

IN THE COURT OF THE JUDL. MAGISTRATE OF I CLASS:
SPECIAL MOBILE COURT, ELURU, WEST GODAVARI DISTRICT.Present: - Sri Shaik Abdul Shariff,
Judicial Magistrate of I Class,
Special Mobile Court, EluruDated, this the 12th day of August, 2016D.V.C. No.29 of 2012

Between:

Kunapureddy Swarna Kumari,
W/o Kunapureddy @ Nookala Shanka Balaji Naidu,
Hindu, Female, Aged 40 years, Housewife,
R/o. Brundavan Apartments,
Ashok Nagar, Eluru, W.G.Dist.

... Complainant

-Vs -

1. Kunapureddy @ Nookala Shanka Balaji Naidu, S/o Venkateswara Rao, Hindu, Male, Aged about 45 yrs, Medicine Business, R/o Tulip Gardens, Plot No.103, V.L.Puram, Rajahmundry, E G Dist.
2. Kunapureddy Venakteswara Rao, Hindu, Male, Aged about 65 years, R/o Ramanaidupeta, Machilipatnam.
3. Kunapureddy Ramakoteswaramma, W/o Venkateswararao, Hindu, Female, Aged about 60 years, R/o Ramanaidupeta, Machilipatnam.
4. G Ratnajee, W/o Venkateswara Rao, Hindu, Female, Aged about 38 years, R/o.Ramanaidupeta, Machilipatnam.
5. G.Venkateswara Rao, Aged about 42 years, Hindu, Male, R/o. Ramanidupeta, Machilipatnam.
6. Gunnam @ Kunapureddy Mangayya Naidu, S/o Venkateswara Rao, Hindu, Aged about 52 years, Advocate, Palakollu, W G Dist.
7. Gunnam Adilaxmi, W/o Mangayya Naidu Hindu, Female, Aged about 46 years, R/O Palakole, W G Dist.
8. Kunapureddy Ramayyanaidu, S/o Venkateswara Rao, Hindu, Aged 46 years, R/o. Tiruvuru.
9. Kunapureddy Radharani, W/o Ramayyanaidu, Aged about 49 years, Hindu, Female, Advocate, Ramanaidupeta, Machilipatnam.
10. Kunapureddy Srinivas S/o Venkateswara Rao, Hindu, Aged 40 years, R/o.Ramanaidupeta, Machilipatnam.
11. Kunapureddy Sriganga, W/o Srinivas, Hindu, Female, Aged about 36 years, R/o Ramanaidupeta, Machilipatnam. --Respondents

The Domestic Violence Act proceedings against R.2 to R.11 are quashed as per the orders in CrI.R.P.Nos.812, 881 of 2009 dated 17/04/2009 of Hon'ble High Court of A.P., Hyderabad.

This case coming on before me for final hearing on 20/07/2016 in the presence of Sri B V Krishna Reddy garu, Advocate for the complainant and Sri K. Srinivasa Rao garu, Advocate for the Respondent having heard arguments and the matter having stood over consideration till this day, this court delivered the following:

ORDER

1. As per the complaint and the counter the chain of facts unfolded in the following manner:

That the complainant, Smt.Kunapureddy Swarna Kumari, states in the complaint that her parents got her wedded with the respondent during the year 1986 at Tirumala and at the time of marriage, her parents parted with an amount of Rs.3,00,000/- as dowry, gold ornaments weighing 15 sovereigns to the respondent and during the wedlock she begot two male children and the respondent never used to take care off the children and used to assault her very badly and he got used to all vices and never attends the duty punctually, due to which his services were terminated by the insurance company and in one occasion she noticed the photo of concubine of the respondent and whereupon, the respondent snatched away the same and warned her for dire consequences, if she discloses to anybody and the respondent shifted the family to Rajahmundry and thereat he began demanding her to bring additional dowry amount from her brothers and her brothers obliged and paid an amount of Rs.1,00,000/- and the respondent took away 15 tulas of gold ornaments high handedly and visited Goa and came back after 6 months and the matter was placed before the elders and the elders reprimanded the respondent, however he did not change his attitude and the respondent used to suspect her chastity and in the month of March,2005, the respondent drove her away from the matrimonial home and due to the harassment her father passed away and

aftermath of the death of her father, herself and the respondent put up family at Eluru in the house of Gadem Rama Krishna and the respondent owns and possess worthwhile properties and in-spite of that he adopted unresponsive attitude towards domestic finances and thus, she banks upon her brothers for her sustenance and therefore, she is entitled claim all the reliefs sought in the complaint.

