

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

Present :: **Sri Kumar Vivek,**
Judl. Magistrate of I Class,
Special Mobile Court, Ongole.

Monday, this the 3rd day of October, 2016

D.V.C.No. 7 of 2014

Between:

Shaik Mehataj @ Jareena W/o Humayun, 27 years,
R/o Konijedu village, Tangutur mandal.

....Petitioner

and

1. Shaik Humayun S/o Late Khaja Mohideen, 33 years,
R/o Near PM school, Janda street, Nellore town
2. Shaik Fatheema Begum W/o Late Khaja Mohideen, 65 years, **(Died)**
R/o Near PM school, Janda street, Nellore town
3. Shaik Sabeera W/o Chand Basha, 30 years,
R/o Kummari street, Nellore town
4. Shaik Chand Basha S/o Khadar Basha, 35 years,
R/o Kummari street, Nellore town
5. Shaik Babu S/o Not known, 45 years,
R/o Bungalowthota, Navabpeta, Nellore town.
6. Shaik Rasheed S/o Khaja Mohideen, 47 years,
R/o Near PM school, Janda street, Nellore town.

....Respondents

This case coming on 26-09-2016 for final hearing before me in the presence of Sri G.V.Narendra Babu, Advocate for Petitioner, and of Sri K.Theppalaneedu, Advocate for Respondent no.1, 3 to 6, having stood over for consideration till this day, this Court delivered the following:

// O R D E R //

1. This is petition filed under section 12 of the Protection of the Women from the Domestic Violence Act, 2005, by the petitioner(wife) against the respondents(husband and her other in-laws) alleging that the petitioner has been subjected to domestic violence at the hands of the respondents, thereby claiming reliefs of protection order, maintenance order @ Rs.10,000/- per month to the petitioner and her child, return of the dowry amount, and compensation order of Rs.1,00,000/-.

2. The factual matrix of the case of the petitioner as set out in the petition in brief is that the respondent no.1 is her husband, the respondent no.2(deceased) is her mother-in-law, the respondent no.3 and 6 are the sister and brother of the respondent no.1, and the respondent no.4 and 5 are the brother-in-laws of the respondent no.1; that the marriage of the respondent no.1 with the was performed as per the Muslim rites and customs on 15-01-

2007 in which her parents have presented cash of Rs.1,30,000/-, gold ornaments weighing 20 sovereigns and household articles worth Rs.50,000/- as dowry apart from incurring Rs.1,00,000/- towards marriage expenses; that after the marriage the petitioner joined the company of the respondent at Nellore for leading marital life; that on 26-07-2008 the petitioner and the respondent no.1 are blessed with one son by name Shaik Shahul Hameed; that after the birth of their son the respondent no.1 became addicted to bad vices like consuming alcohol and spending money on him for leading luxurious life and he was returning to the house in the odd hours that too in the drunken state, and he was beating, abusing, and threatening the petitioner with dire consequences, without any fault on her part on the flimsy grounds; that the other respondents have instigated the respondent no.1 to perform second marriage with another woman so that they can get huge dowry, and they were indiscriminately beating, abusing, and threatening the petitioner with dire consequences, in absence of the respondent no.1; that the respondents did not provide food and amenities to the petitioner and her child, and when her harassment became severe the petitioner has informed about the same to her parents and they have requested the respondents to not to harass the petitioner; that when the petitioner failed to get additional dowry from her parents then the respondent no.1 dropped the petitioner at the house of her parents at Konijedu village, and went away by threatening her that until she fulfills the demand of the respondents he will not allow her to enter into his house; that the petitioner along with her child are staying at Konijedu village, and her parents have sent the elders and mediators for effecting compromise between the petitioner and the respondent no.1, but the respondents have refused to hear the words of the elders and mediators, and they did not allow them to enter into their house; and that the petitioner has lodged a police complaint before the Station House Officer, Women police station at Nellore in which Cr.No. 59/2011 u/sec. 498-A and 506 r/w 34 of the Indian Penal Code and section 3 and 4 of the Dowry Prohibition Act, 1961 has been registered, therefore, this petition has been filed.

3. Counter is filed on behalf of the respondents denying material averments of the petition, but admitting the marriage of the petitioner with the respondent no.1 on 15-01-2007 at Nellore, besides submitting that the petitioner was not willing to continue her matrimonial life with the respondent no.1 in his joint family and she never accepted the mother of the respondent no.1 shall stay in the house of the respondent no.1 and she was insisting the respondent no.1 to shift his residence to her parents' village at Konijedu village; that the petitioner was abusing the respondent no.1 in filthy language and sometimes even refused to cook food; that on 15-03-2011 the petitioner, without informing the respondent no.1, went to the house of her sister and aborted her pregnancy in Vijaya Nursing Home, Mulapet, Nellore; that on one occasion the petitioner had beaten her mother-in-law and caused injuries to her on her hand, and when the respondent no.1 had questioned the petitioner she had threatened the respondent no.1 to implicate them in false cases; that on 27-04-2010 the petitioner went to the house of her parents and she had lodged a false report before the Tangutur police station; that the Tangutur police held counseling and found that the petitioner has lodged a false report; that on 16-07-2011 in the night hours the petitioner had beaten the respondent no.1 and caused nuisance and in that connection the respondent no.1 had informed the same to one Khayyum and one Nazeer and they have advised the petitioner to amicably lead marital life with the respondent no.1; that the petitioner had voluntarily left the company of the respondent no.1; that the petitioner has lodged false complaint against him and his family members under section 498-A of the Indian Penal Code and section 3 and 4 of the Dowry Prohibition Act, 1961; that the petitioner is working a tailor and earning Rs.10,000/- per month; and that the respondent is not having means to maintain the petitioner, therefore, prayed this Court to dismiss the petition.

