

(2011) 05 KL CK 0145**High Court Of Kerala****Case No:** Criminal M.C. No. 1458 of 2011

Sasikumar and Suseela

APPELLANT

Vs

C.K. Kutiamma Pillai, Rasli,

RESPONDENT

Rahmath and State of Kerala

Date of Decision: May 23, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Protection of Women From Domestic Violence Act, 2005 - Section 29

Hon'ble Judges: Thomas P. Joseph, J**Bench:** Single Bench**Advocate:** T.M. Abdul Latheef, for the Appellant; No Appearance, for the Respondent**Judgement**

@JUDGMENTTAG-ORDER

Thomas P. Joseph, J.

Respondents 1 and 2 in C.M.P. No. 1949 of 2011 in M.C. No. 26 of 2011 of the court of learned Judicial First Class Magistrate-I, Kanjirappally are aggrieved by Annexure-A1, order dated May 12, 2011 as per which learned Magistrate has restrained Petitioners from forcibly evicting the first Respondent herein from the "share of household in Ward No. 14 of 477" of Parathodu Panchayat. Learned Counsel submitted that the said order is not in tune with the relief claimed in M.C. No. 26 of 2011. It is pointed out that in the MC proceeding, relief is sought with respect to the building situated on the western side of building No. 14/477 while interim relief is granted with respect to building No. 14/477 itself. It is contended that no such building is in existence and that under cover of the interim order the first Respondent is creating trouble with the assistance of police. According to the learned Counsel allegations made in the M.C are not sufficient to entertain the M.C itself.

2. The interim order, it is not disputed before me is appealable u/s 29 of the Protection of Women from Domestic Violence Act (for short, "the Act"). It is also open to the Petitioners to prefer their objection to C.M.P. No. 1949 of 2011 and request learned Magistrate to dispose of the C.M.P at the earliest. Having regard to the said circumstances I am not inclined to think that this Court will be justified in interfering with the interim order exercising its extra ordinary jurisdiction u/s 482 of the Code of Criminal Procedure.

3. So far as the contention that the first Respondent might create trouble under cover of the interim order with the assistance of police is concerned, it is open to the Petitioners to request learned Magistrate to dispose of C.M.P. No. 1949 of 2011 as early as possible.

Without prejudice to the right of Petitioners to challenge the impugned order as provided u/s 29 of the Act in the appeal and/or prefer their objection to C.M.P. No. 1949 of 2011 as law provides this Criminal Miscellaneous Case is closed. In case any objection is preferred by Petitioners to C.M.P. No. 1949 of 2011 learned Magistrate shall dispose of the C.M.P untrammelled by the view taken in the interim order, as early as possible taking into account the grievance of Petitioners.