

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 26TH DAY OF NOVEMBER 2021 / 5TH AGRAHAYANA, 1943

WP(C) NO. 20219 OF 2021

PETITIONER:

VISHNU R., AGED 31 YEARS
S/O. RAMAKRISHNA KURUP, UTHRADAM, (VELIYIL VEEDU),
MUZHANGODI, THODIYOOR P. O., KARUNAGAPALLY, KOLLAM -
690 523.

BY ADVS.

K.P.PRADEEP

HAREESH M.R.

RASMI NAIR T.

T.T.BIJU

T.THASMI

M.J.ANOOPA

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF WOMEN AND
CHILD DEVELOPMENT, GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
- 2 CHIEF DOWRY PROHIBITION OFFICER
DIRECTOR OF WOMEN AND CHILD DEVELOPMENT, POOJAPPURA P.
O., THIRUVANANTHAPURAM - 695 012.
- 3 DISTRICT DOWRY PROHIBITION OFFICER
KOLLAM, DISTRICT WOMEN AND CHILD DEVELOPMENT OFFICE,
CIVIL STATION, KOLLAM - 691013.
- 4 DEEPTHI K. S., AGED 25 YEARS
D/O. SHYLAJA, PILLAVEETIL, PUTHIYAVEEDU, ASHTAMUDI P.
O., VADAKKEKKARAMURI, THRIKKARUVA, KOLLAM - 691 602.

BY ADV K.V.ANIL KUMAR

PP SANGEETHARAJ N.R

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
26.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 26th day of November, 2021

This writ petition has been filed by the petitioner who is the husband of the 4th respondent. The impugned order has been passed by the 3rd respondent/dowry prohibition officer.

2. According to the learned counsel for the petitioner, the petitioner married the 4th respondent on 06.9.2020 at Mangalathukavu Devi Temple, Ashtamudi, Kollam, as per the customs and practices prevailing among Hindu community. After the marriage they are living together as husband and wife at the residence of the petitioner. Their relationship was strained and 4th respondent initiated legal proceedings against the petitioner and ultimately she filed a petition before the nodal officer (Dowry cases), which is produced as Exhibit P1.

3. According to the learned counsel for the petitioner, the 4th respondent's parents and her brother deposited all her ornaments in the bank locker, except daily use jewelery in the name of the 4th respondent and the petitioner at Thodiyoor

Service Co-operative Bank, Edakulangara Branch. Even the key is also in the possession of the 4th respondent alone.

4. Notice was issued to the 4th respondent. He appeared through the counsel. Respondent Nos.1 to 3 appeared through the Public Prosecutor. Public Prosecutor produced Notification No.G.O.(P) No.13/2021/SJD dated 13.7.2021 published as S.R.O. No.520/2021 in Kerala Gazette Extraordinary No.2060 dated 15.7.2021.

5. Heard both sides.

6. According to the learned counsel for the petitioner the 4th respondent, District Dowry Prohibition Officer (in short 4th respondent), will not get jurisdiction to entertain the petition, since even as per the averments in Exhibit P1, the allegation of 4th respondent is that the ornaments which have been given to her for her well being have been kept in the bank locker and it was not yet returned.

7. **Vadhiboyana Venkata Krishna Reddy v. C.Venkata Rumania Reddy and Another 2019 KHC 2305** was relied on wherein it has been held that "Section 6 of the Dowry Prohibition Act, 1961, enables the wife to file a suit for

recovery of the dowry paid, if the person who received the dowry has failed to transfer the property for the benefit of the woman within the prescribed period.” But the Act r/w Kerala Dowry Prohibition (Amendment) Rules 2021 (in short Rules) provides jurisdiction to the 4th respondent in dealing with matters if it is proved that Dowry has been received by any person other than the woman.

8. As per Rule 2 of amended rules for the words, “Regional Dowry Prohibition Officer” in the Kerala Dowry Prohibition Rules 2004, wherever occur is substituted by “District Dowry Prohibition Officer”.

9. It is relevant in this context to quote Section 3 of the Dowry Prohibition Act, 1961, as amended by Act 63 of 1984 (in short the ‘Act’) which reads as follows:

3. Penalty for giving or taking dowry: [1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable [with imprisonment for for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more].

Provided that the Court may, for adequate and special

reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years].

(2) Nothing in sub-section (1) shall apply to, or in relation to-

(a) presents which are given at the time of a marriage to the bride

(without any demand having been made in that behalf).

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom

(without any demand having been made in the behalf)

Provided that such presents are entered in a List maintained in accordance with the rules made under this Act.

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given]

10. So the presents given at the time of marriage to the bride without any demand having made in that behalf and which have been entered in a list maintained in accordance with rules made under this Act will not come within the

purview of Section 3(1) which prohibits giving or taking of dowry. The very averments in Exhibit P1 complaint is that the ornaments given to her for well being has been kept in the locker in the bank under the control of respondents.

