

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

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

Tuesday, this the 18th day of November, 2014.

D.V.C.No. 1 of 2013.

Between:

Chandra Sukanya Devi, W/o Srinivasulu,
32 years, D/o T.Venkateswarlu, D.No. 2-1-175,
R/o Gaddalagunta, Ongole Prakasam District.

....Petitioner
and

1. Chandra Srinivasulu S/o Venkata Narayana,
44 years, Z.P. High School, School Assistant in English,
Kondayapalem village, Varikuntapadu Mandal,
Nellore District.
2. Chandra Sudharsanamma, W/o Venkata Narayana,
64 years, Mahammadipuram village,
Varikuntapadu Mandal, Nellore District.
3. Chandra Venkata Narayana S/o Abaiahnaidu,
72 years, Mahammadipuram village,
Varikuntapadu Mandal, Nellore District.
4. Chandra Prabhakar Naidu, S/o Venkata Narayana,
40 years, Mahammadipuram village,
Varikuntapadu Mandal, Nellore District.
5. Chandra Thirupathaiah, S/o Abaiahnaidu,
Ration Shop Delar, Mahammadipuram village,
Varikuntapadu Mandal, Nellore District.

...Respondents

This case coming on 07-11-2014 for final hearing before me in the presence of Sri K.Brahma Reddy, Advocate for Petitioner and Sri P.Siva Hari, Advocate for respondents having stood over for consideration till this day, this Court delivered the following:

// O R D E R //

1. This is a petition filed under section 12 of Protection of Women from Domestic Violence Act, 2005 by the petitioner against the respondents for monitory reliefs stating that the respondents have subjected the petitioner to domestic violence.

2. The factual matrix of the case of the petitioner in brief is that her marriage with respondent no.1 was performed on 15-08-2008 at the house of respondent no.1 at Mahammadapuram, Nellore District and at the time of the marriage her parents have presented cash of Rs.3,50,000/-, gold ornaments weighing 2 sovereigns and sum of Rs.2,00,000/- towards cloths and house hold articles to the respondent no.1 and after three months of her marriage her parent-in-laws and other relatives did not allow the petitioner to lead conjugal life with respondent no.1 at Thada and later on the intervention of the elders on the side of the petitioner she joined the company of respondent no.1 at Thada, but the respondent no.1 demanded additional dowry from the petitioner for leading conjugal life with her and respondent no.1 used to harass her mentally, and subsequently the respondents on 05-02-2009 have necked her out of their house and respondent no.1 left her at the house of her parents at Ongole, thereafter, the petitioner sent her nearest relatives and other elders to respondent no.1 and his parents for mediation, but have they bluntly refused mediation and as there was no alternative the petitioner gave a report to Ongole I-Town Police Station on 01-03-2009 and on the basis of the same a crime was registered as in Cr.No. 77/2009.

3. The respondent no.1 has filed counter denying the material averments of petition and submitted that the petitioner herself did not lead conjugal life with him, that petitioner refused to live with respondent no. 1, that respondent no.5 has been residing separately from his family and he is not concerned with the family of respondent no.1, that petitioner is having sufficient means to maintain herself and

that the petitioner did not take proper care of the respondents no. 2 and 3, and she had harassed the respondents no. 1 to 4 from the first day of the marriage.

4. On the side of the petitioner the petitioner examined herself as PW1 and brother of petitioner has been examined as PW2. Ex. P1 and P2 and exhibited on the side of petitioner.

5. On the side of respondents, the respondent no.1 examined himself as RW1, father of the respondent no.1 has been examined as RW2, and one B.Thirupathaiah has been examined as RW3. Ex. R1 to R8 are exhibited on the side of respondents. The Head Master of Z.P. High School, North Kondayapalem, Varikuntapadu Mandal, Nellore District has been examined as CW1 and Ex. C1 and C2 are marked through him.

