

**IN THE COURT OF THE III ADDL. JUDICIAL MAGISTRATE OF I
CLASS, ONGOLE.**

Present: Smt. D.Durga Kalyani,
III Addl. Judl. Magistrate of First Class, Ongole.

Tuesday, this the 28th day of April, 2015.

D.V.C.No.05 of 2014.

Shaik Noorjahan w/o Moulali (Late),
28 years, Balineni Bharat Colony,
Ongole, Prakasam District. ... Petitioner.

Vs.

Shaik Dilshad Begam w/o Hussain Saheb,
50 years, Muslim, Kanaparthi Road, N.G.Padu
Village & Mandal, Prakasam District. ... Respondent.

* * *

This petition is coming on 13.04.2015 for hearing before me in the presence of Sri **M.S.Bhanu Rani**, Advocate for Petitioners and of Sri **M.Balaram**, Advocate for Respondent 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 //

01. The protection Officer/Project Director (District Women and Child Development agency), Ongole has forwarded an application to this court comprised in Form No.II U/sec.12 of Prevention women DV Act 2005 with a copy of domestic incident report i.e., form No.1 with a written report given to protection Officer by the aggrieved person that is the applicant by name Shaik Noorjahan. The protection officer forwarded a letter to this court praying to pass orders as deemed necessary in the circumstances of the case.

The following claims are prayed by the applicant:

1. To pass protection Orders U/sec.18,
2. To pass residence Orders U/sec.19,
3. To grant compensation U/sec.22.

This is a case transferred to this court from Spl. Excise court and renumbered as DVC No.05/2014.

02. Brief facts of the application are as follows:

The aggrieved women i.e., applicant is referred as a petitioner in the following order:

The petitioner herein submits that she was married with one Shaik Moulali (late) who is the son of respondent, on 27.08.2005 as per Muslim caste customs and usage. At the time of marriage her parents presented an amount of Rs.1,00,000/-, 10 sovereigns of gold, household articles and also cash of Rs.25,000/- as Adapaduchu lanchanam, to the parents of her husband towards dowry. After marriage she proceeded to her matrimonial home to lead marital life with her husband. Out of her wedlock she was blessed with two male children. After that the respondent who is her mother-in-law and sister in law by name Pyarijan and her husband Moulali started harassing the petitioner for additional dowry. At last in the year 2009 they necked out the petitioner from her matrimonial home. Having no other go she reached her parents house and informed the same to her parents. At that juncture the parents of the petitioner made mediation where her husband and in-laws demanded the parents of the petitioner for additional dowry. On that her parents has given Rs.2,00,000/- and send the petitioner to her matrimonial home. Even then they did not change their attitude and again necked out the petitioner from her matrimonial home by beating her indiscriminately. While so, on 30.05.2010 the husband of petitioner died due to ill-health. After the the death of her husband the respondent and sister-in-law did not allow the petitioner to

stay at her matrimonial home. On that the petitioner along with her children stayed separately away from respondent, even then they did not leave her peacefully and came to the house of petitioner, abused her in filthy language and threatened her with dire consequences.

Hence, with the above said submission the applicant conveyed that she has faced severe mental agony and emotional distress due to the cruel acts of respondent and so she filed the present case praying the court to grant the following claims.

1. A protection Order under Sec.18 of the Act
2. To return the following articles which are in position of respondents i.e., dowry amount, gold ornaments and household articles,
3. To grant residence orders, and;
4. A compensation order for an amount of Rs.5,80,000/- for mental torture caused by them.

03. On the other hand the respondent filed counter stating that the allegations mentioned in the D.V.C. petition are all false except the marital relationship between the petitioner and her son Shaik Moulali. She submits that her son Shaik Moulali worked as driver under the father of the petitioner, who is owner of the lorry. During that course of employment both the petitioner as well as her son Moulali fell in love with each other. On coming to know about the same both the elders decided to perform their marriage and accordingly the elders performed their marriage. She further submits that her husband deserted the respondent about 25 years back and she herself is eking her livelihood by doing coolie works. So, she did not possess any house or site. At that juncture she has been residing in asbestos sheet roof erected by her by the side of the road margin. Later the petitioner got married her son

