

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

Present: Sri J. Sravan Kumar,  
III Addl. Judl. Magistrate of First Class, Ongole.  
FAC::II-Addl. Judl. Magistrate of First Class, Ongole  
*Thursday, this the 20th day of April, 2017*

D.V.C No.23/2014

1. **Peddisetty @ Tirumalasetty Jyothirmayi**  
w/o Peddisetty Venkata Naga Subba Rao, 41  
years, Hindu, Govt. Teacher, r/o  
Mahalakshmi Apartments, Lawyer Pet,  
Ongole.
2. **Peddisetty Venkata Siva Sai Ram** s/o  
Peddisetty Venkata Naga Subba Rao, 5 years,  
Being minor rep. by his mother 1st petitioner  
Peddisetty @ Tirumalasetty Jyothirmayi, r/o  
Mahalakshmi Apartments, Lawyer Pet,  
Ongole

...Petitioners/  
Complainant

Vs

**Peddisetty Venkata Naga Subba Rao**, s/o  
late Ramulu, 43 years, Hindu, Employee,  
Karur Vysya Bank, r/o D.No.5/138,  
Venkateswara Nagar, 5th Lane, N.G.O's ...Respondent  
colony, Opp. Power Office, Kurnool Road,  
Ongole.

This application is coming on 19-4-2017 for hearing before me in the presence of Sri **K.Raghava Rao**, Advocate for Petitioners and of Sri **P.L.Govindaiah**, Advocate for Respondent; upon perusing the oral and documentary evidence on record and upon perusing the arguments on both sides and having stood over for consideration till this day, this Court delivered the following:-

**// ORDER //**

1. The petitioners 1 & 2 filed present Domestic Violence Case against the respondent for granting of maintenance under Section 18, 19, 20 and 22 and costs of the complainant.

2. Brief allegations in the Petition as follows:-

1st petitioner is legally wedded wife of Respondent and their marriage was solemnized on 02-12-1999 at Ongole, as per Hindu Custom

and Rites. Both petitioner and respondent are govt employees wherein 1<sup>st</sup> petitioner is teacher and respondent is a clerk in Karur Vysya Bank. It is alleged that at the time of marriage, P.W2 presented an amount of Rs.4,50,000/- initially and Rs.1,60,000/- on another occasion at the request of respondent as dowry. During their wedlock, 1st petitioner gave birth to the 2nd petitioner on 22-11-2008. After that the respondent addicted to bad vices and started harassing P.W1 for want of additional dowry of Rs.10,00,000/-. The petitioner further alleged to that the respondent developed an extra marital life relationship with one Nageswari who is neighbour of the said locality and used to beat with P.W1 without any reason. She further mentioned in her petition that the respondent purchased ground floor house bearing No. 5/138 by utilizing dowry amount which was presented by the petitioner. The petitioner further alleged that beside dowry, 50 sovereigns of gold also presented to the respondent at the time of marriage. After marriage both were lived in house bearing No. 5/138; 5th lane, Venkateswara Nagar, Ongole for some time thereafter disputes arose. As such on 14-1-2012 the respondent assaulted the 1st petitioner under the instigation of his concubine and caused bleeding injury to the petitioner. At that juncture the petitioner lodged report against the respondent to Taluka police. Despite of counseling the respondent did not mend his ways and continued his illegal relationship and thereby harassed petitioner. In response to her report the police conducted counseling to them, as such the respondent agreed that he would stay along with her in Datta Sai Apartments. The respondent did not obey settlement teams and used to reside in his old house along with his concubine. In response to her report, Taluka Police registered crime

against the respondent vide 396/2012 for the offence U/sec.498-A of IPC and Sec.3 & 4 of D.P.Act. After filing 498-A of IPC the respondent filed FCOP.92/2012 for dissolving the marriage. The petitioner further prays in her petition that now she has been residing along with her brother, therefore prayed the court to pass orders in her favor as prayed in her complaint.

3. The counsel for the respondent filed counter and denied the allegations of the petitioner and stated that the respondent never harassed the petitioner in any manner and he is affectionate towards the petitioner and his son. The petitioner tried to develop quarrels with the respondent for small and petty issues, and lodged report before Taluka police station u/sec.498-A and Sec.3 & 4 of D.P.Act against him and the case was ended with an acquittal on 10-04-2014. He further argued that the petitioner had filed suit bearing NO. OS.No.220/2012 before the Hon'ble District and Sessions Judge at Ongole for declaration and consequential possession against the house owned by him. The same is pending before the court and now the case is coming-up for trial. He submitted his version that, at present the petitioner is residing in a house owned by her brother who is working as Asst. Divisional Engineer in APSPDCL at Guntur and the petitioner is working as a Teacher in MPUP School at Chilmakuru and earning an amount of Rs.30,000/- per month therefore she can maintain herself. The petitioner is also having a vacant land at D.No.5/138, Venkateswra Nagar, 5th lane, NGO colony, Kurnool road, Prakasam District in her name and its worth of Rs.20,00,000/- lakhs. The land was purchased by the respondent on her name. Hence, the respondent counsel prays the court absolutely the petitioner is no need of

house to live as claimed by her in this petition. Since the 1st petitioner is Govt. teacher and earning handsome salary, hence sought for dismissal of complaint.