6. Head the arguments on both side. Written arguments are filed on behalf of the both sides parties.

7. Points for consideration:

1. ***Whether the petitioner was subjected to domestic violence by the respondents ?***
2. ***Whether the petitioner is entitled to the relief claimed by her in the petition?***
3. ***To what relief ?***

POINT No1:-

8. The specific case of the petitioner is that she was subjected to domestic violence by the respondents for additional dowry. The specific case of the respondent is that the petitioner was not interested in leading conjugal life with respondent no.1 after the marriage and

she did not behave properly with the respondents no.1 to 4 after her marriage with respondent no.1.

9. The petitioner in her chief examination affidavit filed in lieu of her chief examination has deposed that her marriage with respondent no.1 was performed on 15-08-2008 at the house of respondent no. 1 Mahammadapuram, Nellore District and at the time of the marriage her father had presented Rs. 3,50,000/-, gold ornaments weighing 2 sovereigns and cloths and house hold articles worth Rs.2,00,000/- to the respondents and that the respondent no.1 was working as School Assistant, Z.P, High School, Thada. PW1 has further deposed that in her said chief examination affidavit that after the marriage her parents-in-laws and other relatives have started to harass her by demanding additional dowry from her and they did not allow her to lead marital life with the respondent no.1 and she had tolerated their harassment for about 3 months and when she did not observe any change in their attitude towards her then she informed about it to her elders who conducted a *panchayat* and sent her to the company of respondent no.1 at Thada for leading martial life. It is also deposed by Pw1 in her said chief examination affidavit that respondent no.1 did not lead happy marital life with her and on the instigation of his mother he demanded her to bring additional dowry of Rs.3,00,000/- from the house of her parents for leading marital life else his parents will perform his second marriage, that respondent no.1 was comparing her with the girls of his relatives, and he was also abusing her in filthy language, and harassing her mentally. PW1 had further deposed in her said chief examination affidavit that she tolerated the harassment

of respondent no. 1 in expectation that respondent no.1 will change his attitude towards the petitioner, but in vain, and later on 15-02-2009 the respondent no. 1 and her parents have necked her out of their house and respondent no.1 left her to the house of her parents at Ongole and demanded additional dowry of Rs.3,00,000/- from her parents and subsequently she sent her nearest relatives and other elders to the respondents no. 2 to 4 for mediation, but they bluntly refused and having no other go on 01-03-2009 she lodged police complaint that was registered as a case in Cr.No. 77/2009 against the respondents 1 to 4. It is further deposed in the chief examination affidavit by the petitioner that her parents are old aged and they are unable to maintain her due to their weak financial position and respondent no.1 is having sufficient means to maintain her, but he had neglected to maintain her and under these circumstances she filed the petition claiming maintenance before the Hon'ble Family Court, Ongole, on 02-07-2009. PW1 had further deposed in her said affidavit that cash of Rs.3,50,000/-, 2 sovereigns of gold ornaments and Rs.2,00,000/- toward cloths and house hold articles that were taken by the respondents are with the the respondents. PW1 admits during the course of cross-examination that she did not mention specific date on which the respondents no. 1 to 5 have demanded additional dowry from her in her chief examination affidavit. PW1 has stated during the course of her cross-examination that respondent no.1 had resided along with her at Thada in the house of one Venkamma for about 3 months. PW1 further admits during the course of her cross-examination she had deposed before the Hon'ble Family Court, Ongole, in MC 22/2009 that her parents have given cash of

Rs.3,50,000/- as *pasupukunkumma*. PW1 has denied the suggestion during the course of her cross-examination that there is no documentary proof to show that her parents have given cash of Rs.3,50,000/-, gold ornaments weighing 2 sovereigns and house hold articles worth Rs.2,00,000/- at the time of her marriage.

