

IN THE COURT OF THE II ADDL. JUDICIAL MAGISTRATE OF I CLASS,
ONGOLE.

Present: Smt. D.Durga Kalyani,
II Addl. Judl. Magistrate of First Class, Ongole.
Wednesday, this the 29th day of June, 2016
D.V.C.No.15/2015

Shaik Haseena W/o Md. Karimulla, aged 32 years, Muslim, presently
residing at Singrayakonda(Parents House)

... Petitioner.

Vs.

1. Md. Karimulla S/o Sattar Aged 40 years, Muslim, Balajinagarpet,
D.No.10-2-1, 2nd lane, Ongole ... Respondent.

* * *

This petition is coming on 27-6-2016 for hearing before me in the presence of Sri.K.Shankar Kumar, Advocate for Petitioners and of Sri.Kola Siva Prasad Advocate for Respondent and; upon perusing the oral evidence on record and upon perusing the arguments on both sides and having stood over for consideration till this day, this Court made the following:-

// O R D E R //

1. This complaint is filed by the applicant under section 12 of Domestic Violence Act seeking relief of maintenance and a separate house.

2. Brief facts of the petition are as follows:

At about eight years back the applicant was married with the respondent according to their custom. At that time of marriage her parents has presented Rs.2,00,000/- towards dowry and eight sovereigns of gold. Subsequent to marriage she joined respondent and proceeded to her matrimonial home that is to Ongole. Out of her wedlock the respondent gave birth to a female child within one year. In the house of respondent her four sisters used to reside. It is further submitted that marriage of this applicant was performed with the assurance given by elder brother of respondent that is Mr. Ghouse. That accused stating the respondent worked at USA and earned a lot. He also assured that the applicant also proceeded to USA after marriage. But the respondent did not do any job and remained idle without doing any

work by taking money from his brother for his livelihood. It is further award that brother of respondent used to visit every year to Ongole and he also used to harass the applicant to fulfill his lust as he performed the marriage with the respondent to fulfill his sexual desire.

3. It is also further award that one Shakeela the Angawadi worker used to move closely with the respondent and the same was supported by all the family members of the respondent in such a manner they used harass the petitioner even without providing any food to her and her child. At last the parents of the complainant having no other go got conducted mediation at Idwa center in the month of April, 2007 where the respondent under took that he would see the welfare of the applicant and her child properly. But he did not rely upon his promise before the elders. On that the applicant gave complaint before I-Town P.S where the respondent also made assurance before them that he would look after the welfare of the applicant and her child. But he did not do so. Moreover on 19-12-2007 he was issued a lawyer notice with false allegations that to the complainant to handover the Kisan Viskas Patras to him unbearable with the situation the complainant has filed this complaint praying this court to provide maintenance of Rs.3,500/- per month to her and to her child and also to allot a separate house which is abetted to the present house of the respondent.

4. On the other hand counter is filed by the respondent denying the averments of the petition admitting his relationship with the applicant and his daughter. He submits that his brother helped his family financially out of humanitarian consideration. He used to send money to this respondent whenever he did not have adequate income to meet the minimum needs of the family. However the elder brother of this respondent helped a lot to the family of the complainant and ignoring the

same the applicant has made various allegation against him to gain wrongfully.

5. It is also submitted by the respondent that the allegation made against his sisters by the applicant is false as out of four sisters two sisters are residing with their husband at their respective places outside ongole and two sisters deserted and widowed residing with the respondent in the house of their deceased parents. As such the applicant used to abuse them for their no fault and used to quarrel them with out any reason and to necked out them from the house. More over she demanded this respondent to stay with her parents at Singarayakonda which was not obliged by this respondent or he did not send her sisters from the house as demanded by the petitioner. On that the petitioner bore grudge against this respondent as the respondent did no meet her demand.

6. Coming to the allegation pertaining to one Shakeela who is resident of Balajiropet, Ongole who is native of Singarayakonda village and father of complainant himself has negotiated with the respondent family through the said Shakeela. On this his marriage was settled between him and the complainant. Even knowing about the fact the applicant has come up with this allegation for the purpose of this petition.

7. Further it is submitted by him that after first delivery the applicant was conceived immediately and due to which she got the pregnancy aborted as per her consent and Doctor Prasanna. So the alleged harassment made by the respondent is false pertaining to her abortion. If really the versions of petitioner are true she would presented a report to police about four or five years back itself. But he did not do so. Moreover she has left her matrimonial home about four years ago and

has been residing with her parents. In spite of efforts made by the respondent personally and through elders to join her she refused to accompany him saying that she has to join a computer course. In the month of March 2007 the complaint again came to the house of the respondent who quarreled with his sisters and went away without informing anything to this respondent. Subsequently she gave a report in Idwa center, Ongole where counseling took place to both the parties. But the complainant demanded the respondent to settle a separate family at Singarayakonda along with her parents and thereafter to shift the family to Hyderabad.