4. On the side of the petitioner, the petitioner herself examined as PW1 apart from examining PW2 and PW3. On the said of the respondents the respondent no.1 has examined as RW1. No documents have been exhibited on either side.

5. During the pendency of the present petition the respondent no.2 has died.

6. Either sides did not advance arguments in spite of affording sufficient time, as such the arguments on both sides has been treated as *heard* by this Court.

7. Perused the material on record.

8. **Points for consideration:**

1) Whether the petitioner is entitled reliefs of protection order, maintenance order @ Rs.10,000/- per month to the petitioner and her child, return of dowry amount, and compensation order of Rs.1,00,000/- to the petitioner, against the respondents on the grounds put forth by her?

2) To what reliefs ?

9. **Points no.1 and 2:-**

The admitted fact of the case is that the petitioner is the legally wedded wife of the respondent no.1 and the other respondent are her in-laws, and that the petitioner and the respondent no.1 are residing separately.

10. The petitioner in her chief examination affidavit filed in lieu of her chief examination has reiterated the averments of her petition. The pleading and the evidence of the petitioner is that after the birth of their son the respondent no.1 became addicted to consume alcohol and he was spending money on him for leading luxurious life and he was returning house in odd hours in drunken stage and he was beating, abusing, and threatening the petitioner with dire consequences, on flimsy grounds. There is no pleading and evidence of the petitioner before this Court that the respondent no.1 was consuming alcohol even prior to their marriage or that he had started to consume alcohol from the first day of their marriage or immediately thereafter. According to the evidence of the petitioner the respondent no.1 developed sudden addiction towards alcohol after the birth of their child. The said version of the petitioner is difficult to believe as a person who is a teetotaler for couple of years of his marriage, all of a sudden he develops chronic addiction towards alcohol and spendthrift without any reason. The respondent no.1 in his counter and evidence before this Court has denied that he became addicted alcohol

and he was beating, abusing, and threatening the petitioner. The petitioner did not specify and elaborate the grounds on which the respondent no.1 was allegedly beating, abusing, and threatening her with dire consequences, except pleading and deposing before this Court in the vague manner that the respondent was doing so on flimsy grounds.

11. The evidence and pleading of the petitioner further discloses that the other respondents were instigating the respondent no.1 to perform second marriage with another woman so that they can get huge dowry, and they were also indiscriminately beating, abusing, and threatening her with dire consequences, in absence of the respondent no.1. The petitioner has stated during the course of her cross-examination that only she and the respondents no.1 and 2 only were residing together, and the respondent no.3 to 6 were residing separately. When the respondents no.3 to 6 were not residing along with the petitioner in her matrimonial house then the manner and mode of the alleged subjection of the petitioner to domestic violence must be specifically pleaded and proved by the petitioner. There is no averment in the pleading and evidence of the petitioner the respondents no.3 to 6 were instigating the respondent no.1 for performing second marriage with another woman by coming to the matrimonial house of the petitioner or through other mediums like communication etc., in the presence and hearing of the petitioner, and also about the manner in which, and the modes through which, she was beaten by the respondents no.3 to 6. The petitioner also did not aver and depose the exact abusive words that was allegedly uttered by the respondents no.3 to 6 to her and also the nature of threat that was allegedly given to her by the respondents no.3 to 6 in absence of the respondent no.1.

12. Though the petitioner has not specially stated in her petition and she has not deposed specifically deposed before this Court that she was harassed by the respondents for additional dowry, however, her evidence and pleadings discloses that when she failed to get additional dowry then the respondent no.1 had dropped her at her parents village at Konijedu village threatening her that until she fulfill their demand he will not allow her to enter

