

**IN THE COURT OF THE JUDL.MAGISTRATE OF I CLASS
SPL.MOBILE COURT,ANANTAPURAMU.**

**Present :- Sri M.Bujjappa,
Prl. Junior Civil Judge, Anantapuramu
FAC. Judl. First Class Magistrate,
Spl.Mobile Court, Anantapuramu.**

Friday, the 29th Day of January, 2016.

D.V.C.No.06/2012

Between:-

A.Sujatha.

...Petitioner.

And

1) C.Nagaraju.

2) C.K.Rayudu.

3) C.Venkata Lakshamma.

...Respondents.

This petition coming on 12-1-2016 for final hearing before me in the presence of Sri S.K.Chandrasekhar, advocate for the petitioner and of Sri B.Mallikarjuna Reddy, advocate for the respondent1 and 3 and the 2nd respondent having been died and the mater having stood over for consideration till this day, the court made the following:-

ORDER

1) This is a petition filed by the petitioner through Project Director cum Protection Officer, District Woman and Child Development Agency, Ananthapuramu seeking the relief of residence order and prevention of Domestic Violence enabling the petitioner to receive the rents of some of portions of presently residing the house and for maintenance of Rs. 8,000/-.

2) The brief facts of the petition contents leveled against the respondents stood as follows:- The marriage of the petitioner took place in between the petitioner and the respondent No.1 namely Nagaraju on 2-2-95 as per Hindu rites and customs. At the time of marriage, they give Rs. 1 lakh and 30 tulas of gold. After the marriage, they lived happy marital life for a period of one year and during the wed lock, they begotten one female child namely Hemalatha and one son namely Kiran Kumar. It is further alleged in the petition that on the instigation of respondents 2 and 3 for additional dowry, the respondent No.1 subjected the petitioner for cruelty and further the respondent No.1 withdrawn from the company of the petitioner and residing with their mother and father i.e, respondents 2 and 3. After that, the mediation was held and in spite of that, the respondent No.1 approached the Family court for divorce and the said case is pending. He got married one Kavitha and the same is questioned by the petitioner that the respondent came to her and the respondent in turn stated that as such, the petitioner remains in the house of the respondents and he will necked out the petitioner and the children and inducted the said Kavitha into the house and expressed his views before the petitioner. Subsequently the respondents intentionally committed harassment and try to remove the petitioner and children from the house. As such, she approached the Domestic Violence Officer for getting protection from the dispossession and for maintenance.

3) On the other hand, the respondents' counsel filed a detailed counter resisting the claim of the petitioner and contended that the petitioner filed this unjust petition before Domestic Violence Officer and the present petition before the court is not maintainable under law. He further submitted that the petitioner and the respondent are living separately since six years and as such, the Domestic Violence Act will not arise. He further submitted that the respondents 1 to 3 are victims in the hands of the petitioner in the month of July, 2005. The petitioner filed criminal case against the respondents u/ss. 498-A and 307 IPC and the same was tried by the Additional Assistant Sessions Judge, Ananthapuramu and the case was acquitted on 4-12-2007. He further submitted that the petitioner herself deserted the respondent No.1 in the year 2005 itself and she is intentionally residing in the house belongs to the 1st respondent's father. It is further contended in the counter that present petition filed by the petitioner with a view to harass, trouble and cause annoyance to the respondents. Thus the petition contents are totally false and under the guise of petition, she try to knock away the property of the respondents 2 and 3 to which the respondent No.1 had no right at all. He further contended that the petitioner filed maintenance case against the respondent No.1 and he is paying monthly allowance of Rs. 3,250/- to her children in every month and apart from, the petitioner is B.Sc., B.Ed., graduate and she is working as a teacher in private school and besides she is conducting tuition fees for the

students and earning Rs. 6,000/- to Rs. 8,000/- every month. He further submitted that as per section 12 of D.V. Act, female members cannot be made as respondents in the proceedings under the Act and the respondent No.3 is the mother in law of the petitioner and she is a old and sick woman. The proceedings against the respondent No.3 are illegal and in violation of the provisions, the act of proceedings against the 3rd respondent are to be null and void and prays the court to dismiss the petition as meritless.