10. PW2, who is the brother of PW1, has deposed before this Court that the marriage of the petitioner was performed with the respondent no.1 on 15-08-2008 at Mahamadapuram village and at the time of marriage of the petitioner they have given cash of Rs.3,50,000/-, 2 sovereigns of gold and house hold articles worth Rs.2,00,000/- to the respondent no.1 and at the time of marriage of the petitioner the mother-in-law of the petitioner demanded additional dowry of Rs.3,00,000/- and the elders and other relatives who have attended the marriage, pacified the issue and performed the marriage. It is further testified by PW2 in his evidence that soon after the marriage respondent no.1 went to Thada to attend duty and PW1 resided in the house of her in-laws for about three months and during the said period they have requested respondent no. 2 to 4 to sent PW1 to Thada for leading conjugal life with respondent no.1, but they did not hear their words. It is further testified by PW2 in his evidence that on the advise of the elders respondents no. 2 to 5 have sent PW1 to the company of respondent no.1 at Thada and on the same day the respondent no.1 wore *Ayyappa Mala* and he did not lead any conjugal life with the petitioner. PW2 has also deposed in his evidence that in the month of February, 2009, respondent no.1 got promotion as a School Assistant, and he was posted at the same school, but after one week his

promotion respondent no.1 harassed PW1 for additional dowry of Rs.3,00,000/- and necked PW1 out of his house on that PW1 sought help of his colleague by name Vasudeva Rao and later he along with one R.Ankamma Rao went to house of the in-laws of the petitioner and requested them to allow PW1 to join the company of respondent no.1 for leading marital life, but the respondents did not hear their words. It is further testified by PW2 in his evidence that after 2 days he brought the petitioner and he approached the Superintendent of Police Prakasam district, and the said Superintendent of Police had forwarded his application to the Ongole I-Town police station, that the Sub-Inspector of Police of Ongole I-Town police station informed the respondents, but the respondent did not come to the police station, and after one week the respondents have came to their house and created nuisance. It is also testified by PW2 in his evidence that they approached Ongole I-Town police station about creation of nuisance by respondent no.1 in their house and that the Ongole I-Town police station registered the crime. PW2 has further testified in his evidence that in the month of March, 2009, he went to Thada and enquired about the respondent no.1 at Z.P. High School, and on his enquiry the Head Master had informed him that respondent no.1 had developed illegal intimacy with one lady, that he became addicted to bad vices, and further that he was not regularly attending his duty. PW2 had stated during the course of his cross-examination that one Naidu Suryanarayana, Pavuluri Venkata Ramana, Cherukuri Ramamurthy, Sakamuri Basavaiah Naidu and Chandra Murali were the elders at the time of pacification of the issue at the time of marriage of the

petitioner, and that respondent no.1 had resided along with the petitioner at Thada in the house of one Vengamma.

11. The respondent no.1 has examined himself as RW1 and he has deposed before this Court that he and the petitioner had resided at Mahammadapuram village for about 3 months after their marriage, and from the first day of his marriage the petitioner did not attend household work, that she was not taking care of his mother and that she was insisting her to put up separate family. It is also testified by the respondent no.1 in his evidence that later the younger paternal uncle of the petitioner insisted him to put up family at Thada on that he sought time from him and the said younger paternal uncle of the petitioner had abused him in filthy language and threatened him to file criminal case for dowry harassment. It is further deposed by the respondent no.1 in his evidence that on 05-11-2008 the petitioner joined him at Thada and she frequently insulted him on the ground that they are residing in the remote place that is far away from the village and also from the school, and on 06-02-2009 the second elder brother of the petitioner took her to the house of his parents without his knowledge and consent, and filed a criminal case under section 498-A of the Indian Penal Code against him that ended in acquittal. The respondent no.1 has also testified in his evidence that the petitioner has also filed maintenance case against him apart from this petition and in the said maintenance case he has been directed to pay Rs.2,500/- to the petitioner towards monthly maintenance and in the present petition he has been directed to pay interim monthly maintenance @ Rs.5,000/-, and at present he is drawing net salary of

