

IN THE COURT OF THE III ADDL. JUDICIAL MAGISTRATE OF FIRST CLASS, CHITTOOR.

Present: S.SAILAJA
III Addl. Judicial Magistrate of I Class,
Chittoor.

Tuesday, the Thirteenth (13th) day of June,
Two thousand and Seventeen.

DVC. No. 04 of 2016

Between:

K.Pooja Sri, aged about 28 years, w/o D.Babu,
D/o K.Neerajasesala Naidu, Venkatapuram Village
and post, G.D.Nellore Mandal, Chittoor District.

... Petitioner

And

1. D.Babu @ Shanmugam, aged about 34 years, s/o Doraswamy Naidu, Hindu, Plumber,
2. D.Rathnamma, aged about 55 years, w/o Doraswamy Naidu,
R-1 and R-2 are r/a D.No.32, 11 Cross,
Nisaraja Badavani Road, Near Abbanaidu Studio,
Vasanthapuram Ward, Bangalore.
3. A.Kumari, aged about 36 years, w/o Sekhar, r/a Garuda Palyam, Krishnarajappuram, White Field Road, Bangalore.

... Respondents

This case is coming on 09-06-2017 for hearing in the presence of the, Sri V.Surendra Kumar, Smt V.Mohana Kumari and Smt A.S.Saraswathi, Advocates for Petitioner; Respondents remained set exparte; and having stood over to this day for consideration; this Court made the following:

ORDER

01. This complaint/petition is filed by the petitioner/complainant under section 12,17,18,19 and 20 and interim order seeking injunction against the respondents from restraining any of the acts mentioned in complaint prohibiting alienation of assets by the respondent, prohibiting operation of joint bank accounts by the respondent allow the aggrieved person to operate the same, return of jewels to the petitioner which are given by the father of petitioner to the petitioner and 1st respondent at the time of marriage and restraining the respondents for disposing and throwing out from the share house hold entering that portion of the shared household in which she reside, alienating disposing oblique encumbering the shared house hold and allow the petitioner to stay in the petition schedule share in the house hold and directing

the 1st respondent to pay rupees 20 thousand per month to the 1st petitioner and rupees 10 thousand to 2nd petitioner. Their maintenance, education expenses, clothing, transport etc., and to pass exparte interim orders directing the 1st respondent to allow the petitioners in the shared house hold described in the petition schedule and also to pay interim maintenance at rupees 30 thousand per month to the petitioner.

02. The brief averments of the petition are as follows :

A. The complainant submitted that she is the legally wedded wife of 1st respondent and their marriage was celebrated on 10-9-2016 at Kanipakam, by her parents by incurring marriage expenses of Rs.3,00,000/- in large scale and also her parents have presented 114 grams of gold for her and 16 grams of gold for 1strespondent at the time of marriage and gave Rs.3,00,000/- by hand cash and household articles worth about Rs.30,000/-. Later she joined with the 1st respondent and 2rdrespondent after the marriage and living together in a share house hold situated at Bangalore. The 1strespondent is a plumber by profession and getting a sum of Rs. 50,000/- to 70,000/- per month. The 1strespondent have set out the family in Bangalore. After the marriage they are living happily for a period of one year, subsequently the 1st respondent has used to come to the house as late night nearly 12:00 PM by consuming liquor and he totally neglected her and he did not choose to provide the food for her and 1st respondent used to speak in secret place on late nights on terrace. In the month of September, 2009 the 1strespondent has caused to miss carriage of her during third month pregnancy by kicking with his foot on her abdomen whenever she questioned about his behaviour, in the result she admitted at Yoganandan Hospital and taken treatment from the Doctor Sailaja.