by name Shaik Moulali by blackmailing him. Then she developed grudge against the family and failed to look after the welfare of this respondent. In addition to that the petitioner also setup separate family at her father's house at Ongole and she never lived at N.G.Padu village at any point of time. She further submits that the petitioner never lived in the house of respondent after her marriage with her husband Sk.Moulali. As the marriage between the petitioner and her son is love marriage, the petitioner did not bring any dowry and she never received any amount from the petitioner from her parents house. Moreover she used to picked up quarrels frequently on petty issues with her son. While so, with a view to fulfill her luxurious life, she made her husband Moulali to consume liquor regularly and made him to slave. Subsequently the petitioner murdered her husband i.e., the son of respondent and got foisted a false case by attributing that he committed suicide by consuming heavy quantity of alcohol. The respondent and other family members lodged a report suspecting that the petitioner might have murdered her husband with a view to remove his hurdle to lead her luxurious life. The same was registered as a case u/s.174 Cr.P.C. and during the course of investigation the doctors conducted postmortem examination and sent the stomach contents to RFSL to know the cause of death and the said report is being waited. It is further submitted by this respondent that she filed O.P.3/2011 on the file of Prl. Senior Civil Judge, Ongole for insurance claim, in which the Hon'ble Court has awarded an amount of Rs.25,000/- to this respondent on the ground that she is unable to maintain herself. On that the petitioner developed grudge against the respondent and got filed false case attributing domestic violence acts even though the respondent is not at all

responsible for the allegations raised against her. The respondent further submits that when the husband of petitioner i.e., her son died during the enquiry, the question of attributing domestic violence acts doest not arise. When the petitioner has not at all lived in the house of respondent, the respondent had no occasion to ill-treat and harass the petitioner. Further the respondent gave all her gold ornaments to his son while at the time of construction of house during his life time. When the same was questioned in order to avoid return of gold ornaments given by this respondent, the petitioner got foisted this case against her husband and respondent by managing the police and got it registered u/s.174 Cr.P.C. which is incorrect in the eye of law. Pertaining to her health condition, she submits that she has been suffering with brain femur along with blood pressure and diabetes since 10 months. Taking advantage of the said fact the petitioner filed this false case with false though this respondent is not responsible for the allegations attributed against her. Hence, she sought for dismissal of the petition.

04. During the course of trial, the applicant was examined as P.w.1, her father as P.w.2 and exhibited Exs.P.1 to P.4. After closure of applicants evidence respondent examined herself as R.w.1 and no documents were exhibited.

05. Heard arguments on both sides.

06. Basing on the above pleadings, now the points that arises for consideration are :-

1. Whether the petitioner is entitled for residence orders and compensation ?
2. Whether the petitioner is entitled for protection orders ?

Point No.1 :-

07. In order to substantiate her case petitioner got examined herself as P.w.1 and deposed that she was married with the son of respondent on 27.08.2005 as per Muslim rites and customs. At the time of marriage her parents has given cash of Rs.1,00,000/-, 20 sovereigns of gold and Rs.25,000/- towards Adapaduchu Katnam to her in-laws and her sister-in-law. After marriage she joined the matrimonial home to lead marital life with her husband. Out of her wedlock, she was blessed with two male children and they lead happy marital life for about 5 months, thereafter the parents of her husband and his sister started harassing her on the reason that her parents gave less dowry. While so, on 30.03.2010 her husband died due to ill-health. After the death of her husband she went to her in-laws house along with her children, at that time the respondent did not allow her to enter into the house, then she asked her to return back dowry amount, gold ornaments as well as household articles, for which her in-laws refused to return the same. After 5 months of death of her husband, her in-laws came to her parents house and asked her to give half share in the LIC amount, for which she refused, on that her in-laws and sister-in-law beat her indiscriminately, then she made complaint before the Project Director for protection orders and shelter at the shared house hold along with return of dowry amount and gold ornaments.

08. To support the version of P.w.1, she also examined P.w.2 i.e., the father of P.w.1 who filed his chief examination affidavit stating that he has performed the marriage of the petitioner with the son of respondent as per Muslim rites and customs and at that time he has presented cash of Rs.1,00,000/- and 10 sovereigns of gold, house hold

articles and other lanchanams. Later she was sent to her matrimonial home to lead marital life and thereafter out of her wedlock, she was blessed with two children. Subsequently, the respondents used to demand his daughter for extra money. While so, on 30.05.2010 his son-in-law being a driver by profession died. After the death of his son-in-law the respondent harassed his daughter and demanded her to bring some more money. In that regard she was driven out of her matrimonial home and at present she is residing with her children. In addition to that it is also deposed by him that the respondent abused him in filthy language and took away LIC amount without giving share to his daughter. Subsequently, in the year 2012 P.w.1 went to the house of respondent for refund of amount which was paid by him to them, on that they beat her indiscriminately and as they have no other alternative she filed this D.V.C. case for her protection and for refund of money and house hold articles.