8. On that the respondent requested her to come to Ongole and subsequently both of them mutually disagreed for their demands. The respondent has completed PGDCA and discontinued MSC chemistry. Whereas the complainant studied intermediate and with the harassment of the complainant the respondent was mentally disturbed. However he worked under one Ramarao LIC and postal agent and incurred an income of Rs.2,000 per month except that source of income the respondent has no other source. As such he used to give an amount to the complainant and her daughter very oftenly. With this income the respondent has to look after with effective sisters also. Even as per the version of the petitioner itself it is submitted that the respondent is not doing any work and not getting any income so this respondent has no capacity to maintain the complainant and her daughter. Whereas as the complainant has got financial capacity to maintain herself and her daughter. It is also submitted that by the respondent that the complainant had claimed the respondent in the house which is belonged to deceased parents and the house property referred to be situated at Chirala is not exclusive property of this respondent. Hence, he is unable to provide any separate

residence to the complainant and her daughter. So prayed by the respondent

9. During the course of trial the complainant was examined as P.W1 and respondent was examined as R.W1. To reiterated the same facts along with additional facts in their chief examination to prove their contentions but no documentary proof is marked by either side.

10. Basing on the above pleadings the point for determination are as follows:

1. Whether the petitioner is entitled for monitory relief that is maintenance of Rs.3,500/- as well a separate house as pleaded by her?

11. *Before adverting to the points it is safe to have a reference to sec. 3 the definition of Domestic Violence Act which reads as under.*

Definition of Domestic violence:- For the purposes of this act any acts omission or commission or conduct of the respondent shall constitute

Domestic Violence in case it Clause

(a) harms or injuries or endanger the health safety limb life or well being whether mental or physical aggrieved person tends to do so or includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

b) Harasses, harms injuries or endangers the aggrieved person with a view to eoerce her or nay other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b) or.

d) otherwise injuries or causes harm whether physical or mental to the aggrieved person

Explanation 1: For the purposes of this section:-

1) Physical abuse means any act or conduct which is of such a nature as to cause bodily pain, harm or danger to life, limb or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

2) "sexual abuse" includes any conduct of a sexual nature that abuses humiliates degrades or otherwise violates the dignity of woman;

3) Verbal and emotional abuse includes-

a) insults, ridicule, humiliation name calling and insults or ridicules specially with regard to not having a child or a male child and

b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested

4) "Economic abuse" includes:-

a) Deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including but no limited to, household necessities for the aggrieved person and her children, if any stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

b) disposal of household effects any alienation of assets whether movable or immovable valuables shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

c) Prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

12. To establish her version the complainant as P.W1 deposed elaborately in her chief examination that her marriage was performed with the respondent on 10-2-2001 as per Muslim custom and subsequently after marriage she proceeded to her in laws house that is to Ongole. It is submitted by her that at that time of marriage her parents has given Rs.2,00,000/- cash and 8 sovereigns and sara samans all worth of Rs.30,000/-. Subsequently out of wedlock she was conceived and through scanning they came to know that she is going to birth to a female child . On that her sister in laws and Mohd.Gouse her brother in

law insisted to terminate the said pregnancy, refusing the same she went to her parents house and gave birth to a female child. If really the respondent and his family members refused to accept her demanding additional dowry of Rs.1,00,000/-. By that time her father has given Rs.50,000/- to the respondents family and sent to her in laws house. In the year 2002 her brother in law came from USA and after five days he tried to commit rape upon her. He also threatened her that he would give the divorce if she do not obey his sexual desire.

13. Like wise she has been harassed by the respondent family. While so in the year 2005 she was again conceived. By thinking that the petitioner would give birth to a female child again her sister in laws, the respondent and his brother administered some medicines to her due to which her pregnancy got terminated. When the same was questioned the respondent family attempted to throw her into a well. Then she informed to her parents who stated that they would come on the next day as it was 11-00 P.M Subsequently her parents came and a quarrel took place between both the families however a mediation was held where the respondents family assured that they would look after her well. But they again started harassing applicant physically and mentally.

14. Moreover, it is also alleged by the petitioner that the respondent started having close intimacy with one Shakeela and use to close the door in front of her with the said Shakeela in such a manner all of them necked out her from her matrimonial home when she questioned the same about in the year 2007. At last she approached voluntarily organization center that is Idwa on 2-4-2007 where the respondent agreed before the members of said organization and executed a written document that he will take her into conjugal fold but he failed to take

back and as such she has remained in her parents house along with her daughter.

