

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS,
SPECIAL MOBILE COURT, ONGOLE.

Present :: **Sri Kumar Vivek**,
Judl. Magistrate of I Class,
Special Mobile Court, Ongole.

Monday, this the 6th day of February, 2017

D.V.C.No. 2 of 2015

Between:

Barakam Rama Devi W/o Venu Babu, 27 years,
D/o Darla Venkateswarlu,
R/o Kanduluru village, Tangutur mandal.

....Petitioner

and

1. Barakam Venu Babu S/o Venkateswarlu, 30 years,
R/o B.Nidamanuru village, N.G.Padu mandal.
2. Barakam Venkateswarlu S/o Venkata Subbaiah, 50 years,
R/o B.Nidamanuru village, N.G.Padu mandal.
3. Barakam Koteswaramma W/o Venkateswarlu, 45 years,
R/o B.Nidamanuru village, N.G.Padu mandal.
4. Nannam Subba Rayudu S/o Kotaiah, 65 years,
R/o Balaram colony, Ongole.
5. Nannam Koteswara Rao S/o Subba Rayudu, 38 years,
R/o Balaram colony, Ongole.
6. Nannam Sreenu S/o Subba Rayudu, 35 years,
R/o B.Nidamanuru village, N.G.Padu mandal.

....Respondents

This case coming on 01-02-2017 for final hearing before me in the presence of Sri K.Siva Nageswara Rao, Advocate for petitioner, and of Sri R.Kesava Rao, Advocate for respondents having stood over for consideration till this day, this Court delivered the following:

// O R D E R //

1. This is petition filed under section 12 of the Protection of Women from Domestic Violence Act, 2005 seeking reliefs of protection order, residence order, maintenance order @ Rs.10,000/-, compensation order for Rs.5,00,000/-, and return of dowry of Rs.50,000/- and gold ornaments weighing 2 sovereigns, against the respondents.

2. The factual matrix of the case of the petitioner as set out in the petition in brief are that the marriage of the petitioner with the respondent no.1 was performed on 30-06-2005 at the house of respondent no.1 and in the marriage the parents of the petitioner have given Rs.50,000/- cash and gold ornaments weighing 2 sovereigns to the

respondent no.1 and the members of his family as dowry apart from giving household utensils worth Rs.25,000/-, that after few days of the marriage all the respondents have started to subject the petitioner to domestic violence by demanding additional dowry of Rs.1,00,000/- from her and the petitioner informed the same to her parents who advised her to adjust with the respondents, that on 03-11-2009 the petitioner is blessed with a son and when her son was 8 month old then she came to the house of the respondent and the respondent no.1 went to Mysore for purchasing tobacco leaving her and her son at his house, that after 6 months when the respondent no.1 returned house then the other respondents have instigated the respondent no.1 to beat the petitioner and torture her both physically and mentally, that on 10-10-2014 the respondent no.1 along with his parents attempted to kill the petitioner by pouring kerosene oil on the petitioner and setting fire to her, but the neighbours of the respondent have rescued her from the hands of the respondents on hearing her hue and cries, that the parents of the petitioner held mediation through one Darla Narayana, one Darla Ramjan, and one Darla Krishna, and during the mediation the respondents asserted that they will take back the petitioner only on fulfillment of their demand of additional dowry, that the parents of the petitioner could not fulfill the demand of additional dowry of the respondents and due to that reason the petitioner is compelled to reside along with her parents at their house, that the respondent no.1 has filed divorce petition against her that has been contested by her, that the respondent no.1 had neglected to maintain the petitioner and the parents of the petitioner are not having sufficient means to maintain her, that the respondent no.1 is an employee in the tobacco company and receiving monthly salary of Rs.20,000/-, that the respondent no.1 is having agricultural lands, therefore, the present petition has been filed.

