



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

TUESDAY, THE 10TH DAY OF MARCH 2026 / 19TH PHALGUNA, 1947

OP(CRL.) NO. 922 OF 2024

CMP 2774/2024 IN MC NO.36 OF 2022 OF JUDICIAL FIRST CLASS

MAGISTRATE COURT, KAKKANAD

PETITIONER(S) /ACCUSED/RESPONDENT

DILEEP K. G
AGED 51 YEARS
S/O. GOPALAN, KOONIPARAMBIL HOUSE, VADACODE PO,
KANGARAPPADY, THRIKKAKARA NORTH VILLAGE, ERNAKULAM PIN.
682 021

BY ADVS.
SRI.K.C.ELDHO
SRI.S.BIJILAL
SMT.ALMAJITHA FATHIMA
SMT.HIMA JOSEPH

RESPONDENTS/COMPLAINANTS/PETITIONERS

- 1 SWAPNA DILEEP
AGED 37 YEARS
W/O. DILEEP K.G., KOONIPARAMBIL HOUSE, VADACODE PO,
KANGARAPPADY, THRIKKAKARA NORTH VILLAGE, ERNAKULAM, PIN -
682021
- 2 ANAGHA DILEEP
AGED 19 YEARS
D/O. DILEEP KG, KOONIPARAMBIL HOUSE, VADACODE PO,
KANGARAPPADY, THRIKKAKARA NORTH VILLAGE, ERNAKULAM, PIN -
682021
- 3 ABHIRAM KD
AGED 13 YEARS
S/O. DILEEP KG, KOONIPARAMBIL HOUSE, VADACODE PO,
KANGARAPPADY, THRIKKAKARA NORTH VILLAGE, ERNAKULAM MINOR
REPRESENTED BY SWAPNA DILEEP MOTHER AND 1ST RESPONDENT,
PIN - 682021

PP. SRI. SANAL.P.RAJ

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 27.2.2026, THE
COURT ON 10.03.2026 DELIVERED THE FOLLOWING:



C.R.

JUDGMENT

Dated : 10th March, 2026

The 1st respondent in M.C.36/2022 on the file of the Judicial First Class Magistrate, Kakkanad, filed this O.P under Article 227 of the Constitution of India challenging Ext.P6 order of the learned Magistrate by which the learned Magistrate ordered to restore the M.C. which was dismissed for default. (For the purpose of convenience, the parties are hereafter referred to as per their rank in the M.C.)

2. The petitioners filed the above M.C. under Section 12 of the Protection of Women from Domestic Violence Act (in short, the D.V.Act). Ext.P1 is the copy of the said petition. As per Ext.P3 order dated 30.09.2024, the learned Magistrate dismissed Ext.P1 on the ground that despite several chances given, the petitioners did not turn up for adducing evidence. The petitioners preferred Ext.P4 application under Order IX Rule 9 CPC praying for restoring the M.C. The respondents filed Ext.P5 objection stating that the Magistrate has no review power. Overruling the objection raised by the respondents, the learned Magistrate allowed Ext.P4, as per Ext.P6 order holding that being a welfare legislation, the proceedings under section 12 of the D.V.Act should be liberally construed. Aggrieved by Ext.P6 order the 1st respondent preferred this O.P.



3. Now the point that arises for consideration is the following:

Whether the Magistrate has got the authority to restore a petition under Section 12 of the Protection of Women from Domestic Violence Act, which was dismissed for default?

4. Though notice was served on the respondents, they did not turn up.

5. Before this court also the contention taken by the learned counsel for the petitioner is that the proceedings under section 12 of the D.V.Act is a criminal proceeding and that the Magistrate has no review power. Therefore, according to the learned counsel for the petitioner, the learned Magistrate was not justified in restoring the M.C which was dismissed for default. The learned counsel has also relied upon the decision of this Court in **Farhan v. State of Kerala, 2024 (6) KLT 75** in support of his argument that the Criminal Courts have no inherent power and in the absence of any such power, a Criminal Court cannot exercise any power of review, modification or recalling its own order.

6. Though sub-section (1) of Section 28 of the D.V.Act stipulates that the proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences



under Section 31 shall be governed by the provisions of Cr.P.C, sub-section (2) thereof permits the Magistrate to lay down its own procedure for disposal of an application under Section 12 or under sub-section (2) of Section 23. Section 28 of the D.V.Act dealing with the procedure to be followed, under Section 12 of the D.V.Act reads as follows :-

28. Procedure

(1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

(2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

7. As per section 26 of the D.V.Act, a relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding before a Civil Court, Family Court or a Criminal Court affecting the aggrieved person and the respondent. Section 26 of the D.V.Act reads as follows :-

26. Relief in other suits and legal proceedings

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil Court, family Court or a criminal Court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such



suit or legal proceeding before a civil or criminal Court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

8. In the decision in **Badshah v. Urmila Badshah Godse and Another**, 2013 KHC 4831, the Apex court held in paragraph 25 as follows:

“While interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon’s Case[11] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction ut res magis valeat quam pereat, in such cases i.e. where alternative constructions are possible the Court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result...”

9. Relying upon the decision in **Badshah** (supra), this court in **Preeju David v. Minor Mebel**, 2017 (4) KLT 1162, held that criminal courts have power to recall the order dismissing a petition filed under Section 125 of Cr.P.C for default. In the above decision this court further held that, the decision of this court in **Balakrishnan v. Rajamma**, 1979 KHC 280 in which



it was held that criminal courts have no inherent powers to recall the order dismissing a petition filed under Section 125 of Cr.P.C for default, is no more good law.

