

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.

Tuesday, this the 5th day of May, 2015.

D.V.C.No. 5 of 2014

Between:

Chavala Kalpana W/o Bhavan Narayana,
26 years, Pedakothapalli village, Maddipadu mandalPetitioner
and

Chavala Audilakshmi W/o Subba Rao,
55 years, Ravinuthala village,
Korisapadu mandalRespondent

This case coming on 30-04-2015 for final hearing before me in the presence of Sri J.Prabhakar Reddy advocate for petitioner, and of Sri K.Theppalaneedu advocate for respondent having stood over for consideration till this day, this Court delivered the following:

// ORDER //

1. This is the petition filed under section 12 of the Protection of the Women from the Domestic Violence Act, 2005, by the petitioner against the respondent(mother-in-law) alleging that the petitioner was subjected to domestic violence at the hands of the respondent, and thereby she has claimed reliefs of protection order under section 18, and residence order, under section 19 of the Protection of the Women from the Domestic Violence Act, 2005.

2. The factual matrix of the case of the petitioner as set out in the petition in brief is that at the time of the marriage the respondent had informed the parents of the petitioner that she is having a house and cash of Rs.2,00,000/-, that her son is having two auto rickshaws in his name, and later she was harassed by the respondent, her son and others, and they have abused her in filthy language and also beat her and later necked her out of her house for brining money from the house of her parents, therefore, this petition has been filed.

3. Counter is filed on behalf of the respondent and besides denying the material averments of the petition the respondent has submitted that the petitioner has filed the present petition only to harass the respondent who is an old lady; that the petitioner and her husband has failed to take care of the

respondent, and the petitioner herself had sent away the respondent and there is no obligation on the part of the respondent to allot any property to the petitioner; that the husband of the petitioner and the petitioner are residing jointly; that the husband of the petitioner is taking care of the petitioner; that the petitioner has filed the present petition to grab the property of the respondent, and prayed to dismiss the petition.

4. On the side of the petitioner the petitioner examined herself as PW1 and the husband of the petitioner has been examined as PW2. On the said of the respondent the respondent examined herself as RW1. No documents have been exhibited by both sides.

5. Heard the arguments in advanced on behalf of both sides. The learned counsel for the respondent has placed reliance upon the authorities reported in *(2007)2 SCC (Cri) 56 between SR Batra and another vs. Taruna Batra(Smt.)* in the support of the contention of the respondent that the two portioned house exclusively belong to the respondent and it do not belong to PW2 as such the petitioner cannot claim any right of residence in the said two portioned house.

6. Perused the material on record.

7. **Points for determination:**

i) Whether the petitioner is entitled to the reliefs claimed by her in the petition?

ii) To what relief/reliefs ?

8. **Point No1:-**

PW1 has deposed before this Court that she has been residing along her parents at Pedakothapalli village, Maddipadu mandal; that the respondent is her mother-in-law; that at the time of her marriage with PW2 her parents had given cash of Rs.40,000/- and 2 sovereigns of gold chain apart from 6 grams of gold ear studs; that the gold ornaments are in the possession of the respondent; that she handed over her gold chain weighing about 2 sovereigns and 6 grams of ear studs to the respondent when she was going to attend ANM training; that she and PW2 lived happily for about 2 years, and thereafter the respondent on the instigation of her friend Ravinuthala Amareswari instigated PW2, and they have