09. To contradict the version of petitioner, the respondent i.e., the mother-in-law of P.w.1 deposes that she has been residing separately from her husband at Naguluppalapadu village since 25 years in asbestos sheets roofed house raised by the side of road margin. The petitioner being her daughter-in-law fell in love with her son and at their request, she performed their marriage. From the time of her marriage, she used to reside in her parents house at Ongole. Even though she used to behave adamantly by quarreling with her son. At one instance she made the auto drivers to beat her son, at that time her son died. Then she gave report to police, but the same was not registered. Further it is deposed by her that prior to death of her son, he took away her gold ornaments and gave it to his wife, on that aspect she demanded

the petitioner to give her gold ornaments, for which the petitioner has filed this false case against her stating that she has taken away LIC amount which is belonged to her son. Even after the death of her son also the petitioner never came to their house and she never harassed the petitioner as alleged by her.

10. On careful perusal of evidence on record, admittedly there is no dispute with regard to the relationship between the petitioner and respondent. The petitioner as P.w.1 admitted that the respondent is her mother-in-law, whereas the respondent also admits that the petitioner is her daughter-in-law. So, there is no dispute with regard to the relationship between the parties.

11. Now the point that is to be determined, whether the petitioner being daughter-in-law of respondent suffered violence as mentioned under the act by the respondent. On this aspect, the petitioner though stated rivalry stating that the respondent and her daughter harassed her physically and mentally for want of additional dowry, coming to her chief examination itself it is admitted by her that on 30.03.2010 her husband died due to ill-health, after the death of her husband when she went to her in-law's house along with her children, the respondent did not allow her into the house, which means, it is clear that she has been residing separately along with her husband away from the house of respondent. Moreover coming to the cross-examination of P.w.2, it is admitted by him that his daughter and son-in-law used to reside separately in a separate house on rent basis and the intimation about the death of his son-in-law was informed to his mother by the owner of the house in which his daughter and her husband resided. So,

from the above admissions itself it is clear that the petitioner and her husband resided separately from the respondent. So, the concept of shared house hold does not arise as it is admitted by petitioner that the petitioner resided separately from the respondent. Moreover on this aspect this Court inclined to rely upon the Judgments of **Hon'ble Supreme Court** in **S.R.Batra and Another V. Smt. Taruna Batra (AIR 2007 S.C. 1118 and 1119)**, in **Neetu Mittal V. Kanta Mittal and Others (AIR 2009 DELHI 72 and 72)** and in **Umesh Sharma V. State (AIR 2010 (NOC) 515 (DEL.)**. Wherein their lordships clearly stated in those decisions that ;

"The mother-in-law's house does not become 'shared household' only because the applicant-wife had shared that house with her Husband earlier. Moreover, it is also observed in the said decision that "for that it has to be a house owned or taken on rent by Husband or a house which belongs to joint family of which Husband is a member'. At para 1121 it is held that Sec.17(1) of the Act, in our opinion the wife is only entitled to claim a right to residence in a shared household and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amrit Batra is a member."

Further in *Neetu Mittal V. Kanta Mittal and Others* case it is held that;

"Daughter-in-law cannot claim right to live in the house of parents of husband against their consent and wishes"

12. Coming to the case on hand, it is admitted fact that the house in which the respondent is residing is a Poramboke site, where the respondent raised asbestos sheet roof shed and has been residing. So, it

is neither exclusively belonged to respondent nor belonged to the husband of petitioner. Moreover as seen from the evidence on record, it is also observed that the petitioner and her husband resided separately and he cannot be concluded as a member of joint family. So, in view of the above decisions, this Court is not inclined to allow the petition pertaining to residence orders claimed by the petitioner against her mother-in-law. Accordingly, this point is answered against the petitioner.

Point No.2 :-

13. Coming to the aspect of protection orders, though P.w.1 stated that the respondent and her sister-in-law came to her parents house and threatened her to return the half share of LIC amount, coming to the evidence of P.w.2 father of P.w.1 he states that petitioner herself went to the house of respondent and demanded dowry amount and gold. Both the evidences of P.w.1 and P.w.2 are contrary to each other where they does not inspire the confidence of the Court pertaining to their reliability. So, this Court is not inclined to believe the version of P.w.1. Accordingly, this point is answered.

14. Therefore in view of above discussion it is clear that petitioner failed to prove her version by probable ends.

15. 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 28th day of April, 2015.

**Sd/- D. Durga Kalyani,
III Addl. Judl. Magistrate of I Class
Ongole.**

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

For Petitioner :

P.w.1 : Shaik Noorjahan
P.w.2 : Shaik Haneef,

For Respondents :

R.w.1 : Shaik Dilshad Begam,

DOCUMENTS MARKED ON BEHALF OF PETITIONER.

Ex.P.1 : Attested Internet copy of Household Card.
Ex.P.2 : Nativity Certificate.
Ex.P.3 : Marriage Photo.
Ex.P.4 : Residence Certificate.

DOCUMENTS MARKED ON BEHALF OF RESPONDENT.

- NIL -

**Sd/- . D. Durga Kalyani,
III Addl. Judl. Magistrate of I Class
Ongole.**

// TRUE COPY //

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