

**IN THE COURT OF THE SPL. JUDL. MAGISTRATE OF I CLASS,
EXCISE COURT, ONGOLE.**

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

Wednesday, this the 26th day of June, 2013.

D.V.C.No. 46 of 2012.

Between:

Saiba Sreedevi w/o Sridhara Rao, 32 years,
D/o Pathakota Sriramulu, Balineni Bharath Colony,
Ongole, Prakasam District.

....Petitioner

and

1. **Saiba Sridhara Rao** s/o Venkata Ratnam, 42 years,
Railpeta 3rd Lane, D.No.54-1-45 (7), Ongole.
2. **Saiba Padmavathi** w/o Venkata Ratnam, 65 years,
Railpeta 3rd Lane, D.No.54-1-45 (7), Ongole.

...Respondents

This case coming on 17.06.2013 for final hearing before me in the presence of Sri **G.Nagireddy**, Advocate for Petitioner and of Sri **V.Ravi Kumar**, Advocate for the Respondent No.1, and Respondent No.2 having remained exparte and having stood over for consideration till this day, this court made the following:

// ORDER //

1. The petitioner filed this complaint before the District Protection Officer/Project Director, Ongole contending that about 15 years back her marriage was performed with the 1st respondent who is working as A.R. Constable P.C.No.1818 as per Hindu Rites and customs and out of wedlock she is blessed with a daughter, at the time of her marriage her parents gave cash of Rs.10,000/- only to the respondents in view of their financial condition though her parents agreed to give cash of Rs.70,000/-, due to that the respondents used to harass her by beating her and by abusing her and used to harass her to get transfer the house from her mother in the name of 1st respondent's father by way of a registered document. P.w.1 further submitted that as she is questioning the 1st respondent about his bad vices and stealing attitude, the 1st respondent used to beat her, on that she gave report in Ongole II-Town

P.S. against the 1st respondent and her in-laws for the offence under Sec.379, 498 (A), 506 & 509 IPC and the same was registered as a case in Cr.94/2011 and she also filed a Maintenance case in the Family Court, Ongole and at present she is staying along with her daughter at her father's house. The 1st respondent is having an RCC Building at 3rd Line of Railpet, Ongole and a two portioned house at Kavali and she doesn't have house and she needs protection in the hands of respondents as the respondents is putting them in fear and also compensation from the respondents.

2. The Protection Officer/Project Director forwarded the complaint of petitioner to the Hon'ble III-A.M.M. Court, Ongole after making counseling between the petitioner and respondent. Later the case is transferred to this Court as per the proceedings of the Hon'ble Chief Judl. Magistrate-cum-Prl. Senior Civil Judge, Ongole in Dis.No.487, dt.04.04.2012 and the same is re-numbered as D.V.C.No.46/2012.

3. In spite of several adjournments and conditional orders no counter is filed by the 1st respondent and Respondent No.2 is set exparte.

4. During the course of enquiry the petitioner herself examined as P.w.1 and no documents are exhibited and on behalf of respondents no oral or documentary evidence is adduced.

5. Heard arguments of learned counsels for the petitioner and respondents.

6. Now point for Considerations are that :

1. Whether the petitioner is entitled for the relief of protection, shelter, maintenance, educational expenses of her daughter and and compensation ? If so, to what extent ?

2. To what relief ?

7. Perused the evidence of P.w.1 and material available on record. There is no dispute that petitioner and 1st respondent are wife and husband and out of wedlock petitioner and 1st respondent are blessed with a daughter and 1st respondent is working as A.R. Constable P.C.No.1818 and at present they are staying away from each other.

8. According to the petitioner, at the time of their marriage her parents gave cash of Rs.10,000/- to the 1st respondent and a house situated at Nehru Colony at Ongole for the remaining balance amount of Rs.60,000/- as her parents agreed to give Rs.70,000/- as dowry and her parents also gave 6 sovereigns of gold and Rs.50,000/- worth of household articles and after marriage they lead happy marital life for a period of 15 years and since 3 years the 1st respondent started harassing her as she is not bringing anything from her parents house and on that she filed a criminal case against the respondents, and no specific allegations is made against 2nd respondent. During cross-examination of P.w.1 no denial is made by the respondents by way of suggestions to P.w.1 denying harassment of P.w.1 by the 1st respondent since 3 years, except suggesting that she did not mention in the complaint that since 3 years the respondent is harassing her and further suggested that she is staying at her parents house on the reason that if she stay along with 1st respondent she has to look after the daughter of 1st respondent through his first wife which is denied by P.w.1 and during cross-examination of P.w.1 the learned counsel for the respondent categorically elicited from P.w.1 that the daughter of 1st respondent by name Sai Deepika through his 1st wife is staying along with her paternal grand mother. Therefore, the contention of the 1st respondent cannot be believed and it could be safely inferred that due to harassment of 1st respondent only the petitioner left the house.

9. The evidence of P.w.1 is that she is a house wife and not attending to any work and she is depending upon her father for her livelihood and she doesn't have any landed properties and the 1st respondent is working as A.R. Constable and getting salary of Rs.21,000/- p.m. and she prays to grant Rs.5,000/- p.m. towards their maintenance and Rs.3,000/- p.m. towards educational expenses of her daughter who studied upto 10th class and discontinued studies as she is unable to meet the educational expenses due to no source of income and also rent of Rs.2,000/- p.m. as alternative residence. To support the evidence of P.w.1, P.w.1 got filed salary certificate of 1st respondent which categorically goes to show that the 1st respondent is getting gross salary of Rs.21,000/- p.m.