harassed her by demanding her to get money from her parents; and that she filed present petition against the respondent seeking right of residence in one of the portion belonging to the respondent, and also to return gold ornaments that were in the possession of the respondent apart from the seeking protection from the hands of the respondent. PW1 has denied suggestions during the course of her cross-examination that in the application given to the Project Director she did not mention that at the time of her marriage cash of Rs.40,000/-, gold chain weighing 2 sovereigns and 6 grams of ear studs were given to the respondent and that she also did not mention in her said application that at the time of appearing ANM examination she had handed over said gold chain and ear studs to the respondent; that her parents had never given cash of Rs.40,000/-, gold chain weighing 2 sovereigns and ear studs to the respondent; that she never appeared in ANM examination; and that she is not entitled for the reliefs sought in the petition, and that the petition is not maintainable. PW1 admits during the course of her cross-examination that the two portioned house in which the respondent is residing is the self acquired property of the respondent that was constructed by her with her earnings; and that the respondent has filed case against her that is registered as crime no. 49/2012 under section 324 r/w 34 of the Indian Penal Code before Korisapadu police station and pending before the learned AJCJ, Addanki. PW2 has stated during the course of her cross-examination that at present she and PW2 are living together under one roof; that PW2 is the only son of his parents; and that in the year 2007 itself she had given report to the police as the respondent and one Amareswari had instigated PW2 to beat her.

9. PW2 is the husband of the petitioner and son of the respondent, and he has stated on oath before this Court that at the time of his marriage his in-laws have given cash of Rs.40,000/-, gold chain weighing 2 sovereigns, and the respondent had presented gold ear studs to PW1; that the said cash and said gold ornaments are in the possession of the respondent; that he used to give his earnings to the respondent, and the respondent never picked up quarrel with him or with PW1; that the respondent has foisted false case against him as he did not

heed the words of the respondent who had instigated him to send away PW1 to the house of her parents, and she(respondent) can perform his second marriage; that the petitioner has filed present petition seeking right of residence in one of the portions of the house belonging to the respondent, and also return of her gold ornaments from the possession of the respondent. PW2 has stated during the course of his cross-examination that through PW1 he came to know she had given her gold chain and one pair of ear studs to the respondent. PW2 admits during the course of his cross-examination that since the date of their marriage he and PW1 are living together, separately in one portion of the house that stands in name of the respondent, and the respondent has been residing in the another portion. PW2 has denied suggestions during the course of his cross-examination that the said house belong to the respondent and PW2 do not have any right to seek residence in the said house; that he and PW1 have beaten the respondent and caused injuries to her; and that they have filed the present petition against the respondent to harass her.

10. RW1 has testified in her evidence that she is an old lady; that the petitioner and PW2 are residing jointly, and she never harassed the petitioner; that the petitioner and PW2 have failed to take her proper care; that she was sent away by the petitioner; that she was not under obligation to allot any property to the petitioner; that the petitioner has hatched a plan to grab the property without any shelter to her; and that the petitioner has harassed her. RW1 has stated during the course of her cross-examination that she is having two portioned house that was constructed with the income of her husband; that the parents of the petitioner have given cash of Rs.40,000/- and gold chain weighing 2 sovereigns to them in the marriage of PW1 with PW2; that her nephew had pledged those gold ornaments with the Indian Bank in her name and he had secured loan; and that she is ready to give one of the portions to PW1 and PW2 for their residing. RW1 has denied suggestions during the course of her cross-examination that the parents of PW1 had given one pair of gold ear studs weighing 6 grams to them; and that she is under an obligation to return the pledged gold ornaments to PW1.

11. It is the version of PW1 that the respondent and her friend one Ravinuthala Amareswari had instigated PW2 and they have started to harass her by demanding her to get money from her parents. This version of PW1 remained intact and unchallenged as she has not been cross-examined by the respondent on the said aspect, and the said version of PW1 regarding her subjection to domestic violence also stand corroborated with the recitals of her petition. Therefore, unrebutted evidence of PW1 establishes that the respondent has subjected her to domestic violence by instigating PW2 to harass her (petitioner) to bring money from her parents.

