasions, the Power of Attorney holder Anitha Prakash, was absent. She has no direct knowledge in respect of the incident, apart from the hearsay spoken to by the revision petitioner/petitioner herein, or for that matter, by her daughter Pooja in respect of the first incident. It could thus safely be concluded that the Power of Attorney holder was lacking direct and first-hand knowledge in respect of the said two incidents, which were espoused by revision petitioner/petitioner in the complaint, so as to allege domestic violence in the hands of the respondent/son. If that be so, the evidence adduced by Anitha Prakash, the Power of Attorney holder, as PW1 is squarely in the teeth of the judgment of the Hon'ble Supreme Court relied upon by the learned Senior Counsel for the respondent/son in ***Janki Vashdeo Bhojwani*** *(supra)*.

A three Judges Bench of the Hon'ble Supreme Court held that a Power of Attorney holder cannot depose for the principal in respect of a matter over which the principal alone has personal knowledge and in respect of which the principal is entitled to be cross-examined. A contrary view taken by the Bombay High Court in ***Humberto Luis and Another v. Floriano Armando Luis and Another*** [2000 2 Bom CR 754] was specifically overruled by the Supreme Court. Thus the legal position is clear that although a Power of Attorney holder of a party can appear as a witness in his personal capacity and he can state those facts over which he has personal knowledge, he cannot appear as a witness on behalf of that party, in the capacity of that party, to depose about matters over which the power holder has no direct knowledge. This Court is therefore of the opinion that the evidence tendered by PW1 as Power holder of the revision petitioner cannot be taken stock of to grant reliefs. In this regard, it is also noticed that, in the proof affidavit filed by the Power of Attorney holder, the averments in the complaint, as such, is seen cut and

pasted, even without bothering to put the same *in first person* of the deponent. Therefore, the crucial acts which constitute domestic violence have been spoken to, as though the revision petitioner is adducing evidence. That apart, as found by the first appellate court, the answers given by the power holder is evasive even in respect of elementary matters. This Court finds that the right of the respondent to cross-examine the revision petitioner in respect of matters within her exclusive knowledge is seriously jeopardized by permitting the Power of Attorney holder to depose about such matters. Once it is established beyond the pale of any doubt that the crux of the matters spoken on behalf of the revision petitioner in evidence are matters over which the power holder has no personal knowledge, then, the absence of a cross-examination as regards such knowledge would not loom large.

**8.** It is not as if this Court is not aware of the telling documentary evidence available against the respondent by virtue of Ext.P5 F.I.R and Ext.P6 Final Report. The crime

registered in respect of the domestic violence would take the revision petitioner's case a long way, I am also aware of the settled legal proposition that when a technical and jejune ground is pitted against substantial justice, the latter should prevail, especially when an 84 year old woman has approached the court of law seeking reliefs to prevent acts of domestic violence by none other than her son. However, the salutary aspect as to whether the revision petitioner/mother herself is the aggrieved person – in contrast to the respondent's allegation that she has been set in motion by PW1 Anitha Prakash with oblique motive – and that her grievance is genuine and *bonafide* has to be satisfied to grant a relief under Section 19. I am therefore of the opinion that the revision petitioner/mother has to be examined, thereby assuring an opportunity of cross-examination to the respondent/son. After examining the revision petitioner, if it is found that her evidence is creditworthy, needless to say that the relief under Section 19(1)(b) granted by the Magistrate will have to be sustained by the appellate court.

**9.** In the circumstances, Criminal Appeal No.286/2023 is remanded to the Additional Sessions Court-VIII. In view of the fact that the M.C is of the year 2022, this Court directs that the solitary evidence of the revision petitioner/mother has to be recorded by the Appellate Court itself, and a fresh decision in the light of such evidence and the findings in this Order has to be taken by the Appellate Court, expeditiously, at any rate, within a period of three months from the date of receipt of a copy of this Order. Until such time, the reliefs granted by the Appellate Court will prevail. It is clarified that the remand hereby made is a limited one to record the evidence of the revision petitioner/mother, that too only for the purpose of enabling re-appreciation of the relief sought for under Section 19(1)(b) in the light of the evidence to be adduced and the findings in this Order. In holding so, this Court notice that there is no challenge, whatsoever, to the judgment of the appellate court by the respondent/son.

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Criminal Revision Petition is disposed of, as above.

**Sd/-**
**C. JAYACHANDRAN**
**JUDGE**

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