11. Rule 6, Dowry Prohibition Rules, 1992, prescribes the functions to be performed by the Regional Dowry Prohibition Officers. Rule 6(viii, ix, xi, xiii, xiv, xv) are relevant in this context to be extracted which reads as follows:

(viii) The Regional Dowry Prohibition Officer shall scrutinize the complaint and if it is found that the nature and the contents of the complaints is such that it is apparently coming within the purview of Section 3 or 4 or 4A or 5 or 6 of the Act, he will immediately conduct an enquiry to collect such evidence from the parties and to the genuineness of the complaint;

(ix) The Regional Dowry Prohibition Officers shall send quarterly reports to the Chief Dowry Prohibition Officer as to the number of complaints received under the Act and the action taken or the nature of settlement of the issue in Form No.II annexed to these rules. The regional Dowry Prohibition Officer shall send such details or reports as may required by Chief Dowry Prohibition Officer or the Government from time to

time.

x x x x x x x x x x

(xi) Every petition shall be enquired into and heard and a finding recorded within a month from the date of its receipt.

x x x x x x x x x x

(xiii) The Regional Dowry Prohibition Officers may utilize the services of District Prohibition Officers or Additional District Prohibition Officers or City Probation Officers of the area for collecting information or conducting enquiries or assisting in any stage of enquiries or proceedings relating to a complaint petition or application under the Dowry Prohibition Act.

(xiv) On receipt of requisition from the regional Dowry Prohibition Officer the Probation Officers shall conduct necessary enquiries collect information and furnish such detail report promptly as requested by him.

(xv) Where any dowry is received by any persons other than the women and a complaints is received in respect of no-transfer of such dowry to the woman who is entitled to it in accordance with Section 6 of the Act, the Regional Dowry Prohibition Officers shall issue directions tot he parties to transfer the same within the stipulated time.

x x x x x x x x x x

12. On going through the above rules, it is clear that on receiving a complaint, the District Dowry Prohibition Officer is

bound to scrutinize the complaint and find whether it would come within the purview of Sections 2, 3, 6 etc. of the Act and conduct an enquiry to collect evidence from the parties about the genuineness of the complaint and upon such enquiry if it is found that dowry is received by a person other than the women, then only powers under the Act can be exercised by the District Dowry Prohibition Officer. If the complaint is received with respect to the non transfer of such dowry to the woman, who is entitled to it as per Section 6 of the Act, the District Dowry Prohibition Officer can issue directions to the parties to transfer the same. Here, from the records produced from the side of the petitioner as well as from the impugned order what could be gathered is that a statement of the petitioner has been obtained. The impugned order would further go to show that the 4th respondent stated at the time of hearing that 55 sovereigns of gold ornaments was given at the time of marriage and a chain was given to the petitioner by the parents of the 4th respondent and that has been agreed by both parties. It is further stated that out of which 5 chains and 9 bangles have been kept in the

Thodiyoor Service Co-operative Bank, Edakulangara Branch in the joint locker. Thereafter, direction was given to return the 5 chains, 9 bangles and also the chain given to the petitioner at the time of marriage. So, no enquiry is conducted as to whether those articles are dowry given to the 4th respondent and no finding that the articles ordered to be released are dowry given to the 4th respondent at the time of marriage is entered into in the impugned order. What is revealed from the impugned order is only that 4th respondent stated that 55 sovereigns of gold ornaments were given at the time of marriage to her and one gold chain was given to the petitioner at the time of marriage and petitioner admitted that during hearing. Order does not reveal that 4th respondent stated that gold was given as dowry by her parents as agreed or there was any such demand from the side of the petitioner for dowry. The 4th respondent will get jurisdiction to pass direction under Rule 6(xv) of the Rules only if it is found that the ornaments directed to be returned to the 4th respondent are dowry received by the petitioner. In the absence of such finding, the Dowry Prohibition Officer

will not get any jurisdiction to give direction under Rule 6(xv). Hence the impugned order passed is not sustainable in law and is hereby quashed.

13. However, at the time of hearing, the learned counsel for the petitioner fairly conceded that his party will co-operate to take and hand over the gold ornaments ie. five chains, nine bangles as well as one chain gifted to the petitioner at the time of marriage to the 4th respondent.

The learned counsel for the 4th respondent also agrees to take the gold ornaments above stated from the locker in the presence of Branch Manager of the Thodiyoor Service Co-operative Bank, Edakulangara Branch. Both parties suggested the date as 10.12.2021 at 11 a.m.

Writ petition allowed accordingly.

Sd/-

**M.R.ANITHA
JUDGE**

SMF

APPENDIX OF WP (C) 20219/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE COMPLAINT DATED
25.06.2021 FILED BY THE 4TH RESPONDENT.
- Exhibit P2 TRUE COPY OF THE NOTICE DATED 03.08.2021
ISSUED BY THE 3RD RESPONDENT TO THE
PETITIONER.
- Exhibit P3 TRUE COPY OF THE REPLY SUBMITTED BY THE
PETITIONER DATED 10.08.2021 BEFORE THE
3RD RESPONDENT.
- Exhibit P4 TRUE COPY OF THE ORDER NO.DDPO/KLM C 01
DATED 18.08.2021 ISSUED BY THE 3RD
RESPONDENT TO THE PETITIONER.
- Exhibit P5 TRUE COPY OF THE DOWRY PROHIBITION ACT,
1961.
- Exhibit P6 TRUE COPY OF THE KERALA DOWRY PROHIBITION
RULES, 2004.
- Exhibit P7 TRUE COPY OF THE FIR DATED 11.02.2021 IN
CRIME NO.151 OF 2021 OF KARUNAGAPALLY
POLICE STATION.
- Exhibit P8 TRUE COPY OF THE DOWRY PROHIBITION
(MAINTENANCE OF LISTS OF PRESENTS TO THE
BRIDE AND BRIDEGROOM) RULES, 1985.

//TRUE COPY//

PA TO JUDGE