2. Refuting the averments made in the complaint, the respondent filed counter and inter alia maintains that the protection of Women from Domestic Violence Act came into force only from 26/10/2006 and the Act has no retrospective operations and the parents of the complainant neither paid Rs.300,000/- nor presented 15 sovereigns of gold ornaments and complainant is scheduled tribe by caste and he married her without taking any dowry amount and this court has no territorially jurisdiction to hold enquiry as the marriage of the respondent was consummated at Rajahmundry and Eluru and he is not addicted to any vices and he gave up the job at the insistence of the complainant and shifted the family to Anakapally and started the business along with the relatives of the complainant and the business progressed well and the relatives of the complainant felt greedy and insisted the respondent to leave the business and on account of which he shifted the family to Rajahmundry during the year 2001 and floated the business, however the business could not take off and he sustained loss and due to which he became chronic sugar patient and the complainant is not a healthy women and her mother passed away during her childhood and she is very scared off seeing the lizard and cockroaches and used to speak during night times and the complainant is a partner in Sri Srinivasa Steel Syndicate, Anakapally and getting income and the complainant filed divorce O.P and the same was dismissed on enquiry and the brothers of the complainant

are well off and she also owns properties and she is able to maintain herself and the respondent is ready and willing to take back the complainant when she returns back to the family fold of this complaint and therefore, she is not entitled to claim the reliefs sought in the complaint.

3. Basing on the above factual matrix and upon the arguments, canvassed by both the counsel, the following moot points that germen for consideration.

4. **POINTS:**

1. *Whether the complainant established by substaintial competent evidence that at the time of marriage her parents parted with an amount of Rs.3,00,000/- as dowry to the respondent and if so, whether she is entitled to claim back the amount.*
2. *Whether the respondent misapplied the gold ornaments weighing 15 sovereigns pertains to P.W.1 which were presented to her at the time of marriage.*
3. *Whether the respondent subjected P.W.1/complainant to physical abuse, psychological abuse, emotional abuse and economic abuse in the shared household and if so, whether she is entitled to claim the monitory benefits from the respondent by living separately?*
4. *Whether the Domestic Violence Act has retrospective in its operation or prospective in operation?*
5. *Whether this court has territorial jurisdiction to adjudicate upon the grievance of the complainant?*

6. *Whether the complainant is entitled to claim the compensation from the respondent for the mental trauma, agony and sorrow which she suffered on account of domestic violence.*

5. **POINT NO: 1.**

Whether the complainant established by substantial competent evidence that at the time of marriage her parents parted with an amount of Rs.3,00,000/- as dowry to the respondent and if so, whether she is entitled to claim back the amount.

P.W.1 and R.W.1 are the most unfortunate couple indulged in furious litigation for more than a decade having a good, fabulous and wonderful family background, however neither the time nor the concern for the children cemented or welded their affinity and egoism operated in between them in high magnitude.

P.W.1/ Complainant, Smt.Kunapureddy Swarna Kumari, filed proof affidavit in lieu of chief examination and reiterated by and large all the averments made in the complaint and in order to buttress her contention got herself examined as P.W.1 and examined P.W.2 and no documentary evidence was exhibited on her behalf while the respondent in order to fortify his contention filed proof affidavit and got himself examined as R.W.1 and got Ex.D.1 to Ex.D.9 marked. On this evidential backdrop, it is strongly canvassed by the learned counsel for the complainant, Sri.B.V.Krishna Reddy garu that the married couple who have daughters have a acute desire that their daughter share a healthy equations in the matrimony forever without suffering from any cash crunches and bearing that in mind they sacrifice all their comforts and save every penny little by little to part with at the time of marriage and the parents of P.W.1 are financially