Rs.11,104/- per month. It is further testified by the respondent no.1 in the evidence that his parents are senior citizens and they are depending on him for their livelihood, and except his monthly salary he has no other source of income, and also that he is not owing any movable and immovable properties. The respondent no.1 has also testified in his evidence that the petitioner has been working as a teacher in a private school and drawing monthly salary of Rs.7,000/-, that petitioner is having a house site that is situated adjacent to Kurnool Road, Ongole, and also that no dowry was presented to him in the marriage as deposed by the petitioner. The respondent no.1 has further testified in his evidence that he and his parents have never abused PW1 and that he is unable to pay monthly maintenance @ Rs.7,500/- to the petitioner. The respondent no.1 during the course of his cross-examination had stated he was 42 years old at the time of marriage, that after the marriage disputes arose with the petitioner due to which he did not immediately change the name of nominee in his service register, that his marriage with petitioner was consummated but he do not know the meaning of the word consummation, that his parents are having Ac.16-40 cents of land as per Ex. P1 and P2, and that he did not file any document to show that the petitioner has been working in a private school on monthly salary of Rs.7,000/-. The respondent no.1 admits during the course of his cross-examination that his family properties are joint and that they are not yet partitioned, and that he and his brother are only children to his parents.

12. The father of the respondent no.1 has deposed as RW2 before this Court that they have never harassed the petitioner at any

point of time during the period of her stay at their house, that the petitioner left the company of the respondent no.1, that he is having Ac.4-64 cents of land that is his self acquired property, that in the year 2008 after partition he and his brother have sold away some portion of the properties out of Ac.8-00 cents of their ancestral properties and the criminal case filed by the petitioner against them under section . 498-A of the Indian Penal Code has ended in their acquittal.

13. RW3 has deposed before this Court that there is no custom of taking dowry in the caste of respondents, that no dowry was present in the marriage of respondent no.1 and petitioner by the parents of the petitioner, that respondent did not harass the petitioner in any way after the marriage for additional dowry, that respondent no.2 is aged about 80 years and respondent no.3 is aged about 70 years and that the petitioner and respondent no.1 resident in the village for about one week after their marriage till the date of his examination in chief. During the course of cross-examination of RW3 he has stated that he do not know the name of the petitioner, that he cannot say the month and year in which the marriage of the petitioner with respondent no.1 was performed, that he is illiterate, that he did not produce any document to show that he is resident of Mahammadapuram village, that respondent no.4 is the younger brother of respondent no.1, and that he is a Fair Price shop dealer, and that he is working in the Fair Price shop of the respondent no.4. RW3 has further stated during the course of his cross-examination that the respondents are having seven to eight acres of agricultural land

and they did not dispose of any portion of their agricultural land after the marriage of the respondent no.1 with the petitioner.

14. CW1 has produced the service register and salary certificate of the respondent no.1 before this Court. During the course of his cross-examination by the learned counsel for the petitioner he has stated that the gross salary of respondent no.1 for the month of June, 2014, is Rs. 35,960/- and except deduction towards profession tax of Rs.200/- per month, the remaining salary of respondent no.1 is his savings, and that the name of petitioner is not mentioned as nominee in the service register of the respondent No.1. CW1 has stated during the course of his cross-examination by the learned counsel for the respondents that there is deduction of Rs.11,160/- from the salary of the respondent no.1 and that he do not know that Rs. 2,500/- is deducted towards the credit of MC No. 22/2009 on the file of Hon'ble Family Court, Ongole.

15. The admitted fact of the case is that the petitioner is legally wedded wife of respondent no.1, and the petitioner and the respondent no.1 are residing separately since 15-02-2009.