15. She has no properties, source of income, as she studied up to intermediate only. Where as the respondent worked as computer programmer besides doing part time job near postal agent. So, he get salary of Rs.8,000 per month. Besides that he also own 0-75 cents of plot at Vykuntapuram Chirala which is joint family property and also a building worth of 40,00,000/- and obtaining an amount of Rs.1200/- per month towards rent on that building. Therefore she prays the court to provide shelter as well as maintenance.

16. On the other hand to contradict the version of petitioner the respondent as R.W1 has filed his chief examination incorporating his entire counter in the said chief examination and denies the version of petitioner stating that the facts stated by P.W1 are all false. In order to avoid repetition this court is not incorporating the chief examination of R.W1. However the contention of the respondent is that he never harassed P.W1 as alleged by her. He also submits that he has no source of income and he is working as postal agent an getting an amount of Rs.2,000/- per month and hence he is enable to pay any maintenance to the petitioner.

17. Where as the petitioner has financial capacity to maintain herself and also her daughter. As such he submits that the alleged allegations stated by the petitioner in her chief examination are all false.

18. On careful perusal of evidence on record, it is an admitted fact that P.W1 and R.W1 are residing separately since 2007. However, the marriage between them is administered by the respondent. Further it is also admitted by the respondent that P.W2 has given birth to a female

child out of her wedlock with this respondent. So, there is dispute with regard to Domestic relation ship between the parries.

19. Now the point for consideration is Whether the petitioner is entitled for the reliefs sought for?

20. On this aspect P.w1 elaborately deposes in her chief examination that she was harassed by the respondent and his family when it came to their knowledge that she is going to give birth to a female child. On that she went away to her parents house and gave birth to a female child and subsequently her father has given Rs.50,000/- as additional dowry upon their demand to accept her. It is also alleged that her brother in law tried to commit rape upon her and subsequently the respondent and his family members tried to kill her when she questioned about the termination of pregnancy for the 2nd time. On that aspect it is alleged by P.w1 that she was administered medicines by the respondent and his family members for termination of 2nd pregnancy. As such she was harassed by respondent and his family members and hence, she sought for monitory relief and prayed this court to allot a separate house.

21 Though she deposed the above allegations in the above manner the said alleged facts stated by petitioner in her chief examination were not mentioned in her petition. For the 1st time she came up with all the above allegations in her evidence. Moreover if really her version of allegations about respondent family is true that is the respondent family trying to kill her, no women will be dare enough to stay in her in laws house even after their attempt to kill her. Further on this aspect it is also stated by her that her parents would come on the next day after receiving the information which is unbelievable. So, all the allegations against respondent and his family members appeared unbelievable and omnibus allegations.

22. However in order to establish her version it is also deposed by her that the respondent use to sit idle in his house depending upon the income of his brother. In such a manner she was harassed by the respondent as he did not provide domestic expenses to her. Though the respondent denied the allegations of petitioner it is admitted by him in his cross examination that he owns properties and he is working as an agent incurring an income of Rs.2000/- per month. It is stated by him that the said income is not sufficient to him to maintain himself as well as his sisters. Moreover, it is also admitted by him that he is incurring certain amount on the properties he had and eking his livelihood with that money. When such is the case it is also every responsibility for the respondent to maintain his wife and child

23. But he is not doing so, the same is also admitted by him in his cross examination that he is not paying any maintenance to pay the petitioner and his daughter. So, such attitude of remaining idle without maintaining his wife and child depending upon others also creates a mental agony to the Indian wife, particularly as the husband is bounded to maintain his family even though she is divorced unable to maintain herself. Moreover, it is also settled legislation that a able bodied husband is liable to maintain his wife and children even though he has no employment. Hence, the circumstances and the attitude of the respondent comes under purview of economic abuse as per domestic violence act. Hence, it is well established by the petitioner that she faced economic abuse in the hands of respondents. Accordingly she is entitled for maintenance.

24. Coming to the other relief that is the petitioner praying this court to grant a separate house this is not the correct forum where this court can declare her right in the properties though admitted by the

respondents that he had property without documentary proof. Hence, the claim pertaining to giving a separate house to the petitioner is dismissed.

25. In the result, this petition is partly allowed by directing the respondent to pay an amount of Rs.3,000/- each to the petitioner for the maintenance of her child from the date of this order. The said amount shall be payable to the petitioner directly or deposit the same any bank account of the petitioner. The rest of the claim against respondent is dismissed.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in Open Court, this the 29th day of June, 2016

II Addl. Judl. Magistrate of I Class
Ongole.

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

For Petitioner :
P.w.1 : Md.Haseena Begum

For Respondents :
R.w.1 : Sk.Karimulla

DOCUMENTS MARKED ON BEHALF OF PETITIONER.
-NIL-

DOCUMENTS MARKED ON BEHALF OF RESPONDENT.
-NIL-

II AJCJ
Ongole.