resourceful to part with the amount and present the gold ornaments as mentioned in the complaint as well as in the proof affidavit and the learned counsel for the respondent at the time of argument candidly admitted that the parents of P.W.1 have sufficient financial worthiness and they are not weak on financial front and the father and brothers of P.W.1 placed unshakable faith upon R.W.1, however their hopes were badly shattered and P.W.1 got struck in a miserable and sorrowful marriage and admittedly there is no nearer or remoter kinship existed in between R.W.1 and P.W.1 to marry P.W.1 by R.W.1 without taking dowry amount and the marriage is not a love marriage and the marriage is an arranged marriage and the sole testimony of P.W.1 coupled with the probability factors unequivocally and unmistakably tends to establish that the parents of P.W.1 paid the dowry amount and presented the gold ornaments and the plausibility and probability factors have to be given pre-eminence and due credence and not to get influenced by the fact that no documentary evidence is cited by P.W.1 with respect to the payment of dowry amount and the sole essence of section 19 (8) of PWD Act is that the case of the complainant would not flap due to the paucity of documentary evidence and the argument advanced by the learned counsel for the respondent that P.W.1 belongs to Kondakapu which is a schedule tribe by caste and that the respondent married her without expecting any dowry amount is palpably false and this averment is incorporated in the pleadings with a sinister design to ridicule and bully P.W.1 emotionally and therefore, holding the issue in favour of the complainant is highly warranted in the facts and circumstances.

6. The learned counsel for the respondent, Sri.K Srinivasa Rao garu resisted the arguments canvassed by the learned counsel for the complainant and inter-alia maintains in extenso that nonetheless the parents of P.W.1 financially

resourceful, however R.W.1 did not expect any dowry amount and married P.W.1 showing mercy on her as she belongs to Kondakapu and P.W.1 candidly admits during cross examination that she did not advance any documentary proof to show that her parents paid an amount of Rs.3,00,000/- as dowry, presented gold ornaments weighing 15 sovereigns and the argument advanced by the learned counsel for the complainant that there is no legal embargo relying upon the oral evidence is misconceived, absurd and illogical and if this contention gains judicial approval, it would give a license to the unscrupulous wife to unleash harassment and therefore, adjudicating the issue in favor of P.W.1 is wholly unsustainable in law.

7. In order to appreciate the controversial issues, now at this juncture, I think it apt to survey the material emerged out from the testimony of P.W.1 and R.W.1.

8. The factual narrative reveal from para 5 of the complaint is that the parents of P.W.1 paid the dowry amount of Rs.3,00,000/- cash and presented gold ornaments weighing 15 sovereigns to R.W.1 at the time of marriage on his demand. In this factual backdrop, P.W.1 vouched the same facts in her proof affidavit and in additional proof affidavit without any departure. As against this backdrop, the learned counsel for the respondent attempted to assail the testimony of P.W.1 on the ground that whether she advanced any solid proof to show that she presented dowry amount, gold ornaments to R.W.1 at the time of marriage, on which she is very inactive and not assertive. It is not the case of R.W.1 either from the pleadings or from his testimony that P.W.1 is her nearer or far off relative and vice versa the case of the complainant. The parents always have a ardent desire that their daughters life in the matrimony is very congenial, compatible and harmonious and keeping in view, they part with the amounts as

per their financial status at the time of marriage to bail them out from the financial exigencies which encounter them in the future, nonetheless no demand is made. In the case on hand, indisputably the marriage of R.W.1 with P.W.1 is arranged marriage and it is neither a love marriage nor an ideal marriage. While assessing the testimony of the witness, the court should adopt a cautious approach and should not conclude that there is no documentary evidence to prove the payment of dowry amount and oral evidence and probability factors have to be given due emphasis. In cases, where it is not possible to prove certain facts by means of direct evidence, the court has to be guided by the probabilities of the situation. Admittedly, the parents of P.W.1 have no indigent status and they are financially stable. In such a case, it is likely that the parents of P.W.1 have paid the dowry amount to R.W.1 at the time of marriage. Dowry system is rampant in the Indian society even umpteen number of legislations. Therefore, the probability and plausibility factor coupled with the verbal testimony of P.W.1 impels the court to place implicit reliance upon the testimony of P.W.1 regardless of documentary evidence.

9. The substantial revelation from para 4 of the counter of R.W.1 is that "***the complainant is a kondakapu which is schedule tribe by caste and with a lenient view the respondent married the complainant without taking dowry amount***". This material drives home the message that R.W.1 married P.W.1 on his own volition without any compulsion. On the other hand, it is not the case of the R.W.1 that P.W.1 disguised her caste. In such a case as to why R.W.1 averred in the counter that P.W.1 is a scheduled tribe by caste. In this context, the argument advanced by the learned counsel for the respondent has workable force and this averment is made in the counter with intent to inflict psychological trauma, sorrow, agony and pain to P.W.1.