3. The respondent no.1 has filed counter and denied the material averments of the petition, but admitted that his marriage with the

petitioner was performed on 30-06-2005 at the house of the respondent no.1, and submitted that the petitioner has joined the company of the respondent no.1 after the birth of their son, that the respondent no.1 had previously worked in a tobacco company at Mysore and during the absence of the respondent no.1 from the village the petitioner has developed extra marital affair with Udaragudi Sarath Babu, resident of Nidamanur, and when the respondent no.1 questioned the petitioner about it then the petitioner developed grudge against him and other members of his family and for that reason the petitioner had left the company of the respondent no.1, that the respondent no.1 is not doing any work and he is depending upon his parents, friends and relatives for his livelihood, that the respondent no.1 has filed divorce petition against the petitioner as the petitioner has been living in adultery with said Sarath Babu, that the petitioner has filed the present petition only to harass the respondents, therefore, prayed this Court to dismiss the petition.

4. The respondent no.2 to 5 have filed adoption memo before this Court adopting the counter of the respondent no.1.

5. On the side of the petitioner the petitioner examined herself as PW1, and got examined PW2 and PW3 and got exhibited Ex.P1 during the course of cross-examination of the respondent no.1.

6. On the side of the respondents, the respondent no.1 had examined himself as RW1, apart from examining RW2 and RW3.

7. Heard arguments advanced on both sides. Perused the material on record.

8. **Points for determination:**

i) Whether the petitioner is entitled to reliefs of protection order, residence order, maintenance order, compensation order, and return of dowry of Rs.50,000/- and gold ornaments weighing 2 sovereigns against the respondents on the ground put forth by her?

ii) To what relief/reliefs ?

9. **Point No1:-**

The admitted fact of this case is that the marriage of the petitioner and the respondent no.1 was performed on 30-06-2005 and the petitioner is legally wedded wife of the respondent no.1 and out of their wedlock they are blessed with one son, who is in custody of the respondent no.1, and that the petitioner and the respondent no.1 are not residing together under the same roof.

10. The evidence of the petitioner before this Court that the respondent no.1 on the instigation of other respondents have beaten her and tortured her for additional dowry of Rs. 1,00,000/- and since her parents could not fulfill the said demand of the respondents as such the respondents have refused to take her into their company and for that reason she is constrained to reside in the house of her parents. PW2 is the father of the petitioner. PW2 has corroborated the evidence of the petitioner that she has been subjected to domestic violence by the respondents in connection with their demand of additional dowry and since he could not fulfill the said demand of the respondents as such the respondents have refused to take the petitioner into their company and for that reason she is constrained to reside in his house. The petitioner has pleaded in her petition and also testified before this Court that her parents have held mediation through PW3, one Darla Narayana, and one Darla Ramjan and during the mediation the respondents have ascertained that only upon the fulfillment of their demand of additional dowry they will take back the petitioner into their company. PW3 has deposed in his chief examination affidavit that when he along with his brother Venkateswarlu(PW2), said Narayana and Ramjan went to the house of the respondents, the respondents have proclaimed that only when they will give Rs.1,00,000/- towards additional dowry then they will allow the

petitioner to enter into their house. The respondents have not denied the evidence of the petitioner that the respondent no.1 on the instigation of other respondents have beaten her and tortured her for additional dowry of Rs.1,00,000/- and since her parents could not fulfill the said demand of the respondents as such the respondents have refused to take her into their company and for that reason she is constrained to reside in the house of her parents, during the course of her cross-examination except giving suggestion to her that the respondent never demanded additional dowry of Rs.1,00,000/- from her and also the respondents did not proclaim before PW3, said Darla Narayana and Darla Ramjan during the mediation that they will not allowed the petitioner to come into their company until additional dowry is presented to them, that were denied by the petitioner. The evidence of PW2 and PW3 regarding the respondents demanding additional dowry of Rs.1,00,000/- from the petitioner during the mediation and inability of PW2 to fulfill of additional dowry of the respondents and subjection of the petitioner to domestic violence by the respondents by not allowing her to join her matrimonial house, has withstood incisive cross-examination on behalf of the respondents. The petitioner categorically states during the course of her cross-examination that due to her harassment by the respondents she came to the house of her parents in the month of October, 2014. The defence of the respondents is that during the absence of the respondent no.1 on account of his avocation at Mysore the petitioner has developed intimacy with one Udaragudi Sarath Babu and she lived in adultery with him, and when the respondent no.1 questioned her about it then the petitioner had left the company of the respondent no.1 and deserted him without any reasonable cause in the year 2013 itself, and that the respondents have not necked out the petitioner out of their house. It is not in dispute between the parties that respondent no.1 has filed divorce petition against the petitioner. The written arguments filed on behalf of the respondents that discloses that

