

IN THE COURT OF THE II ADDITIONAL JUDICIAL MAGISTRATE OF FIRST
CLASS: ONGOLE

Present: Sri J. Sravan Kumar
III Addl. Judl. Magistrate of First Class, Ongole
FAC: :II-Addl.Judl. Magistrate of First Class, Ongole
Tuesday, the Second (2nd) Day of May, 2017

D.V.C.No.25/2014

Between:

1. Ganipineni Sudharani D/o Venkateswarlu,
Aged 30 years,. Hindu, Housewife, R/o Ponugupati Colony,
Ongole town and mandal
2. Ganipineni Rupesh S/o Krishna Mohan @ Krishna Mohan Naidu,
aged 6 years, Hindu, student, LKG R/o Ponugupati colony, Ongole

2nd petitioner is being minor rep. by his mother and natural
guardian i.e., 1st petitioner Ganipineni Sudha Rani

... **Petitioners**

And

1. Ganipineni KrishnaMohan S/o Venkata Subbaiah, aged 32 years,
caste by Kamma, Thrupukammapalem, Ongole
2. Ganipineni Venkata Subbaiah, S/o Ramaiah, aged 65 years,
Thrupukammapalem, (near Dinalabhavi), Ongole
3. Ganipineni Anathalakshmi W/o Venkata Subbaiah, aged 55 years,
Thrupukammapalem, Ongole
4. Ganipineni Ramanaidu S/o Venkata Subbaiah, aged 38 years,
Thrupukamma palem,Ongole
5. Ganipineni Sravya W/o Ramanaiadu, aged 34 years,
Thrupukammapalem, Ongole ... **Respondents**

The petition coming on 01-05-2017 before me for final hearing in the presence of Smt.P.Lakshmi Kumari, Advocate for the Petitioners and of Sri P.Subbarao, Advocate for the Respondents, upon hearing the arguments and having stood over for consideration till this day, this Court delivered the following:

// ORDER //

1. The present DVC is filed by the complainant and her young child against the Respondents for granting of reliefs under Secs.18, 19, 20 and 21 of DVC Act.

2. The brief allegations of the petitioner are as follows:

The 1st Respondent is husband, 2nd and 3rd Respondents are in-laws, 4th respondent is brother-in-law and 5th respondent is sister-in-law.

The marriage between R1 and petitioner was solemnized on 05-11-2008 as per the Hindu Rites and Customs at Ongole. At the time of marriage, Rs.10,00,000/- dowry and 50 sovereigns of gold presented to the respondents on their demand. Apart from the said valuables, a motor cycle and Rs.50,000/- of amount was given towards marriage expenses. After marriage, R1 and petitioner resided at Turpu Kammapalem for some time, after that, the petitioner and respondent went to Delhi and stayed along with R2 to R5. She alleged that during her stay at Delhi, she was severely harassed by the respondents for want of additional dowry and thereby she was necked out.

She further made an allegation that, with the active instigation of R2 to R5, R1 harassed her mentally and physically and when she conceived the respondents never provided any food and shelter to her and harassed mentally and physically for want of divorce. As there is no other way, she reached to her parents home and lodged report against the Respondents, thereby filed the present complaint for granting of reliefs as prayed for.

3. In other side, the 2nd Respondent counter and the same was adopted by Respondents 1 and 3 and denied the allegations of the petitioner. They never disputed the relationship with the petitioner. They denied allegations of the petitioner and made counter allegations that the petitioner herself withdrawn the company of the 1st Respondent and stayed along with her parents, at no point of time, they never committed harassment as alleged by her. The Respondents stated that he did not have any financial

capacity to pay the maintenance as stated by the petitioner and therefore, he prayed the Court to dismiss the complaint.

4. In support of contention of petitioner, she herself got examined as PW-1. One Prameela, who is mother of PW-1 was examined as PW-2. One Venkateswarlu, who is uncle of PW-1 was examined as PW-3. One Singothu Mangamma examined as PW-4 in support of PW-1 evidence.

On behalf of Respondents, R1 is examined as RW-1. One G. Venkata Subbaiah, father-in-law of petitioner was examined as RW-2. One Gorantla Kantharao, who is a third party to the proceedings examined as RW-3. Exs.P1 to P15 are marked on behalf of petitioners and no documents are marked on respondent.