4) Heard the counsel for the petitioner.

5) The petitioner counsel submitted that the petitioner is legally wedded wife of respondent No.1 and they lead happy marital life for period of one year and after that, the respondents started harassing of the petitioner for demand of additional dowry, even though the petitioner and R-1 have begotten two children and thus the petitioner not only established the harassment but also established the domestic relationship of the petitioner with the respondent. He further argued that the petitioner is residing in the house belongs to the 1st respondent but the respondents by filing divorce O.P. and by obtaining decree, for which the petitioner filed revision but the respondent mercilessly necked out the petitioner and if the respondents are succeeding, the petitioner will put irreparable loss and thus she became helpless lady. It is further argued that the petitioner filed maintenance case against the respondent No.1 and the same is allowed and directed the respondent for paying monthly allowance of Rs.2,500/- which is

in sufficient for both the petitioner and her children and thus there is requirement of Rs.8,000/- in addition to already granted amount for the maintenance of the petitioner and prays the court to allow the petition since the respondents never refuted the evidence of P.Ws 1 and 2 and adduced the evidence by R.W.1 is of no value and it did not refute the version of the petitioner and support the version of the respondent with material and prays the court to allow the petition for the reliefs as prayed for.

6) On the other hand, the respondent counsel filed written arguments in addition to the advancing the arguments and contended that D.V.C.Act came into force with effect from 26-10-2006 and the present petition allegations in the report and in the statement of the Domestic Violence officer, he contended that the alleged incident took place prior to 26-10-2006 but in addition to that, the complainant and her husband are residing separately since 2005 and the case filed by the petitioner u/ss. 498-A and 307 IPC was ended in acquittal and if such is the case, the provisions of Domestic Violence Act cannot come into the play against the respondent in view of decision reported in 2009(1) ALT (Cri) A.P.285.

7) It is further argued that the family court, Ananthapuramu vide O.P.72/99 passed the Judgment dated 4-12-2009 granting divorce between the petitioner and the respondent and the same is denied by the petitioner stating that appeal is pending before Hon'ble High Court and if such is the case, the dissolution of marriage is got a raise to debar the petitioner to

claim any status so as to get the reliefs under Domestic Violence Act. He further argued that the petitioner is not willing to join with the respondents and she is willing to party divorce since she never wanted to live with the petitioner but the present petition is filed in order to take revenge against her husband and old aged respondents 2 and 3. It is further argued that she filed maintenance case for an amount of Rs. 3,250/- per month to her is not sufficient and that she is claiming more amount and claiming amount of Rs. 5,000/- per month as maintenance is illegal and apart from that the petitioner has illegally occupied the house of respondents to which neither the respondent No.1 nor the petitioner having right over the property since it is self acquired property by filing present petition wants to knock away the property and thus she is not entitled for the residence order as well as maintenance. It is further argued that though the respondent No.1 recently get the job in A.P.S.R.T.C. department, he is earning meager salary of Rs.6,000/- per month and on the other hand, the respondent No.1 gets amount of Rs. 3,500/- towards maintenance. She is also doing private teacher job besides she is conducting private tuitions and she is earning more money. She is having good educational qualities to eke out her livelihood and she is entitled for the maintenance. He further argued that since divorce was granted against the petitioner and she has no longer required to entitle to claim the reliefs under Domestic Violence Act and he relied upon Judgment reported in 2013(1) ALT (crl) 147 A.P. He further

argued that the present petition is filed by the petitioner is without having any her complaint and her allegation do not stand since no evidence support it and further the petitioner has not proved any domestic violence before this court and further the petitioner having evil eye to knock away the property of the respondent No.1 and thus this petition is liable to be dismissed.