16. The evidence of the petitioner in her chief examination affidavit do not reveal that her father had presented cash of Rs.3,50,000/-, gold ornaments weighing 2 sovereigns, cloths and house hold articles worth Rs.2,00,000/- to the respondent no.1 as dowry, that too on the demand of the respondent no.1. The cross-examination of the petitioner reveals that she has deposed in her evidence before the Hon'ble Family Court, Ongole in MC No. 22/2009 that cash of Rs.3,50,000/- was given by her parents as

pasupukunkumma. It clearly shows that cash of Rs.3,50,000/- was not presented by the parents of the petitioner to the respondent no.1 as dowry. PW1 has denied suggestion during the course of her cross-examination about non existence of a documentary evidence regarding giving of cash of Rs.3,50,000/-, gold ornaments weighing 2 sovereigns and house hold articles worth Rs.2,00,000/- at the time of her marriage. It disclose existence of a documentary evidence about presentation of cash of Rs.3,50,000/-, 2 sovereigns of gold ornaments and house hold articles worth Rs.2,00,000/- to the respondent no.1 in the marriage of petitioner with respondent no.1, however, the said document has not been produced before the Court to corroborated the evidence of petitioner regarding the alleged presentation of cash of Rs.3,50,000/-, gold ornaments weighing 2 sovereigns and house hold articles worth Rs.2,00,000/- to the respondent no.1 at the time of her marriage. Admittedly the petitioner did not depose the specific dates on which the respondents have demanded additional dowry from her. The evidence of the petitioner further shows that the respondent no.1 had harassed her for additional dowry on the instigation of his mother and he had also threatened her that his parents will perform his second marriage, if she failed to give additional dowry, and the said harassment of the petitioner occurred at the house of one Vengamma at Thada. The said Vengamma has not been examined before this Court by the petitioner to prove alleged incident of harassment of the petitioner by respondent no.1 at Thada for additional dowry of Rs.3,00,000/-. The evidence of the brother of petitioner (PW2) that at the time of the marriage of respondent no.1 with the petitioners the mother-in-law of the petitioner demanded additional dowry of

Rs.3,00,000/- and the said dispute was pacified by the elders and relatives who have attended the marriage, that after joining the company of the respondent no.1 by the petitioner the respondent no.1 did not lead conjugal life with the petitioner and on the same day he wore *Ayyappamala*, that after one week of his promotion as School Assistant the respondent no.1 had harassed the petitioner for additional dowry of Rs.3,00,000/- and necked her out of his house on that the petitioner sought help of his colleague by name Vasudeva Rao, that after one week the Superintendent of Police had forwarded his application to the Ongole I-Town police station, the respondents have created nuisance in their house, that in the month of March, 2009, he visited Thada where he came to know one enquiry from the Head Master of Z.P. High School that respondent no.1 had developed illegal intimacy with another lady, that he became addicted to bad vices and he was also did not regularly attend his duties, is not collaborated with the evidence of petitioner, the alleged victim. The evidence of the petitioner is that the respondents have necked her out of their house on 15-02-2009 and the respondent no.1 had left her to the house of her parents at Ongole, and he demanded additional dowry of Rs.3,00,000/- from her parents. On the other hand, the evidence of PW2 is that after two days of necking out of the petitioner out of his house by respondent no.1, he (PW2) had brought the petitioner to the house of her parents. Therefore, there is inconsistency in the evidence of the petitioner and PW2 regarding the alleged necking out of the petitioner from their house by the respondents. The evidence of respondents no.1 and 2 as RW1 and RW2 shows that the criminal case filed by the petitioner against them

had ended in acquittal. Ex.R2 corroborate the said evidence of the respondent no. 1 and 2 regarding the acquittal of the respondents no. 1 to 4 in the criminal case that was instituted by the petitioner against them under section 498-A of the Indian Penal Code and Sec. 3 and 4 of the Dowry Prohibition Act, 1961. Ex.R2 discloses that cause of action for filing the said criminal case and the present petition is the one and the same. The Hon'ble High Court of Andhra Pradesh in the case reported between *Markapuram Sivarao and others vs. The State of Andhra Pradesh that is reported in 2013 (2) ALD (Criminal) 341 held at para 12 as follows*