5. Now the points for determination are :

1. Whether the petitioner is the legally wedded wife of the 1st Respondent?
2. Whether the petitioner is subjected to Domestic Violence from the hands of the respondents ?
3. Whether Respondents are responsible for such harassment?
4. Whether the petitioner is entitled for compensation as prayed for?
5. Whether the petitioner is entitled for maintenance as prayed for?
6. To what relief?

6. As far as first point is concerned, ***whether the petitioner is the legally wedded wife of the 1st Respondent?***

Both the parties admitted the relationship with the petitioner. Therefore, much discussion is not required to answer the said point that the 1st Respondent himself admitted that the petitioner is his legally wedded wife. Hence, the point is answered accordingly.

7. As far as second point is concerned, ***Whether the petitioner is subjected to Domestic Violence from the hands of the respondents ?***

The word harassment is given wider definition in the prospective of Domestic Violence Act-2005. As seen the definition, every piece of physical and mental element is being covered under the definition.

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

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any 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 injures or causes harm, whether physical or mental, to the aggrieved person.

8. During evidence, PW-1 stated that, the Respondents committed domestic violence and thereby harassed her mentally and physically. She made wild bald allegations against the Respondents stating that they harassed her mentally and physically for want of additional dowry and thereby necked out her child and did not look after their welfare.

9. As seen the contents of the complaint, nowhere the Respondents denied the relationship with the petitioner. The Respondents denied that, they never committed any offence and never committed any domestic violence as alleged by the petitioner. She herself harassing the Respondents by foisting false cases against them.

They further denied that, they never received any dowry and motor cycle as alleged by the petitioner and for the purpose of this case, the

evidence of witnesses stated against them for the purpose of this case, they are deposing false evidence.

10. As seen the cross-examination of the learned respondents counsel, all PWS-1 to 3 were cross-examined at length, but there is no material point to discuss. The Respondents admitting the relationship with the petitioner and he never denied the paternity of the 2nd petitioner. It seems, there are disputes between the 1st Respondent and petitioner and both are residing separately. The 1st Respondent denied his earning and stated that he is not in a position to pay the maintenance.

As seen the DVC Act, nowhere the act denied the maintenance to the wife on the ground that she herself deserted. Such provision is not existed in DVC Act.

11. The counsel for the petitioners vehemently argued that, after filing of this case, the Respondent No.2 transferred the properties in favour of his wife, thereby it indicating the intention of the parties not to do justice to the petitioner.

12. As seen the case facts, circumstances and cross-examination, the 1st respondent categorically admitted that, he is residing in a house bearing Door No.22-D, Pocket B Mayur Vihar phase-2, Delhi 91 and he pleaded that, at no point of time, he resided along with R2 to R5 and the petitioner falsely implicated them into case. He further goes to admitted in his cross-examination that, he is residing along with his friends now, therefore, he did not have any permanent board. He himself admitted in his cross-examination that at no point of time, he resided along with R2 to R5 and he is residing at present along with his friends.

13. On seeing the address stated by RW-1, the address stated in his evidence showing that in the same address, R4 and R5 were residing. Therefore, this court feels that, R1, R4 and R5 residing under one roof and the 1st Respondent is deposing false evidence. The summons of R4 and R5 were serving in the same address, wherein RW-1 stating that it is not the house of R4 and R5 and it is the house of his friends. The petitioner made an allegation against R2 to R5 that they committed domestic violence against her and thereby necked out from her matrimonial home. It seems, the allegations does not require any witnesses and PW-1 evidence is alone sufficient to say that the respondents committed domestic violence Act.

As observed by Hon'ble Apex court in the case *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors* reported in (1997) 7 SCC 7

" The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.

Similarly, Hon'ble Apex court observed in the case of *Prakash Bodhraj v. Shila Rani Chander Prakash* reported in **AIR 1968 Delhi 174**

" An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain

them according to the family standard. It is for such able-bodied person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

14. At this juncture this court would like place reliance on the observation made by the Hon'ble Delhi High Court in the case of **Damanpreet Kaur vs Indermeet Juneja & Anr. Which was reported in 2012 (5) LRC 279 (Del):**

In the said case Hon'ble Delhi High Court made observations that -

“a spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose”

As observed by the Hon'ble court in the above case, though the petitioner is earning by worthy of her capacity, it does not tantamount granting of maintenance. As seen the provisions of DVC Act, the wording used must be understand in wider sense that, the amount of maintenance shall be granted according to the standards of respondent. In this case, the petitioner is having daughter and some amount shall have to be meet towards his educational expenses.