1. On behalf of petitioner she herself examined as P.w1 in support of P.W1 evidence her father is examined as P.W2; After closing the evidence of petitioner, the respondent himself examined as R.W1 and thereafter reported no evidence

2. The counsel for the petitioner vehemently argued that the petitioner is legally wedded wife of respondent when she married the respondent, he was affectionate for some time. Thereafter, the respondent addicted to bad vices and harassed petitioner for want of additional dowry. She further argued that the petitioner was mentally and physically harassed by the respondent for want of divorce and he maintained extra marital relationship with one lady therefore necked out the petitioner. Hence, the respondent being a husband is having minimum responsibility to maintain his wife and son. Now the petitioners 1 & 2 are living at the mercy of her brother therefore sought for granting reliefs as prayed for.

3. In other side the counsel for the respondent argued that the petitioner is Government teacher and earning handsome salary, hence she can maintain herself. And further argued that she is having fixed assets and properties, therefore the respondent is not at all liable to pay the maintenance. He stringently argued that the petitioner herself withdrawn the company of the respondent and harassed respondent by filing many cases though he did not commit any offence. Therefore, the allegation leveled against the respondent are not at all maintainable and petition is liable to be dismissed.

4. Basing on the document and evidence available on record the court intended to frame the following points.

1. Whether P.W1 and R.w1 are husband and wife?
2. Whether she is entitled from the maintenance from her husband
3. Whether P.W1 entitled for the residential orders
4. Whether P.w1 entitled for monitory relief
5. Whether petitioner is entitled for compensation orders
6. Whether the petitioner is entitled for monetary relief?
7. To what relief?

8. As seen the 1st point, the respondent never disputes the relationship with the petitioner. He admitted that P.w1 is legally wedded wife and P.w2 is his son. Therefore, there is no dispute with regard to the relationship between the P.w1 and R.W1 and 2nd petitioner.

9. As seen second point concerned Whether she is entitled from the maintenance from her husband ?

Pw1 is wife of Rw1. There is no dispute in that regard. The only contention of respondent is that Pw1 herself withdrawn from company of Rw1 and residing against his wish. He further contended that Pw1 is government teacher and getting handsome salary, therefore, Rw1 is not at all liable to pay maintenance to Pw1. He further contended that Rw1 is working as clerk in Karur vysya bank limited and getting meager salary therefore, he is not at all liable to pay maintenance to the Pw1. Learned counsel for respondent is expressed his willingness to pay maintenance to petitioner no 2. He strongly resisted that his client is getting meager salary and not in position to pay maintenance to Pw1. As seen DVC Act no where the legislation denied right to claim maintenance by a wife merely she is

earning. As seen 125 of Cr.p.c, the legislation clearly state that, the maintenance can only be granted when wife is unable to maintain herself. As seen the provisions of DVC no such rider existed. RW1 did not dispute that Pw1 is not his wife. He himself admitted in his cross-examination that he is drawing gross salary of Rs 50,000/- As observed by Hon'ble Apex court in the case **Jabsir Kaur Sehgal v. District Judge Dehradun & Ors reported in (1997) 7 SCC 7**

“ The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case.

**Similarly, Hon'ble Apex court observed in the case of Prakash Bodhraj v. Shila Rani Chander Prakash reported in AIR 1968 Delhi 174**

“ An able-bodied young man has to be presumed to be capable of earning sufficient money so as to be able reasonably to maintain his wife and child and he cannot be heard to say that he is not in a position to earn enough to be able to maintain them according to the family standard. It is for such able-bodies person to show to the Court cogent grounds for holding that he is unable to reasons beyond his control, to earn enough to discharge his legal obligation of maintaining his wife and child. When the husband does not disclose to the Court the exact amount of his income, the presumption will be easily permissible against him.

Hon'ble Delhi High Court observed in the case of **Damanpreet Kaur vs Indermeet Juneja & Anr. Which was reported in 2012 (5) LRC 279 (Del):**

*"a spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendent lite alimony. The law does not expect the increasing number of such idle persons who by remaining in the arena of legal battles, try to squeeze out the adversary by implementing the provisions of law suitable to their purpose"*

10. As observed by the Hon'ble court in the above case, though the petitioner is earning by worthy of her capacity, it does not tantamount granting of maintenance. As seen the provisions of DVC Act, the wording used must be understand in wider sense that, the amount of maintenance shall be granted according to the standards of respondent. In this case, the petitioner is having daughter and some amount shall have to be meet towards his educational expenses.