10. In the wake of this material, I am of the unhesitant opinion that the parents of P.W.1 paid the dowry amount of Rs 3,00,000/- to R.W.1 at the time of marriage and thus, it is liable to be restituted.

11. **P O I N T N O . 2 :**

Whether the respondent misapplied the gold ornaments weighing 15 sovereigns pertains to P.W.1 which were presented to her at the time of marriage.

It is averred in the complaint at para No.3 that R.W.1 took away the gold ornaments highhandedly and misapplied the same. It is settled law that pleading does not survive, unless it is substantiated by unimpeachable proof. However, P.W.1 did not cite any iota of proof to show that her parents presented the gold ornaments. Therefore, this point is answered in favor of the respondent and against the complainant.

12. **P O I N T N o . 3 :**

Whether the respondent subjected P.W.1/complainant to physical abuse, psychological abuse, emotional abuse and economic abuse in the shared household and if so, whether she is entitled to claim the monetary benefits from the respondent by living separately?

On this point, it is vehemently canvassed by the learned counsel for the complainant that after the wedding P.W.1 and R.W.1 lead happy, healthy and harmonious married life for some time and thereafter, R.W.1 got used to vices and began tormenting and bullying P.W.1 emotionally for additional dowry amount and in order to get rid off the harassment, the brothers of the

respondent who are highly placed obliged the unlawful demand of R.W.1 and paid an amount of Rs.1,00,000/-, however R.W.1 is very much dissatisfied with the amount and R.W.1 has multiple sexual partners and maintains sexual liaison with them and in one occasion P.W.1 spotted the photo of one woman and questioned R.W.1, on which R.W.1 went wild and threat was put into execution, if she reveals to anybody and R.W.1 used to be very unpunctual attending his duties due to his evil doings and his services were retrenched by the authorities of insurance company and R.W.1 used to thrash P.W.1 very badly when she asked about domestic finances and P.W.1 is homely modest, humble, obedient and tradition ridden lady and not worldly wise and bore the vices of R.W.1 with a great ease with a profound fond hope that R.W.1 would reform his character and that she would meet a happier scenario, however her expectancy was badly shattered and the parents of the respondent instead of chastising him contributed to the tension and nourished the ill feelings of R.W.1, which attitude of the parents of the respondent escalated domestic violence in the matrimony and domestic peace and harmony is broken and P.W.1 placed the matter before the elders to solidify the relationship and to keep the matrimonial fiber intact, however the R.W.1 did not amend his conduct and R.W.1 expelled all the advances made by P.W.1 towards resumption of marriage and ultimately the limitation and patience ran out and she initiated matrimonial proceedings for annulling the marriage believing that there is no point in continuing such a miserable marriage where her life was in perpetual tension and apprehension and right now P.W.1 is in terrible poverty and misery while R.W.1 is born with golden spoon and his income graph is in upswing, however he adopted light hearted approach willfully in order to make P.W.1 and her children suffer financial crunches harboring deep seated hatred and therefore, P.W.1 is entitled to claim

all the monetary reliefs sought in the complaint.

13. The learned counsel for the respondent controverted the arguments advanced by the learned counsel for the complainant and inter-alia maintains that after the wedding P.W.1 and R.W.1 were in happy high towards conjugal front for a period of 20 years and R.W.1 is a man of good virtue and his conduct is blemish-less and he is very humble and modest in his approach and loved P.W.1 with so much of intensity and warmth, however P.W.1 has no iota of gratitude and indulged in vicious campaign that R.W.1 is a man of poor moral fiber and R.W.1 never got used to any bad habits and P.W.1 is very rude, arrogant, domineering and brutal in her behavior and wanted to live in the lap of luxury and always desire a extravagant life style and insisted R.W.1 to give up the profitable job and accordingly, R.W.1 obliged and the relatives of P.W.1 played massive fraud against R.W.1 and whereupon, he started his own business and sustained colossal loss and P.W.1 left the matrimonial home on her own volition without any legitimate reason and filed application under section 13 of Hindu Marriages Act for annulling the marriage and that itself clearly shows that P.W.1 has no transparent sincerity to sustain the marriage and R.W.1 expressed his magnanimity towards her without any ill-will and extended his arm to lead marital life, however P.W.1 follows her heart and doesn't listen to anybody and R.W.1 exhibits high degree of patience inspite of inflicting horrifying degrees of cruelty and if indeed R.W.1 inflicted physical and psychological ordeal to P.W.1 for additional dowry amount, P.W.1 would have lodged complaint under section 498-A IPC and that itself clearly demonstrates that no domestic violence took place in the matrimony and the precedential law laid down that, if the wife herself is the deserter from the matrimonial obligations, she is not entitled to claim any monetary reliefs and R.W1 is jobless and he is not settled carrier wise and he

