

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

Present: Smt **C.R.Sumalatha**, B.Sc., L.L.B.,
Special Judicial Magistrate of I Class, Excise Court, Ongole

Tuesday, this the 06th day of August, 2013.

D.V.C.No. 04 of 2012.

Between:

Kasukurthy Vijaya Kumari w/o Bhaskar Subbarao,
35 years, Anganwadi Teacher, Christian, Jammulapalem
village, Tangutur Mandal, Prakasam District.

... Petitioner

And

1. **Kasukurthy Bhaskar @ Subba Rao** s/o Jala Ramaiah,
42 years, Painter, Jammulapalem village, Tangutur Mandal.
2. **Kasukurthy Jala Ramaiah** s/o Subbaiah, 68 years,
Rtd. Employee, R/o Jammulapalem village,
Tangutur Mandal, Prakasam District.
3. **Devarapalli Chandra Mohan** s/o not known, 42 years,
Photographer, R/o Tangutur village & Mandal.
4. **Devarapalli Joshasri** w/o Chandra Mohan, 36 years,
working as computer instructor in Vennur High
school, R/o Tangutur village & Mandal.
5. **Devarapalli Kamalamma** w/o Chennaiah, 68 years,
r/o Jammulapalem village, Tangutur Mandal.

... Respondents

This case coming on 22.07.2013 for final hearing before me in the presence of Sri **T.Thimothy**, Advocate for Petitioner and of Sri **L.Koteswara Rao**, Advocate for Respondents and having stood over for consideration till this day, this court made the following:

// ORDER //

1. The petitioner filed this complaint under Sec.12 of Domestic Violence Act, 2005 seeking protection, maintenance and for return of gold ornaments and also for compensation from the respondents.
2. The brief averments of complaint are that : The marriage between the petitioner and 1st respondent took place on 06.09.1996 as per Hindu Rites and customs at Jammulapalem village in the presence of elders, at the time of marriage parents of petitioner presented cash

of Rs.65,000/- and 10 sovereigns of gold to the 1st respondent and his parents, after marriage petitioner joined 1st respondent to lead marital life and out of wedlock they are blessed with two male children. After giving birth to 2nd son, the respondent started harassing her with the support of R.2 to R.5 demanding additional dowry and used to beat her indiscriminately suspecting her fidelity. The petitioner further submitted that the 1st respondent addicted to alcohol and used to come to the house at late nights and harass the petitioner both mentally and physically demanding additional dowry. R1 to R5 also used to threaten her that they will perform second marriage to R.1 by taking huge dowry. The petitioner further submitted that she is working as Anganwadi teacher at Jammulamadugu village and 1st respondent used to take her entire salary to meet his bad vices and not providing any needs to the petitioner and her children who are studying 6th and 4th class respectively in private school.

The petitioner further submits that she bared all the torture with a hope that 1st respondent will change his attitude but the 1st respondent did not change his attitude and at last on 10.06.2008 all the respondents beat the petitioner and necked her out of the house, in spite of intervention of her parents and elders the 1st respondent refused to permit the petitioner to stay with him, as there is no other go the petitioner approached Tangutur Police, but Police did not take any action as the respondents are powerful and influence the police.

The petitioner further submits that she is residing in another portion in the same compound away from 1st respondent and her clothes and household articles are with the 1st respondent, the 1st respondent refused to return even daily utensils and 1st respondent is

threatening her that he is going to sell away the properties. Hence, she is constrained to file this petition for the reliefs u/s.17, 18, 19 & 22 of Domestic Violence Act.