10. In **Karun Prasad & Others v. Keerthana & Another, 2021, SCC OnLine Ker, 15052** (OP(Crl.)295/2021), in a similar set of facts the order of the learned Magistrate restoring the petition filed under section 12 of the D.V.Act which was dismissed for default, was under challenge. This Court relying upon the decisions in **Preeju David** (supra) and **Badshah** (supra) held that restoration of a petition under section 12 of the D.V.Act was within the powers of the Magistrate.

11. With respect to the object of the D.V.Act, in **Karun Prasad** (supra) in paragraph 6 this court held that:

“M.C.184/2020 has been filed under Section 12 of the Act claiming reliefs under Sections 12(1), 18, 19, 20 and 22 of Protection of Woman From Domestic Violence Act, 2005 (in short the Act). Statement of objects and Reasons of the Act would expressly provide that the Act was happened to be promulgated when it was found that the phenomenon of domestic violence which was prevailing widely but remains invisible in public dominion. The criminal law provides a remedy under Section 498A IPC for the redressal of a woman who is subjected to cruelty by the husband and relatives. But the Civil law does not address this phenomenon of domestic violence in its entirety. It was in that context that it was promulgated a law so as to ensure the constitutional guarantee provided under Articles 14, 15 and 21 of the Constitution of India for a



remedy under Civil Law intended to protect woman from Domestic Violence Act to prevent the occurrence of domestic violence in the Society. So the Act provides a civil remedy which is being enforced through a Criminal Court.”

12. In paragraphs 8 and 11 in **Karun Prasad** (supra) this court further held that:-

“ 8. The act is also a benevolent legislation to redress the grievance of hapless woman and children at the hands of the opposite party. The Act itself provides as per Section 26 that any relief available under Sections 18 to 22 may also be sought in any legal proceeding before the Civil Court or a Family Court affecting the aggrieved person and the respondent where such proceeding was initiated before or after the commencement of this Act. Section 26(2) also provides that any relief referred to under sub section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a Civil or criminal court. The only embargo provided by sub-section (3) is that in case any relief has been obtained by the aggrieved person in any proceeding other than the proceeding under the said Act, she shall be bound to inform the Magistrate of the grant of such relief. So the Act itself provides adequate safeguard to seek the relief under Sections 18 to 22 in any civil proceeding in addition to any other relief pending in any other civil or criminal court.”

“11. PWDV Act is also a beneficial legislation and hence a purposive interpretation has to be given so as to achieve the object and to redress the grievance of marginalized society and the purpose of the Act is also to achieve social justice by eradicating menace of domestic violence which is rampant in our society. While dealing with such matters, the Court has to exercise its jurisdiction to advance the justice and curb injustice. In the present case, the impugned order itself would reveal that M.C.184/2020 was not included in the list on 16.12.2020 and 17.2.2021 on which date



there was no representation for the respondent and hence the respondent could not have known the posting date of the case to 25.2.2021. So taking those aspects into account, the learned Magistrate find it just to restore the case back to file for adjudication on merits. I do not find any illegality or irregularity or illegal exercise of jurisdiction by the Magistrate warranting interference at the instance of this Court.”

13. As held by this Court in the decisions in **Karun Prasad** and **Preeju David** (supra) and the decision of the Apex court in **Badshah** (supra) it is to be held that proceedings under the D.V.Act are civil in nature and form part of a beneficial legislation. While interpreting the provisions of such a beneficial legislation, the courts must adopt purposive interpretation to ensure the effective protection under the D.V.Act. Therefore, it is to be held that the Magistrate possesses implied power to restore a petition filed under the D.V. Act which was dismissed for default, to advance justice. Therefore, section 362 Cr.P.C cannot be a bar for exercising such power in the process of ensuring protection to the aggrieved person.

14. In the decision in **Maria Mercy Suzana Fernandes vs. Francisco Monte Piedade Cruz and Ors.**, MANU/MH/0687/2018, the Bombay High Court also held that a Magistrate who has the power to dismiss a case for default inherently has the power to restore it upon sufficient cause being shown and it would be unjust to hold otherwise.

15. In the decision in **Jaydipsinh Prabhatsinh Jhala and Ors. Vs.**



State of Gujarat and Ors., MANU/GJ/0850/2009, the Gujarat High Court while holding that a wife can array even female relatives of the husband as respondents under the proviso to Section 2(q) of the D.V.Act, held that, proceedings under the D.V.Act are predominantly civil in nature and therefore, the Magistrate is not strictly bound by rigid criminal procedure and may adopt flexible procedure in the interest of justice.

16. In the light of the above discussions, it can be seen that for ensuring the effective protection under the D.V.Act it is to be held that a Magistrate who has power to dismiss a case for default inherently has the power to restore it, upon sufficient cause being shown. Therefore, I do not find any irregularity or illegality in Ext.P6 order passed by the learned Magistrate restoring the MC which was dismissed for default and as such, this O.P.(Crl) is liable to be dismissed.

In the result, this O.P.(Crl) is dismissed.

Sd/- C.Pratheep Kumar, Judge



APPENDIX OF OP(CRL.) NO. 922 OF 2024

PETITIONER EXHIBITS

- Exhibit P1 A TRUE COPY OF MC NO. 36/2022 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- Exhibit P2 A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN MC NO. 36/2022 BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- Exhibit P3 A TRUE COPY OF THE ORDER DATED 30/9/2024 IN MC NO. 36/2022 IS FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- Exhibit P4 A TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT AS CMP NO. 2774/2024 IN MC NO. 36/2022 IS FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- Exhibit P5 . A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN CMP NO. 2774/2024 IN MC NO. 36/2022 IS FILED BEFORE JUDICIAL FIRST CLASS MAGISTRATE COURT, KAKKANAD
- Exhibit P6 THE CERTIFIED COPY OF THE ORDER IN CMP NO. 2774/2024 IN MC NO. 36/2022 DATED 27/11/2024