the respondents have taken a defence that the present petition has been filed by the petitioner after filing of the divorce petition as counter blast to it. It indicates that the respondent no.1 has filed divorce petition prior to filing of the present petition by the petitioner. Ex.P1, certified copy of the divorce petition shows that the respondent no.1 has not pleaded therein that during his absence from the village the petitioner had developed intimacy with said Udaragudi Sarath Babu and she lived in adultery with him and when the respondent no.1 had questioned her about her extra marital affair with said Udaragudi Sarath Babu then the petitioner has deserted her and she left his company and she has been residing in the house of her parents. Had there is any ring of truth in the defence of the respondents that petitioner had lived in adultery with said Udaragudi Sarath Babu in the absence of the respondent no.1 from the village certainly said ground would have been pleaded by the respondent no.1 in his divorce petition as one of the grounds seeking divorce, but *sans* any such pleading in Ex.P1 leads this Court to infer that the respondents have taken a false defence that the petitioner has lived in adultery with said Udaragudi Sarath Babu during the absence of the respondent no.1 and when the respondent no.1 had questioned her about her extra material affair with said Udaragudi Sarath Babu then the petitioner has deserted her and she left his company and she has been residing in the house of her parents, thereby imputing un-chastity to a married woman(petitioner) that itself constitutes one of the instances of subjecting the petitioner to domestic violence.

11. The respondents have suggested to petitioner during the course of her cross-examination that on the side of the respondent no.1 one Yeramala Subba Rao, one Yeramala Subbamma, one Yaka Govindamma and RW2 were sent as mediators to the petitioner for pacification of the matrimonial dispute, but before the said mediators her parents have refused to sent her to the company of the respondent no.1.

There is no evidence of RW2 before this Court that before the mediators the parents of the petitioner have refused to sent her to the company of the respondent no.1. RW3 has deposed before this Court that he along with RW2 and one Yaka Govindamma went to mediate the matrimonial dispute of the petitioner and respondent no.1 and for taking the petitioner back to the company of the respondent no.1 for lading marital life. There is no evidence of the respondents and RW2 before this Court that RW3 had also accompanied him for holding mediation. Said Yaka Govindamma, the alleged mediator is not examined on the side of the respondents. There is no pleading of the respondents in their counter that on the side of the respondent no.1 one Yeramala Subba Rao, one Yeramala Subbamma, one Yaka Govindamma and RW2 were sent as mediators to the petitioner for pacification of the matrimonial dispute, but before the said mediators her parents have refused to sent her to the company of the respondent no.1. It is axiomatic that evidence without pleading is devoid of any legal effect. Therefore, this Court do not find any force in the contention of the respondents that through RW2, RW3 and other persons efforts has been made on the side of the respondents for amicable settlement of matrimonial dispute of the petitioner and the respondent no.1 and for bringing the petitioner to the company of the respondent no.1 for leading marital life.

12. The respondents have pleaded in their counter that the petitioner has joined the company of the respondent no.1 after the birth of their son. The respondent no.1 during the course of his cross-examination admits that the petitioner did not join his company after the birth of their child, and that he and the petitioner had led marital life together for about 5 years. RW2 also states during the course of his cross-examination that the petitioner had led marital life with the respondent no.1 at the house of the respondents immediately after her marriage, and the parents of the respondent were also residing in the same house. Therefore, it is held that

the petitioner has proved that after the marriage she had resided in the share household i.e., the house of the respondents for a considerable period after their marriage.