8) In order to prove the case of the petitioner, she adduced the evidence of P.Ws 1 and 2 and got marked Exs.P-1 to P-3. On the other hand, the respondent No.1 himself is examined as R.W.1 and got marked Ex.B-1 alone besides depending upon weakness of the petitioner.

9) Heard arguments on both sides and perused the record.

10) Now the points that arises for considerations are:-

- 1) Whether the Domestic Violence Act pertaining to the facts and circumstances of the case is prospective and retrospective to entitle or disentitle the petitioner to claim the reliefs under Domestic Violence Act?
- 2) Whether the petitioner establishes the domestic relationship of the petitioner with the respondents 1 to 3 as per D.V. Act?
- 3) Whether the petitioner proves the Domestic violence committed by the respondents against her?
- 4) Whether there is dissolution of marriage took place between the petitioner and the respondent No.1 and if so whether such decree

of divorce disentitled the petitioner to claim the reliefs in the Domestic Violence Act?

5) Whether the petitioner is entitled for the reliefs as claimed for?

11) **POINT NO.1:- i) Whether the Domestic Violence Act pertaining to the facts and circumstances of the case is prospective and retrospective to entitle or disentitle the petitioner to claim the reliefs under Domestic Violence Act?**

The respondent by filing detailed counter resisted the claim of the petitioner invoking the domestic violence Act provisions and he contended that the domestic violence came into effect from 26-10-2006 and the Act is not retrospective effect and if so, the report submitted by the Domestic Violence Officer and the statement of witness does not disclose any Domestic violence after 26-10-2006 and it is admitted by the complainant-petitioner that herself and her husband are residing separately since 2005 and after so when the respondent No.1 is not living with the petitioner from 2005 and thus invoking Domestic Violence Act against the respondents is impermissible under law. It is admitted by P.W.1 in cross examination that from 2005 onwards, they are living separately but it is the contention of the petitioner that 1st respondent used to visit the residence of the petitioner and proclaimed that he got married another woman and asked to vacate her. So the said utterance also attracts Domestic Violence which occurred after granting of divorce probably took in the year 2009. No doubt the Hon'ble

High Court of A.P. in between U.U.Thimmanna and others Vs. Smt.U.U.Sandhya and another held that Act came into effect with effect from 26-10-2006. Therefore it is fundamental principle of law that "any penal provision has no retrospective operation only prospective". But the Hon'ble Supreme Court on this aspect made it clear in Judgment between Krishna Bhatachargee Vs. Sarathi Choudhury and another reported in (2016) ACR 5. The Hon'ble Supreme Court held that

"Act is a beneficial as well as assertively affirmative enactment for realization of constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence and thus the petition under the provisions of 2005 Act is maintainable even if acts of domestic violence had been committed prior to coming into force of the Act, not with standing fact that in past she had lived together with her husband in a shared house hold but was no more living with him, at the time when the Act came into force".

So the Supreme Court categorically held that the Domestic Violence Act, 2005 is retrospective in nature. Hence in the present case, the petitioner is absolutely not debarred to invoke the provisions under the Domestic Violence Act to enforce the Act and to realization of the rights guaranteed under the Act. Hence this point is accordingly answered in favour of the petitioner and against the respondents.

12) **POINT NOs.2 and 3:- Whether the petitioner establishes the domestic relationship of the petitioner with the respondents 1 to 3 as per the requirement of the Domestic Violence Act? and**

Whether the petitioner proves the Domestic Violence committed by the respondents against her?

It is a trait of the Domestic Violence Act that there must be some domestic relationship should exist between the petitioner and the respondents to invoke the reliefs claimed under the Domestic violence Act. Here in this case, it is the evidence of P.W.1 that the marriage of the petitioner took place with the respondent No.1 on 2-2-1995 and she lived happily for a period of one year, after that the respondent No.1 is harassing her with the instigation of R-2 and R-3. Subsequently the respondent No.1 left from the house where she is presently residing and left to his parents as they are having so many houses. If this evidence is considered projected only on the petitioner and the respondent No.1 alone lived under one roof happily for a period of one year or there is no whisper in the evidence that the petitioner is residing with the respondents 2 and 3 along with the respondent No.1 under one roof. Further the evidence of P.W.1 reveals that after relationship with the respondent No.1 was strained just as completion of one year, the respondent No.1 left. The respondent No.1 went and joined with respondents 2 and 3. So probably in the year 1996 onwards, the respondent No.1 is residing with the respondents 2 and 3 and it projects that the respondents 2 and 3 are residing separately from the respondent No.1 and the petitioner. So the chief affidavit contents itself projected that the respondents 2 and 3 are having no such domestic