3. Denying the averments made in the complaint, the 1st respondent filed counter admitting his marriage with the petitioner performed on 06.09.1996 as per their caste customs and out of their wedlock they are blessed with two male children and contended that his 1st son is studying in Govt. Gurukula Patasala at Guntur District, 2nd and 5th respondents are residing separately at Jammulapalem and 3rd and 4th respondents who are wife and husband are residing at Tangutur village, the petitioner necked out the 2nd respondent from his house and in the said house she is running Anganawada Center. The 1st respondent further submits that the petitioner developed illegal intimacy with his younger brother and with his support the petitioner necked him and also 2nd respondent out of the house and they are suffering due to harassment of the petitioner and they have no capacity to protect themselves and they are on the roads, the petitioner and his younger brother are also trying to do away his life in view of their illegal intimacy. The 1st respondent further submits that he has no properties, income and residence and the 2nd respondent who is a retired court employee has deposited Rs.2,25,000/- in the name of his younger brother and also Rs.2,25,000/- jointly in his name and in the name of petitioner and the petitioner alone is taking monthly interest from the date of deposit. The 1st respondent further submits that his younger brother's wife also left his younger brother in view of illegal intimacy between his wife and his younger brother and the other respondents never interfered with the matters of the

petitioner and they never demanded the petition to bring dowry or additional dowry and prays to dismiss the petition.

4. Respondents No.2 to 5 filed adoption memo adopting the counter filed by 1st respondent.

5. To prove the case of the petitioner, the petitioner herself examined as Pw.1 besides examining P.w.2 to P.w.4 and no documents are exhibited. On behalf of respondents, the 1st respondent himself examined as R.w.1 besides examining R.w.2 and got marked Exs.R1 & R.2.

6. Now point for Considerations are that :

Whether the petitioner is entitled for the relief of maintenance, protection, return of gold ornaments and also for compensation? If so, to what relief ?

POINT:-

7. It is an admitted fact that both P.w.1 and R.w.1 are wife and husband and their marriage was performed in the year 1996 and out of wedlock they are blessed with two male children and P.w.3 is one of their sons and at present both P.w.1 and R.w.1 are staying away from each other and their children are staying along with P.w.1.

8. According to P.w.1 who is working as Anganawadi teacher, she and her husband lived together happily till 2001 and later disputes arose between them, the 1st respondent will not attend any work and he used to take her earnings and he will not even provide food to her and used to beat her demanding additional dowry on the instigation of R.2 to R.5 and R1 to R5 necked her out of the house of R.1 demanding her to bring additional dowry, otherwise they will perform second marriage to R1, but she stayed at the house of R.1 with a hope that

R.1 might change his attitude at any point of time and at present she is staying in one of the portions of the house belonging to R.2.

9. P.w.2 who is none other than father of P.w.1 deposed that P.w.1 and R.w.1 lived happily till giving birth to their 2nd son and after that 1st respondent started harassing P.w.1 without giving money and he also held mediation with elders but in vain and R.1 is harassing P.w.1, and P.w.3 who is none other than son of P.w.1 and R.w.1 deposed that R.w.1 used to take away the salary of petitioner and used to spent the same for his personal use and his father never take care of him, due to disputes P.w.1 and R.w.1 are staying separately and now R.w.1 is residing with his mother i.e., R.5.

10. During cross-examination of P.w.1 to P.w.3, P.w.1 to P.w.3 candidly conceded that P.w.1 is staying along with her children in one of the portions in a three portioned house belonging to R.2 and in another portion she is running Anganwadi school and in the 3rd portion the younger brother of R.w.1 by name Sunil is residing and R.w.1 is staying separately away from P.w.1. Coming to the evidence of P.w.4 who is also working as Anganwadi teacher also deposed that since 4 or 5 years there are disputes between P.w.1 and her husband and petitioner is running Anganwadi school in one of the portions in a three portioned house belonging to R.2.

11. It is therefore, from the evidence of P.w.1 to P.w.4, it is categorically established that there are disputes between P.w.1 and R.w.1 and in view of disputes both of them are living separately and P.w.1 is staying in one of the portions and running Anganwadi school in the another portion and younger brother of R.w.1 by name Sunil is

staying in the other portion of said three portioned house and R.w.1 & R.2 are not staying along with P.w.1 and younger brother of R.1 alone is staying in the one of the portions of the said house.