depends upon his father for his sustenance and therefore, P.W.1 is not entitled to claim any maintenance.

14. In order to test the rival submission, now at this juncture, it is just and proper to advert to the material emerged out from the testimony of P.W.1 and R.W.1.

15. The core contention canvassed by the learned counsel for the respondent is that P.W.1 abandoned the matrimonial home on her own willingness without any cogent and credible reason and when R.W.1 tried for resumption of marital tie, P.W.1 expelled all the advances made by R.W.1 and it is jurisprudential justification that, if the wife quits the matrimonial home without any just and reasonable cause, she is not entitled to claim any monetary reliefs. In this background, it is pertinent to quote the averments made in para 20 of the counter. It is specifically pleaded in para 20 of the counter that R.W.1 would accord warm welcome to P.W.1, if she comes and joins him. In this context, the counsel for the respondent questioned P.W.1 whether she is willing to join R.W.1, on which she emphatically denied. If in truth R.W.1 has any transparent honesty and righteousness to continue the marital tie without snapping, he would have invoked the coercive provision as envisaged under section 9 of Hindu Marriages Act i.e., for restitution of conjugal rights, however R.W.1 is very much indifferent and inactive and did not offer any solemn explanation as to why he failed to resort to the provisions of section 9 of Hindu Marriages Act. This material makes me to understand that the offer of R.W.1 to continue the marital bond with P.W.1 is highly pretentious and fake.

16. The main thrust of the argument of the learned counsel for the respondent is that P.W.1 exercised her own volition and left the matrimonial home and thus P.W.1 is guilty of willful desertion. It is the common phenomenon that when the matrimonial bickerings ensue in between the spouses due to some incompatibility, the elders act as peace makers and make the marriage work and make the marital home safe from destruction. However in the case on hand, it is not averred by the respondent in his counter that he placed the matter before the elders. If really R.W.1 has any interest in P.W.1, he would have initiated reconciliation proceedings before the elders. This material adds credibility to the case of the P.W.1 and pushes the believability of the case of the R.W.1 into zero level.

17. The third limb of the argument canvassed by the learned counsel for the respondent is that, if in truth P.W.1 suffered low marital happiness on account of cruelty alleged to have been perpetrated by the respondent, surely she would have set the criminal machinery in motion under section 498-A IPC and this circumstance clearly points out that P.W.1 is guilty of matrimonial misconduct. In this contextual facts, regard must be had to the material forth came from the cross examination of R.W.1. During cross examination R.W.1 affirms that *“He deposed in O.P. No.22/2010 on the file of Principal Senior Civil Judge’s Court that P.W.1 is tradition ridden woman and always prays the almighty and she is a big devotee”*.

18. In general the woman who are orthodox and have a firm belief over traditions and old customs may not turn impulsive and aggressive and may not resort to criminals proceedings against their husbands believing that their family reputation will be marred irretrievably and irreplaceably. This material gives some

formidable feedback to the court that P.W.1 is highly traditional lady and has traditional approach towards life and due to which reason she might not have lodged complaint against the respondent under section 498-A IPC.

19. P.W.1 candidly admits in the cross examination that "*I filed application under section 13 of Hindu marriages Act for seeking the dissolution of marriage on the file of Principle Senior Civil Judge, Eluru and the same was ended in dismissal*". In the normal scheme of things, no married woman who have grown up and marriageable children would not venture to walkout from the marriage and gets her marital life ruined, unless the home atmosphere in the matrimony is uncongenial. This material makes me cognizant that R.W.1 resorted to domestic violence in the shared household.

