

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.51/2012 OR 34/2014

Gayakavada Deepthi, W/o Rajesekhar, aged about 25 years,
presently R/o Mothe Johnsi (Mother)
Dr.No.1-58, (6/3), Indurthi Nagar, Ongole

... Petitioner.

Vs.

1. Gayakavada Rajasekhar, S/o Maheswara Rao
aged about 30 years
2. Gayakavada Maheswara Rao, S/o not known,
Aged about 62 years
3. Gayakavada Ramabai W/o Gayakavada Maheswara Rao,
Aged about 50 years, Housewife
4. Gayakavada Krishnam Raju @ Krishna
S/o Maheswara Rao aged about 40 years, Private Lecturer
5. Gayakavada Priyanka, W/o Krishnam Raju, aged about 30
years, Housewife

(Respondents 1 to 5 are R/o Srinivasa Towers(Patwari Enclave),
Room.NO.302, 303 Near Sandya Hospital, IDPL Colony, Bala
Nagar, Hyderabad)

6. Bhavani W/o Janardhan, Elder D/o Maheswara Rao,
aged about 43 eyars, Private Teacher, R/o 1st floor, of Srinivasa
Towers, BalaNagar, Hyderabad
7. Janardhan S/o not known, aged about 48 years, Real Estate
Business, R/o 1st floor of Srinivasa Towers
BalaNagar, Hyderabad
8. Srilakshmi W/o Kanna, Aged about 40 years, Private Engineer
Nanda Nagar, Chintala, Hyderabad
9. Kanna, S/o Nageswara Rao, aged about 45 years, Private
Engineer, R/o Nanda Nagar, Chintala, Hyderabad

... Respondents.

* * *

This petition is coming on 27-6-2016 for hearing before me in the presence of Sri.Kola Siva Prasad, Advocate for Petitioners and of Sri.P.Sreedhar Advocate for respondents 1 to 9 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 is a complaint filed by the defacto complainant U/sec.12 of Protection of women from Domestic Violence Act, 2005 praying this court to grant the following reliefs. 1) To Pass Protection orders; 2) Residential accommodation; 3) Monthly maintenance of Rs.10,000/-.

2. Brief facts of the petition are as follows:

on 01-10-2010 the petitioner and first respondent was married as per Hindu Sastras in Swagath Function Hall, Kukatpalli, Hyderabad. At that time of marriage the mother of petitioner presented Rs.1,50,000/- cash and 15 sovereigns of gold ornaments to the first respondent and his parents. Further at the time of marriage the first respondent , his parents elder brother, sister in law, sisters and brother in law informed the petitioner and her mother that first respondent was already married with one Jyothi of Savalyapuram village of Guntur District and at present they are divorced. Believing their words petitioner accepted for marriage and married the first respondent as per Hindu rights and customs. After marriage the respondent has set up his family in plot No. 303 of Patwan Enclave. Subsequently out of their wedlock the petitioner was blessed with a son who is aged about 15 months at present by name Ashuthosh Raj . From the beginning of the marriage the 1st respondent used to harass the petitioner by relying on the lies of his mother. In pursuance of the same the first respondent mother started demanding the petitioner to give to her son to the elder brother of 1st respondent as he had no issues. In such a manner all the family members of the respondent including 1st respondent harassed the petitioner to handover the son to the elder brother of 1st respondent. At one instance they detained the petitioner in a room by locking as she did not accept their unlawful demand. Moreover they also threatened the mother of petitioner that even she could not do anything. In such a manner the respondent used to beat the petitioner indiscriminately whenever she requested them not to separate her son from her unbearable with the harassment of the respondents the petitioner decided to harm herself by committing suicide. In connection to that she had consumed nail polish

remover with a view to commit suicide. At that time the respondent provided medical treatment to the petitioner through a private doctor and took all the precautions that the said incident could not be leaked out.

3. However, the petitioner with great difficulty informed about the harassment made by the respondents to her mother and who in turn along with relatives came there and requested the 1st respondent and his parents to send the petitioner along with kid. Even in those circumstances the respondent did not allow the petitioner and her son to go to her mother. In addition to that the petitioner was confined in the house. In those circumstances she approached CI of Police of Bala Nagar, Police station and reported the matter to him. Upon the instructions of CI the respondents handed over the kid to the petitioner.