12. The contention of R.w.1 is that the petitioner developed illegal intimacy with his younger brother and with the support of his younger brother she necked him and 2nd respondent from the house and he is staying at his grand mother's house on her mercy as he has no properties and income and they are suffering a lot due to the harassment of the petitioner and his younger brother and they are also trying to do away his life and in view of their illegal intimacy wife of his younger brother also left his company. During cross-examination of P.w.1 when the learned counsel for R.w.1 posed question to P.w.1 whether wife of younger brother of R.w.1 left the company of her husband i.e., younger brother of R.w.1, for which, P.w.1 deposed that she doesn't know whether wife of younger brother of R.w.1 left the company of younger brother of R.w.1 about 6 months back due to disputes that the younger brother of R.w.1 developed illegal intimacy with her. Whereas P.w.2 and P.w.3 categorically admitted that one Nancy who is wife of younger brother of R.w.1 by name Sunil Kumar left the company of her husband about 6 months back due to disputes between them and since then the said Nancy is staying at her parents house at Nellore. It is also admitted fact that her younger brother-in-law Sunil Kumar is also residing in one of the portions where P.w.1 is also residing and it is unbelievable that P.w.1 being neighbourer of her younger brother-in-law doesn't know whether there are disputes between her younger brother and his wife and whether wife of her younger brother-in-law left his company nearly about 6 months back

or not, when P.w.3 who is P.w.1's son staying at Guntur and P.w.2 who is father of P.w.1 who is staying at Ethamukkala village are able to say that younger brother-in-law of P.w.1 and his wife are staying separately away from each other since 6 months, it creates doubt as to why P.w.1 is suppressing the fact that wife of her younger brother-in-law left his company and also the nature of disputes between his younger brother-in-law and his wife, it is for the reasons best known to P.w.1.

13. It is therefore, it could be safely concluded that R.w.1 and R.2 are not residing along with P.w.1 or along with younger brother of R.1 in the house belonging to R.2 and R.w.1 is staying at the house of R.5 and the evidence of P.w.1 is silent as to where R.2 is residing at present and whether R.2 is having another house or not and why R.2 is not residing in one of the three portions of the house owned by him. Further no specific allegations are made against R.2 to R.5 except vaguely stating that R.2 to R.5 instructed R.1 to harass and they beat her and necked her out from the house demanding additional dowry. The evidence of P.w.1 is silent whether she went to her parents house or stayed at her marital home when she was necked out from the house by R.1 to R.5 and when she joined her matrimonial home and when R.w.1 left her company and went away from the house and on what reason. Further on close reading of evidence of P.w.2 and P.w.3 goes to show that R.w.1 used to take away money from P.w.1 and used to harass her without giving money and there is no whisper in the evidence of P.w.2 and P.w.3 about R.1 to R.5 beating P.w.1 and necked out P.w.1 from the house and no single allegation is attributed by P.w.1 to P.w.3 against R.2 to R.5 who are admittedly not residing

along with P.w.1 in the shared house hold. Further it is admitted by P.w.1 and P.w.3 that R.2 who is a retired court employee has deposited Rs.2,25,000/- jointly in the name of P.w.1 and R.w.1 and also Rs.2,25,000/- in the name of younger brother of R.1, if that is so, where is the need for R.2 to harass P.w.1 to bring additional dowry along with R.1, R.3 to R.5, if really R.1 to R.5 harassed P.w.1 demanding P.w.1 to bring additional dowry, there is no need and necessity for R.2 to deposit Rs.2,25,000/- in the joint name of P.w.1 and R.w.1 from out of his retired benefits.