20. It is pleaded in para 15 of the counter that P.W.1 is not a healthy woman as her mother passed away in her childhood and she developed hysteria and she used to cry loudly and fall down even seeing lizards and cockroaches and also used to speak during the sleep between 3.00 AM to 4.00 AM everyday and made the respondent to spend sleepless nights. From this material, it appeals to me that P.W.1 is very sensitive and gullible lady.

21. It is specifically pleaded in para 15 of the counter that P.W.1 is not a hale and healthy woman. However, no iota of evidence is cited to show that P.W.1 suffers from health ailments.

22. Now turning to the financial affluence of P.W.1 and R.W.1.

23. The main plank of the attack of the learned counsel for the respondent as against the case of the P.W.1 that P.W.1 is not a down right pauper and she lives in affluent circumstances and was engaged in the business and filed income tax

returns pertaining to the assessment year 1999 and 2000 and the wife who is having substantial means of sustenance is not entitled to claim maintenance from the husband who has miserable means. Now at this juncture, it is pertinent to be seen the recitals of Ex.D.3 income tax returns. A perusal of Ex.D.3 makes it apparently clear that during the year 1999-2000 P.W.1 filed income tax returns. It is quite manifest from Ex.D.3 that P.W.1 did business during the year 1999-2000 and derived income therefrom. Merely because P.W.1 derived income during the year 1999-2000, it cannot be deduced that she is also getting the same income right now. In this context, it is worth mentioning the cross examination of R.W.1. The learned counsel for the complainant confronted D.W.1 whether he advanced any documentary proof to show that P.W.1 owns and possess any landed properties, on which he is very passive and not assertive. It is the case of the R.W.1 that P.W.1 is doing business, however it is not substantiated by any cogent and convincing evidence. From this material, it apparently follows that P.W.1 is financially destitute and is leading very pathetic life and banks upon her brothers for her sustenance and for the sustenance of her kids.

24. It is strenuously urged by the learned counsel for the respondent that R.W.1 was not gainfully employed anywhere and he is suffering from unemployment, nonetheless he is an engineering graduate and he is not decease free and is down with chronic sugar and he is very much weak on financial front and it is the settled law that *he who asserts must prove* and thus, a positive duty is cast on P.W.1 to prove the financial worthiness of the respondent, however she dismally failed to prove and therefore, she is not entitled to claim any monitory reliefs. In the backdrop of this argument, it is appropriate to reproduce the material came out from the cross examination of R.W.1.

25. With respect to the financial means, R.W.1 maintains that “ *On the date of my marriage I own house property situated in Machilipatnam and my adaptive mother owns and possess Ac.1.30 cents of agricultural land and my father transferred the building bearing number 22/111 which is spread in an extent of 5 cents in my favour.*” Be that as it may.

26. The learned counsel for the complainant confronted R.W.1 by showing the title deeds whether the properties stand in his name, on which R.W.1 gave evasive replies and made an attempt to disguise the facts. The court verified the recitals of the sale deeds and found that all the certified copies of the sale deeds produced clearly stand in the name of R.W.1. From the deposition of R.W.1, it appears that R.W.1 has scant respect for the truth and deliberately resorted to untruth in spite of having worthwhile properties in his name. This material affords sufficient indication that R.W.1 is a rich and a man of high position.

27. It is fundamental and natural duty of a man to maintain his wife and his kids. If a man is healthy and able bodied he must be presumed to have capacity to support his wife. An insolvent, beggar or a monk must support his wife so long as he is able bodied. It appears from the testimony of R.W.1 that he has health issues however no iota of evidence is cited. Therefore, he is under legal and moral obligation to maintain his wife. In this context, it is not out of place for me to revisit the decision of the Hon'ble High Court of Andhra Pradesh reported in ALD (CRL.) 2010 (2) 391 in between Sikakollu Chandramohan Vs Srikakollu Saraswathi Devi. The legal ratio laid down in this decision is that the economic abuse includes deprivation of economic resources pertains to the aggrieved party. The principal adumbrated by the Hon'ble High Court squarely applies to the present factual matrix in all four corners.

28. In view of the analysis and aforementioned legal environment, I am constrained to hold this point is answered in favour of P.W.1 and as against the R.W.1. In the facts and circumstance of the case as the granting of maintenance of Rs.10,000/- to the complainant will meet the ends of the justice.