11. In view of the above circumstances this court feels that though the wife is earning salary it is the minimum duty of husband to maintain his wife though she is earning. The Act never prevents earning wife for claiming maintenance. In the present case on hand Pw1 and Pw2 alleged that Rw1 necked out her mercilessly and maintaining extramarital relationship with her neighbour. She further alleged that RW1 bet her indiscreetly with the instigation of his concubine. Basing on the evidence available on record this court feels that though the allegations leveled against Rw1 was not proved by any eye witnessed, this court must see the

nature of allegations in the prospective of society. Disputes among spouse may not have any access to the independent witness. The deminour of parties and the material placed before this court should be seen in deciding the case. This is a case where wife is claiming maintenance from her husband. As per the case of respondent Rw1 has already granted divorce, therefore he denied Pw1's case. In other side Pw1 countered that the divorce which granted by Hon'ble Family court was already challenged before Hon'ble High Court and the same is pending now. However, mere granting divorce is not tantamount of granting maintenance to wife. Even, a divorce is also entitled to claim maintenance. Therefore, this court feels that Pw1 being a wife and petitioner no 2 being a son both are entitled to get maintenance from Rw1.

12. Coming to the another point concern this court has to answer whether P.W1 entitled for the residential orders ?

As seen the allegations of Pw1, the respondent and herself lived in a share house bearing Door 5-138/A, NGO Colony, Ongole immediately after marriage. She further stated that the respondent constructed 1<sup>st</sup> floor on the dowry amount given by her. She made further allegation that the respondent availed house loan in her name and with the amount he made construction. Therefore, she sought residential orders in her favour. As seen the contention of respondent he denied her allegations and stated that she never spent any amount in construction of house and the said house is constructed with his own earnings. The respondent did not dispute that the house mentioned on her petition is not shared house. Therefore, this court feels that the petitioner and her son are entitled to reside in the said house therefore the point is answer accordingly.

Considering the facts and circumstance of the case this court feels that the entire evidence on record giving an impression that the respondent harassed petitioner and committed domestic violence.

13. The word harassment is given wider definition in the prospective of Domestic Violence Act-2005. As seen the definition, every piece of physical and mental element is being covered under the definition.

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in Clause (a) or Clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

14. As seen the contents of the petitioner alleged that the respondents severally harassed her for want of additional dowry. May be her allegations doesn't support by any independent witness. But the evidence of other witnesses are corroborating with the evidence of Pw1. The respondent barely denied the allegations of Pw1. But he did not place any martial evidence. In view of the above circumstance this court feels that the petitioner 1 and 2 are entitled for maintenance as well residential orders. As seen the facts and circumstance of the case this court feels that an amount of Rs 3,00,000/- is feasible to grant under the head of compensation. The respondent is directed to pay an amount of Rs 5,000/- each to the Pw1 and her son. Further the respondent is directed to not to commit any domestic violence against petitioners accordingly protection

order has been granted. The Dy.S.P of Ongole, is directed to implement the residential orders within one month from date of receipt of this order. The respondent is directed to pay arrears of amount within two months from the date of receipt of this order.

15. In the result, the petition is partly allowed and the Respondent is directed to pay an amount of Rs.5,000/- per month each to the petitioners 1 and 2 towards maintenance to the petitioners to meet their medical expenses. Further the respondent is directed to pay the said amount from the date of this petition. He is directed to pay the maintenance amount on or before 5th of every succeeding month to the account provided by the petitioners.

Further the petitioners are provided right to reside in a shared household in D.No.5-138/A, NGO Colony, Ongole. Further more, the 1st petitioner and his son/2nd petitioner are granted protection order and the Respondent is directed not to commit any domestic violence against her. The D.S.P Ongole Town is directed to implement the Residential orders within one month from the date of this Order.

Further the Respondent is directed to pay compensation of Rs.3,00,000/- to the petitioners within three months from the date of receipt of this order.

The rest of the claim against the Respondent is dismissed.

Typed to my dictation by the Personal Assistant, corrected and pronounced by me in Open Court, this the 20th day of April, 2017

Sd/- J.Sravan Kumar  
III Addl. Judl. Magistrate of I Class  
FAC::II-Addl. Judl. Magistrate of I-Class  
Ongole.

**// APPENDIX OF EVIDENCE //**

WITNESSES EXAMINED

For petitioner

P.W1: T.Jyothirmai

P.W2:T.Lakshmaiah

Respondent

R.W1:P.Venkata Naga Subba Rao

DOCUMENTS MARKED ON BEHALF OF PETITIONER.

-NIL-

DOCUMENTS MARKED ON BEHALF OF RESPONDENT.

-NIL-

Sd/- J.S.K  
III-A.J.F.M.C  
FAC::II-A.J.F.M.C  
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