relationship with the petitioner. It is another factor note to be considered and admitted by the petitioner itself that she is residing in the house of respondent No.2. It is borne by record also. The relief sought by the petitioner is restraining the respondents from interfering with the present house in which she is living. Admittedly the said house belongs to the respondent No.2. Though she stated that the said property is the ancestral property, the record indicates that the said house is belonging to the respondent No.2. The petitioner in addition to her claim must at least proved by his oral or documentary proof to show that the present house is ancestral property of the respondent No.1 and 1st respondent is having right over the said property. The Hon'ble Supreme Court in between S.R.Batra and another Vs. Smt. Taruna Batra reported in 2007(3) ALT (Cri) 1 S.C. observed under D.V.C. Act that the wife is entitled to claim the right of residence in shared house hold but observed that

“If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past that property becomes a shared house hold. It is quite possible that the husband and wife may have lived together in dozens of places with the husband's father, husband's paternal grand parents, his maternal parents, uncles, aunts, brothers, sisters, nephews and nieces etc., If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared house holds and t he wife can well insist in living the all these houses of her husband's relatives merely because she had stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd and it is well settled that any interpretation which leads to absurdity should not be accepted and also observed that the claim for alternative accommodation can only be made against the husband and not against the husband in laws or other relatives”

13) The purport of the above said Judgment that analogy propounded by the Supreme Court can be made applicable to this case also. Here in this case, it is admitted by the petitioner that the present house in which she is residing belongs to the 2nd petitioner. As already stated above, there is no domestic relationship between the respondents 2 and 3 and the petitioner and even the petitioner has not proved the domestic relationship of her and the respondents 2 and 3. Then one can gather that out of generosity even now R-2's house allotted the petitioner to stay in his house which got by R-2 with his hard money. P.Ws 1 and 2 stated that there is apprehension from the respondents about the peaceful possession of the petitioner in the present house that should not be materialized by allowing this petition restraining the respondents from interfering with the peaceful possession of the petitioner in the said house would meet the situation. The petitioner can claim separate residency from the respondent No.1 alone but not respondents 2 and 3. Further P.W.1 adduced the evidence only with regard to the claim for house in which the petitioner is presently residing and she did not articulate about the domestic violence whether happened or not happened. So it can be gathered that the present petition is filed in order to knock away the respondent No.2's property.

14) When coming to the other aspects of any domestic violence, it is the obligation on the part of the petitioner to prove that there is some domestic violence proceeded from the respondents. The chief affidavit of

P.W.1 only reveals that the respondent No.1 alone harassed her and after the dissolution of marriage between the petitioner and R-1 for one day, the respondent came to her house in which the present petitioner is residing and informed the second marriage with another woman and threatened to her to vacate the house. The above said words in mind of petitioner cannot constituted domestic violence and chief affidavit of P.W.1 spoken words of domestic violence as harassed by R-1 but nothing was substantiated by her to prove the incident of the domestic violence. The affidavit contents must be inspiring one to believe the said domestic violence. Under the above circumstances, I do not find any domestic violence proceeded from the respondents 2 and 3 more particularly. As against the respondent No.1, the evidence of P.W.1 is not inspiring my confidence and further P.W.2 did not whisper single word of domestic violence committed by R-1 or R-2 and R-3. It is just stated that the respondents are making efforts to neck out the petitioner from the house. Under the above circumstances since the respondent adduced evidence in lengthy to the petitioner's claim. Then it is the obligation on the part of the petitioner to probabalise the some domestic violence alleged to be committed by the respondents. Hence this point is answered accordingly in favour of the respondents and against the petitioner.