29. *Now coming to the conduct of R.W.1 towards his children.*

30. The material available on record exposes that the elder son of P.W.1 is aged about 27 years, while the younger son is aged about 18 years and the elder son is prosecuting education in America. It is the case of the R.W.1 that he is very caring, sharing and supportive husband and he has unstinted love towards P.W.1. In this background, it is significant to be seen the cross examination of R.W.1. R.W.1 emphatically asserts during cross examination that "***Myself and P.W.1 are residing separately from 2006 and I did not provide any maintenance either to my wife or to my children till now.***" From this material, it is quite explicit that R.W.1 is reeling under revenge and showed unresponsive and insensitive attitude towards P.W.1 and her children. It is not the case of the R.W.1 that he funded the amount to his elder son when he flew down to America to pursue his ambition.

31. The learned counsel for the complainant cross examined R.W.1 whether he provided any medical assistance to P.W.1, on which he went in denial mode.

32. From the foregoing analysis, I am of the unhesitant opinion that P.W.1 depends upon her brothers for her sustenance and R.W.1 showed utter callous attitude towards P.W.1 and her kids without providing any sustenance.

33. **POINT NO.4:****Whether the Domestic Violence Act has retrospective in its operation or prospective in operation?**

It is strenuously urged by the learned counsel for the respondent that the complaint is not maintainable as the domestic violence is alleged to have been taken place in the month of march 2005 and the Act came into force only from 26/10/2006 and the Act has no retrospective in operation and article 20 (1) of Indian Constitution squarely applies i.e., *Expost facto law* and on that ground the case of the complainant flaps. In order to appreciate the contention of the learned counsel for the respondent, now at this juncture, it is profitable for this court to revisit Sec 2 (f) of Domestic Violence Act. Sec 2 (f) defines what is domestic relationship. The sole essence of definition of domestic relationship is that a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage adoption or are family members living together as a joint family. From the language employed in the definition, it is quite manifest that the present complaint is maintainable. Therefore, in view of the legal command, the argument advanced by the learned counsel for the respondent has no substantial force and I don't want to fall in line with his argument.

34. In the aforementioned context, I am fortified by a decision of our Hon'ble High Court reported in ALD (CRL.) 2010 (2) 391 in between Sikakollu Chandramohan Vs Srikakollu Saraswathi Devi. This judgment elucidates the principle that any substantive enactment is prospective in nature unless specifically stated otherwise. There is no indication in the Act to hold that the

Act is not prospective but retrospective in operation. But simply because the Act is found to be prospective in operation it cannot be said that the provisions under the Act cannot be invoked in case separation between the parties was prior to the Act coming into force. It has to be seen whether the cause of action arose or cause of action continues to exist even after the Act coming into force. This decision squarely applies to the present factual matrix.

35. A perusal of the complaint, it is apparently clear that it is instituted on 05/01/2007, whereas the Domestic Violence Act came into force on 26/10/2006. Therefore, I am of the firm opinion the complaint is absolutely maintainable.

36. **P O I N T N O.5.**

Whether this court has territorial jurisdiction to adjudicate upon the grievance of the complainant?

It is vehemently canvassed by the learned counsel for the complainant that this Court is invested with the jurisdiction to hold enquiry of this case and P.W.1 and R.W.1 shifted their family to Eluru and took the house bearing No.24A-B-6/4 of P.W.2 i.e., Gadham Venkata Ramana, Siva kumari on rent and a part of the domestic violence took place at Eluru and P.W.1 and R.W.1 temporarily resided in Eluru for some time and P.W.2 clearly testifies in her deposition that P.W.1 and R.W.1 lived together in her house and in view of the mandate of section 27 of P W D Act, this court is endowed with the jurisdiction to take cognizance and adjudicate upon the issue.

37. The learned counsel for the respondents assailed the arguments advanced by the learned counsel for the complainant and inter-alia maintains that P.W.1 and R.W.1 resided together in Rajahmundry, Anakapalli and Machilipatnam after the wedding and they never resided in Eluru and therefore, this court has no

jurisdiction and the services of P.W.2 are recruited only to create jurisdiction in this court which has no inherent jurisdiction and therefore, the application is liable to be dismissed.