12. PW1 has stated before this Court that at the time of her marriage with PW2 her parents have given cash of Rs.40,000/-, gold chain weighing 2 sovereigns and 6 grams of gold ear studs and they are in the possession of the respondent. The respondent during the course of her cross-examination categorically admits that the parents of PW1 have given cash of Rs.40,000/- and gold chain weighing 2 sovereigns to them in the marriage, and that the said gold ornament is pledged by her nephew with Indian Bank in her name for securing loan. However, the respondent denies that one pair ear studs weighing 6 grams were also given to them by the parents of PW1. The evidence of PW2 reveals that the respondent in fact had presented gold ear studs to PW1 at the time of marriage. Thus it can be said that the parents of PW1 have only presented Rs.40,000/- cash and gold chain weighing 2 sovereigns to the respondent at the time of the marriage, and that they did not present any one pair of gold ear studs weighing 6 grams to the respondent. The learned counsel for the respondent has argued that PW1 did not mention in her petition that her parents have given Rs.40,000/- cash and gold ornaments to the respondent, and that there is material improvement in the evidence of PW1 before this Court from her previous statement, therefore, the evidence of PW1 regarding presentation of the said cash and gold ornaments cannot be disbelieved. No doubt PW1 did not aver about the presentation of said cash and gold ornaments by the parents of PW1 to the respondent, however, in view of the admission made by the respondent during the course of her cross-examination regarding such presentation of cash

and gold chain by the parents of PW1 to them, there is no iota of doubt to disbelieve such presentation of cash and gold chain weighing 2 sovereigns by the parents of PW1 in her marriage to the respondent, and under such circumstance not much weight need not be given to the said improvement in the evidence of PW1 before this Court regarding the said presentation. The respondent has denied suggestion that there is no obligation on her part to return the pledged gold ornaments to PW1. When the pledged gold ornament(gold chain weighing 2 sovereigns) were presented to the respondent by the parents of PW1 in the marriage then the respondent is bound to return the pledged said gold ornament to PW1 after releasing the same from the Indian Bank. Similarly the respondent is also liable to return Rs.40,000/- that was given to her by the parents of PW1 in the marriage.

13. The petitioner is seeking right of residence in one of the portions of the house of the respondent. The learned counsel for the respondent has vehemently argued that PW1 has stated during the course of her cross-examination that the two portioned house in which the respondent has been residing was constructed by the respondent with her own earnings, and that it is self acquired property of the respondent. Reliance in this regard has been placed upon the authority reported *supra*. The learned counsel for the petitioner has argued that the respondent herself has stated during the course of her cross-examination that the said two portioned house was constructed with the income of her husband, and that the said house is not the self acquired property of the respondent, and the said house is shared household within a meaning of section 2(s) of the Protection of the Women from the Domestic Violence Act, 2005, belonging to the joint family in which PW2 is a member. In the authority relied upon by the respondent *supra* the hon'ble Supreme Court held that the wife cannot claim any right to live in the house that belong to her mother-in-law. However, in the instant case it has been brought on the record of the case during the course of cross-examination of the respondent that the said two portioned house was constructed with the earnings of the husband of the respondent. PW2 is the only son of her parents. When the said two portioned house has been constructed out of the earnings of the husband of the respondent and father of

PW2 then certainly the said house cannot be said to a self acquired property of the respondent, and that the said house acquires the status of the joint family property in which PW2 is a member. The said admission by the respondent regarding the nature of the said house is the best evidence to conclude that the said house is a joint family property and it a shared house holds. The readiness expressed by RW1 during the course of her cross-examination to give one of the portions of the house to PW1 and PW2 for their residence implies that the respondent is also acknowledgment the right of residence of PW1 in the said house. Under such circumstance the *ratio* of the authority relied by the respondent *supra* is not applicable to the present case as the said house do not belong to the respondent and with due respect not followed. This point is answered accordingly.

14. 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 respondent is 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 respondent is directed and to allow the petitioner to reside in one of the the said portions; and
3. the respondent is directed to return Rs.40,000/-(Rupees Forty thousand only) and gold ornaments weighing about two sovereigns to the possession of the petitioner to which she is entitled.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in open Court, this the 5th day of May, 2015.

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

//APPENDIX OF EVIDENCE//

-: WITNESSES EXAMINED :-

For Petitioners
PW1 : Ch. Kalpana
PW2 : Ch. Bavannarayana

For Respondent:
RW1 : Ch. Audilakshmi

// DOCUMENTS MARKED //

For Petitioner: -Nil-
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.