15) **POINT NO.4**:- **Whether there is dissolution of marriage took place in between the petitioner and the respondent No.1 and if**

so, whether such decree of divorce disentitle the petitioner to claim the reliefs under the Domestic Violence Act?

By virtue of dissolution of marriage between the petitioner and the respondent No.1, the petitioner fore closed to invoke the provisions of Domestic Violence Act. The chief affidavit of P.W.1 shows that after the respondent withdrawn from the complainant company, he used to reside with the respondents 2 and 3. Subsequently he filed divorce O.P. on the file of Family court and the Family court granted divorce between them but she opted to prefer appeal against the orders of Family court. Even appeal is pending, the respondent got married one Kavitha and then he came to the house of the respondent and asked her to vacate from the house. By filing chief affidavit of R.W.1, he submitted that vide Family court O.P.No. 72/2009, he got divorce order in Judgment dated 14-12-2009 and thus there is no marital status existed between the parties as on the date of filing of the domestic violence case. But during the course of cross examination of R.W.1, R.W.1 admitted that he did not file any copy of the orders that were passed by the Family court, Ananthapuramu granting divorce to him in O.P.72/2009. However if the cross examination of P.W.2 is perused at the page of one line, she admits that divorce O.P. was disposed conditionally. So by relying on the admission made by P.W.2, one can gathered the divorce O.P. existed between the respondent and the petition is disposed off on merits. More over the admissions which were elicited by the respondent in

cross examination of P.W.1 is having much significance to support the version of the respondent. During the course of cross examination of P.W.1, she admitted that the respondent No.1 filed O.P.72/2009 on the file of Family court, Ananthapuramu for divorce and the divorce also granted. It is the clarification given by P.W.1 on condition that the respondents should pay an amount of Rs. 4 lakhs to the petitioner by the respondent. Whether such amount was paid or such amount was incorporated in the divorce O.P. is not questioned by the petitioner. Further P.W.1 claimed in her chief affidavit that she preferred an appeal against the divorce granted by Family court, Ananthapuramu but no such appeal copy is filed or no such appeal Revision number on the file of High Court or any other court is pending and on this aspect, the petitioner fails to place oral or documentary record to believe her version. In the said situation, the respondent probabalise his version of dissolution of marriage between him and the petitioner. At this juncture, the learned counsel for the respondent relied upon the Judgment reported in 2013(1) ALD (Crl) 147 A.P. between Medi Koteswara Prasad Vs. Medi Manemma and others wherein the Hon'ble High Court observed that

“ By virtue of the dissolution of the marriage between the first petitioner and the respondent by a decree of divorce which became final, the first petitioner cannot be termed as aggrieved person. What is significant is that only concerned woman, who is or has been in domestic relationship with the respondent, who is alleged to have been subjected to any act of domestic violence by the respondent can alone be termed as aggrieved person who can file the complaint for relevant reliefs under different provisions of the Act. As such it is not proper to continue the proceedings against the petitioner in consequence of which the proceedings are liable to be quashed”

1) The above said Judgment squarely applicable to the present case.

The petitioner and the respondent got divorce and the same is admitted by both of them. Though the petitioner stated that the appeal was pending, but she did not articulate any evidence or scrap of paper or at least number of the said appeal or revision against the divorce granted by Family Court, Ananthapuramu. Apart from that the Hon'ble Supreme Court in 2016 ACR.5 between Krishna Bhattacharjee Vs. Sarathi Choudhury and another observed in para No.2 that

“there is no distinction between decree for divorce and decree of judicial separation—Once decree of divorce is passed, status of parties becomes different, but that is not so when there is decree for judicial separation—Such decree does not dissolve marriage—it affords opportunity for reconciliation and adjustment—Finding recorded by courts below which have been concurred by High Court that parties having been judicially separated, appellant wife has ceased to be an ‘aggrieved person’ is wholly unsustainable”