4. After that when the petitioner tried to enter her matrimonial home the respondent did not allow her to enter into the house. Having no other go the petitioner along with her son reached to Ongole and has been residing under the roof of her mother. At present the mother of petitioner and her brother are looking after the welfare of the petitioner and her son. In spite of several efforts made personally and also through elders for reunion with the first respondent, the first respondent and his relatives did not accept for the same and also made clear before the elders that first respondent do not want to lead marital life with the petitioner. They also informed that they are going to perform another marriage to the 1st respondent with some other lady for huge amount. Moreover, they threatened the elders that they will file false cases against them if they come again for mediation. As such the first respondent voluntarily and willfully neglected the petitioner and her son.

5. While so, the petitioner has no source of income and she has no properties of any kind on her name. As such the petitioner and her son are totally living under the charity of mother of petitioner and petitioner mother could not maintain them due to her financial problems. Where as the respondent is working as an employee in Times of India and he is earning an amount of Rs.16,000/- towards his monthly salary. In addition to that he is also doing money lending business and earns an amount of Rs.40,000/- per month. Besides that he also own a house and there are no dependents on the earnings of the 1st respondent. As such the petitioner requested for an amount of Rs.10,000/- per month towards her maintenance to be paid by the first respondent in the present abnormal stake in cost of living.

6. It is also submitted by the petitioner that she has been apprehending life danger in the hands of respondent as respondents 2 to 9 are making hectic efforts to perform another marriage to the 1st respondent with another women. In consonant to that all of them threatened with dire consequences. As such she is required protection orders from the respondents. It is also submitted by her that she also requires residential accommodation as all the respondent have committed the acts of Domestic Violence towards her. Hence she sought for protection orders; residential orders; and also monthly maintenance of Rs.10,000/- towards her maintenance.

7. On the other hand counter is filed by the respondent denying all the averments of the petition except his relationship with the petitioner and her son. It is admitted by the respondent/R1 that his marriage was performed with the petitioner at Hyderabad and it is absolutely false to state that petitioners mother presented cash of Rs.1,50,000/- and 15 sovereigns of gold ornaments. As it was 2nd marriage to him after

dissolution of his earlier marriage this respondent married the petitioner without taking any dowry and gifts from the petitioners family. Moreover it is also submitted by the respondent that the marriage expenses was borne by the family of this respondent.

8. It is further admitted by the respondent that he has set up his family in Hyderabad, after marriage, and a son by name Ashuthosh Raj was born to the couple on 25-10-2010. It is also submitted that the family of the petitioner has no earning member . The petitioner had two brothers by names Morey Nagarjuna and Morey Vamsi. Even prior to the marriage of the petitioner with this respondent, the said vamsi eloped a with girl and married her against the wishes of her parents. He is a vagabond. Petitioners another brother by name Nagarjuna could not get marriage even yet for want of employment and income. Likewise The father of the petitioner also died about 18 years ago and this respondent learnt that the mother of the petitioner, has been maintaining live in relationship with a person by name Shaik Rabbani who has a criminal record. Soon after the marriage both of the petitioners brother started asking this respondent for want of money by telling lame excuses and likewise the respondent used to adjust money to them now and then.

9. Even From the month of January, 2011 the petitioner started harassing this respondent to sell away the apartment at Hyderabad and shift the family to her mother's house at Ongole. This respondent expressed his disinterest as he does not want to lose his existing employment. Since then the petitioner has been asking this respondent to adjust an amount of Rs.2,00,000/- to his brother Nagarjuna for starting a business at Ongole. The respondent could not accept to her request as he did not possess that much of amount. On that the petitioner started harassing the 1st respondent to shift his family to

Ongole by selling the house and lend money to her. Likewise the petitioner started to raise quarrels with this respondent for trival things. she used to threaten this respondent that she would commit suicide. In such a manner she used to avoid cooking food and used to insult the family members and relatives of this respondent. That being so, the petitioner and respondent performed head tonsure function of their son in the month of July, 2011 at that time the mother and brother of petitioner attended the said function and while returning from Tirumala the petitioner and her son accompanied her mother and brother on the pretext of a short stay at their house at Ongole. But the petitioner did not return Hyderabad even after a month. Since then the petitioner again started this respondent to come to Ongole permanently and also to lend an amount of Rs.2,00,000/- to her brother. After some the petitioner stopped talking with this respondent over phone and on every occasion when ever this respondent tried to contact her on phone the petitioners mother and her paramour Rabbani used to demand the respondent to come to Ongole and the petitioner would not come to Hyderabad. In those circumstances this respondent came to Ongole and asked the petitioner to come along with him. But the petitioner bluntly refused for the same. At that time the brothers of the petitioner also insulted this respondent and petitioner mothers and brother also insulted this respondent and above said Rabbani threatened this respondent that they would drag him the court and police station by initiating several kinds of false litigation cases. Even they did not allowed respondent to see the face of his son. Having no other go this respondent returned to Hyderabad and brought the same to the notice of his parents and brothers. Subsequently the respondents brother in law and younger sister in law came to Ongole in the month of October, 2011