into his house, and from the same it can be gathered that the petitioner intends submit before this Court that she was subjected to cruelty by the respondents for additional dowry. The evidence and pleading of the petitioner is silent about the amount that was allegedly demanded by the respondents from her towards additional dowry. PW2 and PW3 have also not spoken before this Court about the amount of additional dowry for which the petitioner was allegedly subjected to cruelty by the respondents. The cross-examination of PW2 shows that the father of the petitioner had informed him that the petitioner was beaten, abused and threatened by the respondent no.1. He also categorically admits during the course of his cross-examination that he has no personal knowledge about the respondents demanding additional dowry from the petitioner and failure on the part of the petitioner to give the same from the house of her parents. PW3 states during the course of her cross-examination that she did not act as a mediator for pacification of matrimonial dispute between the petitioner and the respondent no.1, and she never went to the house of the respondent no.1 at any point of time after the marriage. PW3 did not testify on oath before this Court nor she states during the course of her cross-examination about source of her knowledge of subjection of the petitioner to domestic violence by the respondents that is required to be testified by her as she had admittedly not participated in the mediation, and she did not come to the house of the respondent no.1 at any point of time after the marriage. On the one hand, the pleading and evidence of the petitioner is that when she failed to get additional dowry from her parents the respondent no.1 had left her at the house of her parents at Konijedu village. On the other hand, it has been suggested to the respondent no.1 during the course of his cross-examination on behalf of the petitioner that on 27-04-2010 the respondents have necked the petitioner out of their house by demanding additional dowry and she came to the house of her parents, and after few lines again it has been suggested to the respondent no.1 that after holding of the counseling by the Circle Inspector of Police, Singarayakonda Circle, Tangutur, the respondent have again necked the petitioner out of their house by beating her. These suggestions given to the respondent no.1 on

behalf of the petitioner is alien to the pleading and the evidence of the petitioner that reveal that the respondent no.1 had come along with the petitioner to the house of her parents at Konijedu village, for leaving her there. No suggestion has been given to the respondent no.1 on behalf of the petitioner that he had himself left the petitioner at the house of her parents at Konijedu village by coming there along with the petitioner when she failed to get additional dowry from the house of her parents.

13. The defense of the respondent is that the petitioner was not willing to live in the joint family of the respondent no.1 and she was insisting him to reside separately at the village of her parents at Konijedu village, that she did not like that her mother-in-law shall reside along with them, and that on one occasion without informing the respondent no.1 she got terminated her pregnancy when she conceived for the second time after the birth of their son, and that the petitioner has been voluntarily residing separately from the respondent no.1. The evidence of the respondent shows that after their marriage the petitioner was insisting him to set up separate family at the village of her parents at Konijedu village, that the petitioner did not like her mother-in-law shall reside along with them, and that after the birth of their son when the petitioner had conceived for the second child then with the assistance of her sister by name Haseena, who is residing at Nellore town, she got terminated the pregnancy without informing him, has not been challenged by the petitioner during the course of his cross-examination. Thus, the un-rebutted evidence of the respondent discloses that the petitioner has rather victimized the respondent no.1.

14. The petitioner claims that her parents have presented Rs.1,30,000/- cash, gold ornament weighing 20 sovereigns, and household articles worth Rs.50,000/- to the respondents in their marriage. The respondents denies the same. The cross-examination of the respondent no.1 discloses that it has been suggested to him on behalf of the petitioner that there is audio and video record to establish presentation of entire household articles to him and other respondents in their marriage. The petitioner did not

produce the alleged audio and video recording to establish alleged presentation of household articles worth Rs.50,000/- to the respondents in her marriage by her parents. The cross-examination of PW2 indicates that she had not personally observed the parents of the petitioner giving Rs.1,30,000/- cash, 20 sovereigns of gold ornament, household articles as dowry to the respondents, as such, his evidence can be said to be hearsay in nature, and unreliable in that regard. The cross-examination of PW3 discloses that Rs.1,30,000/- dowry, gold ornaments weighing 20 sovereigns, and household articles were presented in her absence, and that her evidence is also is also hearsay in nature, and unreliable in that regard. Per *contra* the cross-examination of PW3 discloses that gold ornaments weighing 20 sovereigns were presented to the petitioner in her marriage. Thus it can be said that the said gold ornaments were not presented to the respondent as dowry by the parents of the petitioner. The evidence of the parents of the petitioner is the best evidence to prove that the alleged presentation of dowry in the marriage of the petitioner and the respondent no.1 to the respondents. It is not the case of the petitioner that her parents are not more alive. The parents of the petitioner are not examined by the petitioner before this Court. Hence, an adverse inference is drawn under section 114(g) of the Indian Evidence Act against the petitioner for not examining her parents to establish the alleged presentation of dowry in her marriage by her parents to the respondents.

15. The petitioner has claimed maintenance @ Rs.10,000/- per month from the respondent for herself and her son. The petitioner did not plead and testify before this Court about her inability to maintain herself and her son, and also about the sufficiency of the means of the respondent no.1 to provide maintenance to her and her son.

16. Accordingly, in view of forgoing discussion this Court hold that the petitioner has failed to prove that she was subjected to domestic violence at the hands of the respondents when she was residing at her matrimonial house at Nellore town, that any dowry was presented to the respondents in her marriage by her parents, and that she is unable to maintain herself and her

son. Therefore, it is held that the petitioner is not entitled to claim any of the reliefs prayed by her. Points answered accordingly against the petitioner and in favour of the respondents.

17. In the result, petition is dismissed.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in open Court, this the 3rd day of October, 2016.

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

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

For Petitioner

PW1 : SK. Mehataj
PW2 : T.Subba Reddy
PW3 : P.Khajabi

For Respondents:

DW1 : SK.Humayun

// DOCUMENTS MARKED //

For Petitioner: -Nil-

For Respondents: - Nil-

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

// True copy //

Judicial Magistrate of I-Class,
Spl. Mobile Court, Ongole.