" One of the main ingredients to be established for claiming benefit under the provisions of the Act is that there should be domestic violence as defined under section 3 of the Act. When the allegations of domestic violence/ harassment made in a case instituted at the behest of the respondent were found to be false and baseless by a criminal court after full fledged trial and when identical allegations are made in the present complaint made under section 12 of the Act, I am of the opinion that continuation of proceedings against the petitioners, who are acquitted in an earlier criminal case, though may not amount to double jeopardy, but the same will definitely amount to an abuse of process of court. Now useful purpose would be served in continuing such proceedings as the case of domestic violence were found to be false by a criminal court and the findings given by said court have became final. Allowing the petitioners to face trial no general and wild allegations without any specific instance of domestic violence is nothing, but an abuse of process of the court"

17. The written arguments filed on behalf of the petitioner shows the Criminal Appeal No.177/2013 filed against the judgment under Ex.R2 is pending before the Hon'ble Family Court-cum-VIII-Addl. District Court, Ongole. It establishes that the judgment under the Ex.R2 as on this date has not been reversed or modified by the hon'ble Appellate Court. Admittedly PW1 has been residing separately from the respondents after 15-02-2009. The petitioner did not speak about her subjection to dowry violence after 15-02-2009 by the respondents. Under such circumstances the *ratio decidendi* of the judgment supra squarely apply to the facts of the case as the facts and the cause of action alleging subjection to her cruelty by the respondents no. 1 to 4 that was earlier taken by the petitioner in the criminal case and it is identical to the facts and cause of action of the present case. Even otherwise the evidence of the petitioner reveals vague allegation of her alleged subjection to domestic violence by the respondents for additional dowry and that the evidence of the petitioner and her brother (PW2) are also uncorroborated and inconsistent with each other on material aspects. With these observations I hold that the contention of the petitioner that the petitioner was subjected to domestic violence for additional dowry by the respondents cannot be believed. The point is answered against the petitioner and in favour of the respondents.

18. Point No.2:-

In the finding in point no.1. when it is emphatically held that the contention of the petitioner regarding her subjection to domestic violence cannot be relied upon, the grant of monetary reliefs to the

petitioner by the respondents do not arise. This point is answered against the petitioner and in favour of the respondents.

19. Point No.3:-

In view my finding in points No. 1 and 2 the petition is found to be devoid of any merits and the same is liable to be dismissed.

20. In the result, the petition is dismissed.

Dictated to the personal assistant, transcribed by him, corrected and pronounced by me in open court, this the 18th day of November, 2014.

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

//APPENDIX OF EVIDENCE//

-: WITNESSES EXAMINED :-

For Petitioners

P.W.1 :Chandra Sukanya Devi
 P.W.2 : T. Sudhakara Rao

For Respondent:

Rw.1: Chandra Srinivasulu
 Rw.2: Chandra Venkata Narayana
 RW.3: B.Thirupathaiah

Court Witness:

C.W.1: N.Srirama Murthy

/ / DOCUMENTS MARKED / /

For Petitioners:

Ex.P1 :1-B Namuna (ROR) for the year 2011-2012.
 Ex.P2 : Pattadar Adangal for the year 2011-2012.

For Respondent:

Ex.R1 : Certified Order copy in MC 22/2009, Dt. 06-04-2011.
 Ex.R2 : Certified Copy of Calendar and Judgment in CC 221/2009
 delivered by the learned II-AJMFC, Ongole.
 Ex.R3 : Certified copy of petition and affidavit in HMO____/2012 on the file
 of Hon'ble Senior Civil Judge, Kavali.
 Ex.R4 : Certified copy of Registered Gift Deed, Dt. 29-03-2007.
 Ex.R5 : Copy of petition filed before AP Human Rights commision.
 Dt. 13-01-2011.

Ex.R6 : 16th day Death ceremony invitation in respect of death of
 father of petitioner.

Ex.R7 : True copy of Proceedings of District Educational Officer,
 Nellore District, Dt. 13-09-2012.

Ex.R8: Explanation written by me to the DEO, Nellore District,
 Dt. 13-09-2012.

By Court:

Ex.C1 : Service Register of RW1.
 Ex.C2 : Salary Certificate of RW1, dt. 02-07-2014.

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

// True copy //

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