38. The point raised by the learned counsel for the respondent is ostensibly a point of law which has to be decided in terms of Section 27 of P.W.D. Act. On reading of the whole operative scheme of Section 27 of P.W.D Act, concedes a situation that where the aggrieved party resides permanently or temporarily and makes that place her place of abode that court gets jurisdiction to hold the trial of the case.

39. P.W.2 who is examined on behalf of P.W.1 vividly spoke in her deposition that she is landlady of the house bearing No. 24A-B-6/4, 4th road, Ashok Nagar, Eluru and let out the house to R.W.1 and P.W.1. The testimony of P.W.2 is attempted to be assailed on the ground that she did not produce any rent agreement. Merely because she did not produce any rent agreement, it cannot be concluded that her testimony is interested testimony. No ostensible reason is ascribed in the cross examination, as to why P.W.2 resorted to falsehood against R.W.1. Therefore in view of this premised reason, I hold that this court has absolute jurisdiction to hold the enquiry.

40. **POINT No. 6:**

Whether the complainant is entitled to claim the compensation from the respondent for the mental trauma, agony and sorrow which she suffered on account of domestic violence.

On this point, it is the predominant submission of the learned counsel for the complainant that every married woman enters into holy knot with a great aspiration that she would lead marital life with great joy and merriment and

every marriage has inconveniences, minor rows and major spats and the reason cited by the respondent are a small wear and tears in the matrimony, however he blew it out of proportion and brought unhappiness in the matrimonial life of P.W.1 and the sanctity of marriage deserves great respect, however R.W.1 inflicted pain, suffering and agony to P.W.1 and due to the hostile environment in the matrimony P.W.1 could not enjoy the essence of the marriage and the essence of marriage is sharing of common life and sharing of happiness which the life offers, however the respondent is so unmindful of that and violated the solemn pledge made at the time of marriage and P.W.1 have had hellish experience at the hands of the respondent for which pecuniary compensation is an adequate remedy and the evidence available on record clearly shows that the heart of the R.W.1 is not in the relationship and the life of P.W.1 is thrown in a great havoc and she has to lead the rest of the life in a gloomy state and therefore, awarding compensation to the complainant is wholly sustainable.

41. The material available on record i.e., not sending any amount either to P.W.1 or to his kids unequivocally reveals that R.W.1 developed a deep seated ill will against P.W.1 and his children and never cared about the medical expenses of P.W.1. In this background, the argument advanced by the learned counsel for the complainant has workable force and therefore, I append my argument with the argument of learned counsel for complainant.

42. On cumulative assessment of evidence, I am of the unhesitant opinion granting of compensation of Rs.15,00,000/- to PW1 would meet the ends of justice.

43. In the result, the complaint succeeds and accordingly, the respondent is directed to return the dowry amount of Rs.3,00,000/- to P.W.1 within three months and further he is directed to pay a monthly maintenance of Rs.10,000/- to the complainant from the date of this order and he is further directed to pay the amount on first day of every succeeding month and he is further directed to pay the compensation of Rs.15,00,000/- to P.W.1 within six months from the date of the order and the respondent is directed not to interfere in to the personal freedom and space of P.W.1.

Prepared on the computer to my direct dictation and after correction and pronounced in open Court on this the 12th day of August, 2016.

Judicial Magistrate of I Class,
Special Mobile Court, Eluru.

APPENDIX OF EVIDENCE

WITNESSES EXAMINED FOR

FOR COMPLAINANT ::

P.W.1: Kunapureddy Swarna Kumari

P.W.2: G V R Siva Kumari

FOR RESPONDENT ::

R.W.1: Kunapureddy @ Nookala Shanka Balaji Naidu

EXHIBITS MARKED

FOR COMPLAINANT: NIL

FOR RESPONDENT

Ex.D.1: Caste certificate

Ex.D.2: Certified copy of H.M.O.P.No.22/2010

Ex.D.3: Income Tax Returns

Ex.D.4: L I C Receipts

Ex.D.5: Original Pass Book

Ex.D.6: CC of petition copy in H.M.O.P.No.22/2010

Ex.D.7: CC of order of Decree and Judgment in H.M.O.P. No.22/2010

Ex.D.8: Affidavit and petition in H.M.O.P.No.50/2008

Ex.D.9: Medical Bills of the respondent (23 Nos)

JFCM, SMC, Eluru