15. As seen the facts of the case, the petitioner is having young child and the husband is having responsibility to maintain the child. Therefore,

this Court feels that the material raised by the Respondent counsel and the extensive cross-examination was not held in any manner. Since there is no rider to DVC Act for providing maintenance to the wife. The respondent is residing at Delhi and doing business. The Respondent denied that he did not have any income source and depending on the earnings of his father. Mere denial of income source doesn't have any force. Being husband 1st respondent is bound to maintain her wife and young child.

In view of the admitted relationship with the petitioners 1 and 2, this Court feels that, an amount of Rs.20,000/- is feasible to grant maintenance to the petitioners 1 and 2.

Considering the allegations mentioned in the petition, this Court feels that, it is the appropriate case to grant compensation. Since the petitioner and her own young child are residing at the mercy of parents, therefore, this Court feels that it is a fit case to grant residential orders in favour of petitioners.

In view of the discussion, this court feels that the respondent is liable to pay maintenance to the complainant and her children. Hence, the point is answered in favor of Pw1.

16. **Point No.6:**

To what relief?

In the result, the petition is partly allowed and the Respondent No.1 is directed to pay an amount of Rs.20,000/- per month towards maintenance to the petitioners 1 and 2 from the date of this petition. The Respondent No.1 is directed to pay the arrears amount within 2 months from the date of this petition and he is further directed to pay the

maintenance amount on or before 5th of every succeeding month or directed to deposit in the petitioner's account.

Further all the Respondents are directed to provide residential accommodation to the petitioners in the house mentioned in the petition. Further, the Respondents are directed not to commit any domestic violence in favour of petitioners 1 and 2. accordingly, protection order was granted. The Deputy Superintendent of Police, Ongole Town is directed to implement the Residential orders within two months from the date of this Order. The Protection officer is directed to assist in implementation of the residential orders with the help of Deputy Superintendent of Police and assist the petitioners in enforcing of her rights.

Further the Respondents are directed to pay compensation of Rs.5,00,000/- to the petitioners within three months from the date of receipt of this order.

The rest of the claim against the respondents is dismissed.

Dictated to the Personal Assistant, transcribed by her, corrected and pronounced by me in Open Court, this the 2nd day of May, 2017.

Sd/- J.Sravan Kumar
III ADDL. JUDL. MAGISTRATE OF I CLASS,
FAC::II-Addl.Judl.Magistrate of I-Class
ONGOLE

APPENDIX OF EVIDENCE **WITNESSES EXAMINED**

For Petitioner :

PW-1: G.Sudharani
P.W2: G.Prameela
P.W3:P.Venkateswarlu
P.W4:S.Mangamma

For Respondents :

RW-1: G.Krishna Mohan Naidu
R.W2:G.Venkata Subbaiah
R.W3:G.Kantharao

DOCUMENTS MARKED

For petitioner:

Ex.P1:Mee Seva copy of Regd. Sale deed dt. 9-1-2006 No.09AA 212711
Ex.P2: Mee seva copy of Regd Sale deed dt. 20-3-2006 No.359607

- Ex.P3: Mee seva copy of Regd Sale deed dt. 20-3-2006 No.359601
Ex.P4: Mee seva copy of Development agreement of GPA dt. 5-11-2011
No.570168
Ex.P5: Mee seva copy dt. 5-6-2015 No. BR 076890
Ex.P6: Mee seva copy of Settlement deed dt. 25-5-2015 NO BR 076010
Ex.P7: Mee seva copy of settlement deed dt. 25-5-2015 No.BR 076009
Ex.P8: Mee seva copy of settlement deed BR 076970
Ex.P9: Mee seva copy dt. 22-5-2015 Y 741449
Ex.P10:Mee seva copy of sale deed dt. 15-4-2003 No.26892
Ex.P11:Mee seva copy of sale deed dt.28-12-2001 No. 68880
Ex.P12:Mee seva copy of settlement deed dt. 14-7-2003 No. 18622
Ex.P13:Mee seva copy of document dt. 15-7-2003 18646
Ex.P14:Mee seva copy of settlement deed dt. 14-7-2003 No. 63239
Ex.P15:Mee seva copy of settlement deed dt 8-6-2005 No.06AA 113956

Sd/- J.S.K
III A.J.M.F.C.,
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