13. The learned counsel for the respondents argued that the petitioner is attending coolie work and she is earning daily wages of Rs.300/- and she has admitted the same in her cross-examination. The cross-examination of the petitioner nowhere discloses that any cross-examination of the petitioner was done on behalf of the respondents with regard to her avocation as a coolie and her daily income @ Rs.300/-. There is no admission made by the petitioner during the course of her cross-examination that she is attending coolie work and she is earning daily wages of Rs.300/- as argued on behalf of the respondents. The respondent no.1 admits during the course of his cross-examination that he is working in a tobacco company by name ITC. RW2 also admits during the course of his cross-examination that the respondent no.1 is working in a tobacco company at Throvagunta near Ongole town. RW3 categorically admits during the course of his cross-examination that the respondent no.1 is an employee of ITC company. The said admission made by the respondent no.1, RW2 and RW3 is contrary to the defence of the respondents that the respondent no.1 is unemployed and he is depending on his parents, relatives and friends for his livelihood. However, the petitioner did not produce any salary certificate of the respondent no.1 before this Court to prove that he is drawing monthly salary of Rs.20,000/-. The petitioner also did not produce any documentary evidence before this Court that the respondent no.1 is possessing agricultural land in his own name. Nevertheless, the petitioner has proved that the respondent no.1 is an employee of one of the leading tobacco and fast moving consumer goods company i.e., ITC, and he is having sufficient means to maintain the petitioner to whom he had neglected to maintain in connection with

fulfillment of demand of the respondents of additional dowry of Rs.1,00,000/-.

14. The evidence of the petitioner before this Court that in her marriage her parents have given Rs.50,000/- cash and gold ornaments weighing 2 sovereigns as dowry to the respondent. PW2 has deposed before this Court that he had given Rs.50,000/- cash and gold ornaments weighing 2 sovereigns as dowry to the respondent. The respondents deny presentation of any dowry by PW2 to them in the marriage of the petitioner and the respondent no.1. However, it has been brought on the record of the case during the course of cross-examination of the respondent no.1 dowry of cash of Rs.10,000/- was presented in his marriage by the parents of the petitioner. But the petitioner has failed to elicit during the course of cross-examination the respondent no.1 that PW2 had presented Rs.50,000/- cash and gold ornaments weighing 2 sovereigns to the respondents. Hence the petitioner is entitled to return of cash dowry of Rs.10,000/- only from the respondents.

15. Accordingly, this Court in view of foregoing discussion hold that the respondents have subjected the petitioner to domestic violence in connection with their fulfillment of demand of additional dowry of Rs.1,00,000/- by beating her, torturing her, by not allowing her to join the company of the respondent no.1 for leading marital life and by making false imputation of un-chastity to her as such the petitioner is entitled to the reliefs claimed by her. This point is answered accordingly.

16. **Point No.2:-**

In view of my finding in point no.1 the petition is allowed in part granting following reliefs to the petitioner;

1. the respondents are prohibited from causing any domestic violence to the petitioner in any manner as described under section 18 of the Protection of the Women from Domestic Violence Act, 2005;

2. the respondents are directed to return Rs.10,000/- cash given to them by the parents of petitioner as dowry;
3. the respondents are directed to pay Rs.2,00,000/- to the petitioner towards compensation;
4. the respondent no.1 is directed to provide same level of alternate accommodation for the petitioner as enjoyed by her in the share household or to take rent for the same; and
5. the respondent no.1 is directed to pay maintenance @ Rs.3,000/- per month on or before 10th of every succeeding month to the petitioner from the date of this petition.

Typed to my dictation by the Personal Assistant, corrected and pronounced by me in open Court, this the 6th day of February, 2017.

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

//APPENDIX OF EVIDENCE//
-: WITNESSES EXAMINED :-

For Petitioners

PW1 : B.Rama Devi
PW2 : D.Venkateswarlu
PW3 : D.Krishna

For Respondents:

RW1 : B.Venu Babu
RW2 : Y.Koteswara Rao
RW3 : N.Subba Rayudu

// DOCUMENTS MARKED //

For Petitioner:

Ex.P1 : Certified copy of divorce petition and counter in HOMP 5/2015.

For Respondents: - Nil-

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

// True copy //

Judicial Magistrate of I-Class,
Spl. Mobile Court, Ongole.