10. Whereas the contention of 1st respondent is that he is having parents and a daughter by name Deepika through his first wife and he has to look after their welfare with his meager salary of Rs.10,000/- and he has no capacity to give maintenance to the petitioner and her daughter, the petitioner is eking her livelihood by running a Ladies Tailoring shop near Srinivasa Theater, Ongole and she also got discontinued their daughter from studies and petitioner is also taking her daughter to the Tailoring shop to work along with her and both the petitioner and their daughter are getting sufficient income to maintain themselves. In support of the above contention, the respondent has not adduced any oral and documentary evidence and respondent is silent about how much income the petitioner and their daughter are earning, except vaguely putting a suggestion to P.w.1 that petitioner is running a ladies tailoring shop and both petitioner and her daughter are earning income and got sufficient means, therefore in the absence of any material on record it is unsafe to believe the contention of the 1st

respondent that the petitioner and their daughter are earning income, and the 1st respondent failed to prove the fact that the petitioner is running a tailoring shop and the petitioner and their daughter are earning income from the tailoring shop.

11. Further while advancing arguments both counsels for the petitioner and 1st respondent reported that in Crl.M.P.199/2012 in M.C.No.21/2011 filed by the petitioner and her daughter against the 1st respondent before the Hon'ble Family Court, Ongole seeking interim maintenance, an amount of Rs.1,500/- per month to each of the petitioners was granted towards their monthly maintenance and certified copy of order dt.13.09.2012 passed in Crl.M.P.199/2012 in M.C.No.21/2011 is also filed by the 1st respondent, which goes to show that the Hon'ble Family Court ordered interim maintenance of Rs.1,500/- p.m. each to the petitioner and her daughter taking into consideration of the monthly salary of Rs.20,000/- p.m. of the 1st respondent. And the evidence of P.w.1 and Ex.P.1 also goes to show that the 1st respondent is drawing gross salary of Rs.21,818/- and net salary of Rs.10,972/- and it is not the case of the petitioner that 1st respondent is having movable and immovable properties and 1st respondent is also getting income from out of properties other than his salary. It is therefore, the interim maintenance of Rs.1,500/- p.m. ordered in Crl.M.P.199/2012 in M.C.No. 21/2011 to the petitioner and to her daughter each is more than sufficient for their monthly maintenance.

12. With regard to educational expenses of P.w.1's daughter, the evidence of P.w.1 itself categorically goes to show that her daughter has discontinued her studies and the evidence of P.w.1 is silent whether she joined her daughter in any college or not and how much expenses she is

incurring towards her daughter's studies and whether her daughter has passed 10th class or not, except vaguely seeking Rs.3,000/- p.m. towards educational expenses of her daughter. As there is no proof to show that petitioner is incurring Rs.3,000/- p.m. towards educational expenses of her daughter and as it is already admitted by P.w.1 that her daughter discontinued her studies after 10th class, it could be safely said that the petitioner is not entitled for educational expenses of her daughter.

13. Coming to the aspect of shelter, the petitioner in her complaint categorically admitted that she is residing along with her father and there is no whisper in the evidence of P.w.1 that at present where she is residing and if she is residing in a rented house, at whose house she is residing and address particulars of the said rented house and how much rent she is paying per month and no piece of evidence is filed by P.w.1 to prove that P.w.1 is paying rent of Rs.2,000/- p.m. and the owner of the said house is also not examined. Therefore, there is no oral and documentary evidence to prove that P.w.1 is paying rent of Rs.2,000/- per month as stated by her in her evidence and in the absence of any material on record, it could be safely said that the petitioner is not entitled for rent of Rs.2,000/- p.m.

14. With regard to the relief of protection and compensation, on close reading of evidence of P.w.1, P.w.1 deposed that since 3 years prior to filing of complaint the respondent is harassing her and she also lodged a criminal case against the respondents and after coming out of her matrimonial home she took shelter in a woman home at Ongole and 15 days later she filed case against the respondents and the evidence of P.w.1 is silent whether the 1st respondent continued harassing her and her daughter and whether there is likely to cause Domestic Violence to her and to her daughter. It is therefore, in the absence of any material

on record that there is likely to cause domestic violence to her and to her daughter and 1st respondent is still continuously harassing P.w.1, it could be safely said that petitioner and her daughter are not entitled for protection order. Further the evidence of P.w.1 is silent whether she sustained any injuries or suffered mental torture and emotional distress in the hands of respondents and no specific allegations are made against the respondents in respect of the nature of harassment, even P.w.1 has not sought relief of compensation in her evidence. It is therefore, it could be safely concluded that the petitioner is not entitled for the relief of compensation.

15. It is therefore, in view of the above discussion, it could be safely concluded that the petitioner is not entitled for the reliefs as sought by her and the petition is liable to be dismissed.

16. In the result, the petition is dismissed. No costs.

Dictated to the personal assistant, transcribed by him, corrected and pronounced by me in open court, this the 26th day of June, 2013.

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

//APPENDIX OF EVIDENCE//

-: WITNESSES EXAMINED :-

For Petitioner

P.W.1 :Saiba Sridevi.

For Respondents:

- None-

// DOCUMENTS MARKED //

For Petitioner:

Ex.P.1 : Salary Certificate of Respondent issued by Administrative Officer, District Police Office, Ongole, for the month of March, 2012.

For Respondents:

NIL

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