14. It is therefore, in view of the above circumstances, it could be safely concluded that there is no substantial evidence to believe the version of P.w.1 that R.1 to R.5 are harassing P.w.1 demanding additional dowry and they beat P.w.1 and necked her out of the house and it could be safely concluded that P.w.1 is not entitled for the relief of protection.

15. Coming to the aspect of maintenance admittedly P.w.1 is working as Anganwadi teacher and getting salary of Rs.2,500/- and it is also admitted by P.w.1 that R.w.1 is eking out his livelihood by doing cooly work and he is staying away from P.w.1 and his children, as P.w.1 is getting salary of Rs.2,500/- and she is able to maintain herself, P.w.1 is not entitled for maintenance, however R.w.1 is liable to pay maintenance to their children who are studying 8th class and 6th class respectively who are unable to maintain themselves. It is therefore, the petitioner is entitled for an amount of Rs.1,000/- towards maintenance and educational expenses to each of her children.

16. With regard to return of dowry amount and gold ornaments, the evidence of P.w.1 is that at the time of their marriage her parents gave cash of Rs.65,000/- and 10 sovereigns of gold ornaments to the 1st respondent towards dowry. During cross-examination of P.w.1, P.w.1 deposed that her parents gave dowry amount to R.w.1 and R.2 and at the time of giving dowry she was not present at the place and she came to know the same through her parents, P.w.2 who is none other than the father of P.w.1 in his evidence deposed that at the time of marriage he gave cash of Rs.60,000/- and 10 sovereigns of gold ornaments to R.w.1 towards dowry, during cross-examination he deposed that he gave the said dowry amount and ornaments to the elders of R.w.1 in the presence of R.w.1. Except the oral evidence of P.w.1 & P.w.2 who are interested in each other, there is no other oral or documentary evidence to show that P.w.2 gave dowry to R.w.1 and his elders and there are no bills pertaining to the purchase of 10 sovereigns of gold ornaments at the time of marriage of P.w.1 and R.w.1. Except the oral evidence of P.w.1 and P.w.2 there is no either oral or documentary evidence to substantiate the evidence of P.w.1 and P.w.2 that at the time of marriage P.w.2 gave cash of Rs.60,000/- or Rs.65,000/- to R.1 and R.2, therefore the petitioner is not entitled for the said relief.

17. It is therefore, in view of the above discussion, the petitioner is not entitled for the relief of protection, return of dowry amount and gold ornaments, compensation and maintenance to her, however R.w.1 being the father of his minor children who are studying 5th class and 6th class respectively have to maintain his children and an amount

of Rs.1,000/- to each of their children is granted towards their monthly maintenance and educational expenses.

18. In the result, the petition is partly allowed by granting maintenance of Rs.1,000/- to each of P.w.1's children (two sons) towards their monthly maintenance and educational expenses from the date of this order. And the 1st respondent is directed to pay monthly maintenance to the petitioner on or before the 5th of every succeeding month.

Typed to my dictation by the personal assistant, corrected and pronounced by me in open court, this the 06th day of August, 2013.

Sd/- C.R.Sumalatha.
***Spl. Judicial Magistrate of I Class,
Excise Court, Ongole***

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

For Petitioner

P.W.1 :Kasukurthy Vijaya Kumari
P.W.2 :Kasukurthy Subbaiah
P.W.3 :Kasukurthy Sujith Kumar
P.W.4 :Deva Kanaka Durga.

For Respondents:

R.w.1: Kasukurthy Bhaskar
R.w.2: Thatithoti Narasinga Rao

// DOCUMENTS MARKED //

For Petitioner:

-NIL-

For Respondents:

Ex.R.1 : Certified copy of Calendar & Judgment in C.C.172/2010 on the file of J.F.C.M., Spl. Mobile Court, Ongole.
Ex.R.2 : House Tax Receipt issued by Panchayat Secretary, Jammalapalem village, dt.15.02.2012.

Sd/- C.R.Sumalatha.
Spl.JMFC, Excise Court,
Ongole.