2) If the analogy of the above said Supreme Court Judgment is pragmatically considered once the decree of divorce is passed, the status of parties became different and if so, the present petition said to be filed in the year 2012 and the decree of divorce probably was granted before the institution of this D.V.C., hence once the dissolution of marriage between the parties are taken place, the respondent is no longer having such relationship with the petitioner sacramentally to enforce certain obligation to her to imbibed under the domestic violence Act. The another factor that need to be considered is that the divorce application has disposed on merits and the

divorce application is made by the respondent No.1 himself. So there is every probability for the respondent to probabalise his side of grounds and succeeded the divorce in the said situation and thus contention of the petitioner cannot be looked into. Under the above reason, I feel that the petitioner is not entitled to seek any relief against the respondent. Hence this point is accordingly answered in favour of the respondent and against the petitioner.

3) **POINT NO.5:-** In view of the discussion made under points Nos. 2 to 4 and in view of maintenance paid by the petitioner No.1 regularly to her and in relation to the maintenance case, this petitioner cannot entitled for the further maintenance from the respondent, though sec. 39 of the Domestic Violence Act is solely spoken about the reliefs in addition to the reliefs attributed or provided in any other acts. More over under the divorce O.P. and as per the explanation provided by the petitioner in the cross examination of P.W.1 itself that Rs. 4 lakhs amount stipulated under the divorce O.P. payable by the respondent and whether the said amount is prayed or not and it is not clarified by neither of the parties. Under the said situation, it is initial obligation on the part of the petitioner to discharge the burden of proving the fact that she did not receive the said lumpsum amount of Rs. 4 lakhs. So it can be presumed that the divorce decree was honoured by the respondent. Hence the present petition in seeking further maintenance in addition to the M.C. amount regularly paying to the

petitioner is absolutely, arbitrary and un-acceptable. Further more, it is bond by the record that the petitioner stated that she studied B.Ed course after her primary education, if so she is a lady having the education and potentiality to maintain herself. Under the reported in 2012(1) A.L.T. (CrI) page 34 A.P. the court held that though "constitution conflicts with the jurisdiction to pass ex parte maintenance under the Domestic Violence Act proceedings, the fundamental particulars of judicial procedures for grant of maintenance could not be ignored".

"if the fundamental provisions of judicial procedures is adopted to the facts from the present case is that the petitioner is highly educated lady and having potentiality to maintain herself and further more, it attracts the fundamental duty of constitution is that every citizen of India must do something for the progress of the society. So if the society wants to progress, the person like that the present petitioner who is having potentiality and education must work hard and earns something for themselves, so that indirectly help the progress of the society".

When she is having capacity to maintain herself then extending her palm for the alms of the respondent is highly un-acceptable. So as per the Domestic Violence Act, though it is a beneficial legislation but the basic principles cannot be deviated under the facts and circumstances of this case and the petitioner is not entitled to claim any maintenance and for

residence. So this point is accordingly answered in favour of the respondent and against the petitioner.

4) In the result, the petitioner is not entitled for the Maintenance, residence order and other reliefs claimed in the petition and thus this petition is dismissed.

Dictated to the personal Assistant transcribed by him, corrected and pronounced by me in open court, this the 29th day of January, 2016.

FAC. Judl. I Class Magistrate,
Spl. Mobile Court, Anantpuramu.

Appendix of evidence

Witnesses examined for

Petitioner:-

P.W.1:- A.Sujatha.

P.W.2:- A.Naganna.

Respondents:-

R.W.1:- C.Nagaraju.

Exhibits marked for petitioner:-

Ex.P-1:- Complaint given by P.W.1.

Ex.P-2:-Form-I.

Ex.P-3:- Enquiry report.

Exhibits marked for respondents:-

Ex.B-1:- Certified copy of Judgment in S.C.No.346/2006 on the file of Additional Assistant Sessions Judge, Ananthapuramu.

FAC. JFCM.