and tried to convince the petitioner to join the respondent. Then also the said Rabbani insulted them by using filthy language and warned them not to come to their house again. Similarly when father of this respondent also visited Ongole in the month of February, 2012 for mediation the petitioner and her family members vacated the old house and shifted to a new house. When he telephoned to the brother of the petitioner they failed to respond for the same and after some time the said Rabbani telephoned to father of this respondent and enquired about his cause of his arrival asking him to wait at RTC bus stand but they did not meet his father and in such a manner they humiliated the father of respondent by switching off their cell phones. So the efforts made by the members of the family of the respondent proved futile due to adamant attitude of the petitioner and her family members.

10. It is also submitted that this respondent is working as Marketing executive in Times of India, Hyderabad and earns an amount of Rs.6,000/- to Rs. 8,000/- per month. While so, his father i.e., 2nd respondent is of aged person and is a retired private employee suffering from several ailments and his mother i.e.3rd respondent is a housewife and she is suffering from several ailments including heart disease. Therefore both of them has no income except monthly pension of Rs.2,000/- as they could not meet their both ends, this respondent and his elder brother are looking after them. Though they reside in the house of 4th respondent this respondent contributes an amount of Rs.3,000/- per month to his age old parents towards their monthly maintenance.

11. Coming to the petitioner and his son this respondent never neglected them and petitioner herself deserted this respondent. This respondent has utmost love and affection towards petitioner and he is

ready and willing to take them back even at present to his house. Hence, in view of above submission it is prayed by the respondent to dismiss the petition.

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

1. Whether the petitioner is entitled for protection orders ?
2. Whether the petitioner is entitled for residence orders?
3. Whether the petitioner is entitled for maintenance?

13. 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 humilities 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.

14. Coming to the case on hand in order to grant reliefs sought by the petitioner that is either protection order or residence orders or monetary reliefs it has to be established by the petitioner that domestic violence has been taking place against her by the respondents R1 to R9.

15. To establish the same the petitioner as P.W1 deposes in the following manner that her marriage took place on 1-10-2001 with R1 at Hyderabad as per Hindu Rites and customs. At that time of marriage her parents gave cash of Rs.1,50,000/- and 15 sovereigns of gold to R1 towards dowry. After marriage she joined R1 at Hyderabad and subsequently out of her wedlock she gave birth a male child on 25-10-2010. Since then the respondent started harassing petitioner to give her child to R7 who is elder brother of R1 in adoption. As she did not accept

for the same the respondents threatened her that they would neck out her from her matrimonial home if did not accept to their demand . At one instance respondent confined her a room taking away her child. On that she consumed nail polish remover to do away her life.

16. However she was provided treatment by the respondents and subsequently she informed about said fact to her parents who in turn came there and questioned the respondent for which the respondents necked her out from her house by taking away the child. On that she went to police station and through police she obtained custody of her child and subsequently came to Ongole. Since then she has been staying at her parents house. Though mediations was held for several times through elders the respondent did not accept to take her back stating that they have intended to perform 2nd marriage to R.W1.

17. Coming to the means of respondent, he is working as executive in times of India, Hyderabad and drawing a salary of Rs.16,000/- per month and also do finance business and earns an income of Rs.25,000/- per month. Hence she has filed this petition seeking protection orders alternative residence and also maintenance to her and her child, for an amount of Rs.10,000/- per month

18. On the other hand the respondents failed to adduce their evidence inspite of given much opportunity. Hence, their evidence is closed.

19. However on perusal of evidence on record admittedly there is no dispute with regard to Domestic relation ship between P.W1 and 1st respondent. Why because the respondent himself admitted in his cross examination about his marriage with the petitioner as per Hindu rites and customs and also about consummation and subsequently about the birth of his male child to them out of their wedlock. So there is no dispute with regard to Domestic relationship between the parties.

20. Now coming to the relief sought by petitioner that is pertaining to monthly maintenance and residential orders, the allegation against the respondent as per P.W1 is that the respondents started harassing P.W1 from the time of birth of her son that she should give her son to R4 & R5 in adoption as they had no issues. On this aspect P.W1 elaborately deposed that from the time of birth of her son the respondents started harassing by demanding to give her son to elder brother of respondent R1 that he had no issues. In such a manner when ever she refused for the same she was harassed by the respondent. At one instance she was also confined in a room and not provided with food by taking her son away from her. On that she consumed nail polish remover liquid and tried to committed suicide. Subsequently she was treated by the respondents and later she has informed about the incident to her mother who in turn came and requested the respondents for which the respondent took the child from P.W1 and necked out her. Thereupon she went to police station and obtained her child with the help of police and subsequently she came to Ongole as the respondent did not enter into matrimonial home. As such she has become dependent upon her mother and has been residing at Ongole.

21. Per contra the respondent though not adduced any evidence and cross examined P.W1 at length, evidence of P.W1 could not shaken. However the evidence of P.W1 could not be discredited in any manner excepting putting suggestions which are of no value. Though respondent denied the allegation against the respondent he did not prove the same by adducing cogent evidence. However, It is an admitted fact that he has not provided any maintenance since the date of filing of this petition or since his separation from P.W1. Though he stated many allegation in his counter that the petitioner herself deserted her matrimonial home he

could not prove the same by adducing cogent evidence. Moreover it is stated by him in his counter that he has sent several mediators for restitution of conjugal life between them but no such mediator is examined to support his contention. However in view of admitted fact that he has not provided any maintenance from the date of separation from P.W1 it amounts to economic abuse as per Domestic Violence Act.

22. Further no maintenance amount is given at least to his son from the date of his separation which also amounts to economic abuse. Further the version of P.W1 pertaining to her child appears to be true which comes under the purview of emotional abuse.

23. Further coming to the aspect of protection orders so in view of above discussion it is clear that as well as entitled for maintenance and residential orders.

24. Coming to the amount claimed by the petitioner that is Rs.10,000/- per month she could not explain the reason how she claimed such huge amount with any documentary proof to show that the respondent is earning certain an amount of Rs.16,000/- per month by working in Times of India and also incurs by doing finance business. However the respondent admitted that he is employee in Times of India and earning an amount or Rs.6,000/- to Rs.8,000/- per month and he has been paying Rs.3,000/- towards monthly maintenance to his parents. He has every responsibility to see the welfare of his wife and child also if he is abled body. Hence in view of above discussion the petitioner and her son are entitled for maintenance and residential accommodation. Accordingly the petition is allowed directing the respondent to pay an amount of Rs.3,000/- each to the petitioner and her son towards maintenance as well as residential expenditure.

25. Coming to the aspect of protection orders though P.W1 deposed elaborately in her evidence about the alleged harassment made towards her by the respondents family she could not establish any incident that have been taken place to show that she required protection orders why because she has been residing at Ongole and no instances has been explained by her that she requires protection orders. Hence in such circumstances this court is not inclined to believe her version in the aspect of requirement of protection orders and accordingly the petition is dismissed with regard to other claims.

26. In the result the petition is partly allowed directing the respondent to pay an amount of Rs.3,000/- per month towards maintenance and accommodation each to the petitioner and her son.

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

Sd/- D.Durga Kalyani
II Addl. Judl. Magistrate of I Class
Ongole.

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

For Petitioner :
P.w.1 : G.Deepthi

For Respondents :
-NIL-

DOCUMENTS MARKED ON BEHALF OF PETITIONER.

-NIL-

DOCUMENTS MARKED ON BEHALF OF RESPONDENT.

-NIL-

Sd/- D.Durga Kalyani
II Addl. Judl. Magistrate of I Class
Ongole.

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II-Addl. Judl. Magistrate of I-class
Ongole

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II-A.J.F.C.M, Ongole.

C.C.251/2013

On careful perusal of evidence on record P.W2 &3 said to be eye witnesses turned hostile and did not support the case of the prosecution. Thus remains only the evidence of P.w1 & 4 who elaborately deposed that the accused has beaten P.W1 at MRO office by threatening him and abusing him in unparliamentary language. However as seen from the cross examination of P.W1 it is an admitted by him that P.W4 is his friend and he has disputes with accused and her family. It is also admitted by him, that his mother a filed a case against accused and nine others in C.C.292/2012 pertaining to land disputes existed between P.w1 and brother of accused. So in view of above admission it is clear that the evidence of P.W1 cannot be relied . More over the

evidence of P.W4 is also not believable as it is admitted by P.W1 that P.W4 is his friend.

Coming to the chief examination of P.W1 I is deposed by him that accused has beaten him with the stick where as coming to the cross examination he deposed that the accused tried to beat him with a stick and at that time some people rescued him. So, the version of P.W1 is contradicting from the chief examination stated by him. Thus in view of above discussion it is clear that prosecution failed to prove the guilt of the accused beyond reasonable doubt.