B. Further she submitted that she has received cell phone from the 1strespondent on the request to call her parents and she has seen some mesmerizing messages and calls came from the same number then she questioned about them, but 1strespondent escaped by stating that the number belonged to his friend. Thereafter in the month of June 2012, the 2ndrespondent has sent her to the hotel for doing coolie work which was established by 3rdrespondent and living together by doing coolie work in such hotel situated at Garudapalayam, Krishnarajapuram, White Field Road, but 3rd respondent on 23-8-2012 openly advised to the 2ndrespondent to celebrate the second marriage to the 1strespondent and she was always ill-treated that she has no child and she is godralu but she is not working properly and she getting coolie, then she has return back to her matrimonial home after lost her

patience. In the year 2012, the 1st respondent has advised to the petitioner to cook the chicken. Then his mistress Padma came to the home where she and the 1st respondent living together along with her sister's husband and children of her sister and eat the chicken. Subsequently on the same night, the 1st respondent has asked her, whether the minor child on the photo is similar to him by showing one photo immediately he stated that he is going to get second marriage with Padma and such male child born out of intimacy between himself and his mistress Padma. Thereafter in the year 2013, Padma along with her child came to the house while the petitioner and 1st respondent living together since then 1st respondent totally avoided her even to seen her and there is no eye contact. The 1st respondent has escaped from the phone calls made by her by stating that he was in busy.

C. Further she stated that the 1st respondent has used to go to temple along with his mistress Padma in the presence of petitioner and 1st respondent has come down to heinous stage such as he used to participate in the sexual intercourse in the presence of the petitioner. The 1st respondent and his mistress used to beat the petitioner whenever she asked about their behaviour more over they were pours the hot tea on the left leg of the petitioner as she has supplied the tea to the 1st respondent and Padma in 2 minutes late. The child born out of intimacy between the 1st respondent and Padma is now studying at Prarthana School, Padmanasha Nagar, Bangalore. The petitioner has never intimated about her parents either of the intimacy or harassment made by the 1st respondent and his mistress Padma. The fear of her death basing on the threat given by the 1st respondent and his mistress Padma by stating that they will kill her, if she intimated anybody about the intimacy. But the house owner by name Prasanna intimated to her mother about the intimacy between the 1st respondent and his mistress Padma and all the events occurred in the house of petitioner. In fact the 1st respondent was avoiding her parents to come to the house to seen the petitioner with a view to conceal his intimacy from the date of his mistress entered into the house. 2nd respondent always used to comment her that she has no child and she is unable to give heir to their house and on 12-11-2015 the 2nd respondent openly stated in her presence that Padma is fit person to the 1st respondent as a wife since she has given birth to male child to their house. On 17-11-2015 the 1st respondent and his mistress together beaten the petitioner and locked up in the room with a view to kill her, in consequence she escaped from the home and taking shelter in her parents' house at Gangadara Nellore as she has no other go and with the life threat. Hence the petition.

03. The brief averments of the counter filed by the 1st Respondent and adoption memo of respondents 2 and 3 are as follows :

A. They denied the contents of complaint filed by petitioner. Further they stated that from the date of marriage itself the petitioner is not amicable with them in any aspects and not chosen to them to lead marital life with 1st respondent for the reasons best known to her apart from that the petitioner is suffering with mental disorder, but by suppressing the same got performed the marriage with 1st respondent by her family members. Even though the family members of petitioner suppressed the mental disorder of petitioner, 1st respondent never questioned the same and kept quiet as already the marriage was taken place between him and the petitioner and having respect towards Hindu traditions, but without considering the same. The petitioner continuous harassed the 1st respondent without any fault on his part for the reasons are best known to her. At any point of time the 1st respondent never harassed the petitioner and never demanded her for any kind and never beat her and treated as his wife in good manner by providing all needs and requirements to her satisfaction in all aspects but the petitioner without satisfying those requirements the petitioner harassed 1st respondent both mentally and physically without any fault on the part of 1st respondent.

B. Further they submitted that the petitioner voluntarily herself left the company of respondents' family without knowledge and consent of respondent and his family members by taking all belongings to her while he was away from the house. Further the 1st respondent is always ready and willing to lead happy material life with the petitioner, but the petitioner is not cooperating even from the date of marriage itself and giving troubles continuously but he being a law abiding citizen barred all the harassments of the petitioner with a find hope that she will change her attitude at any point of time, but the same is in vain. There is no source of income and he is struggling for his day to day livelihood and also he is suffering with ill health and that he is not doing any work and that there is no any income. The alleged source of income stated in the petition is only imaginary and there is no proof for the same and the same is created only in order to get maintenance from the respondents even they have no any shelter to them. Further the petitioner has left the company of 1st respondent and so she is not entitled to any relief against the respondents as there is no fault on them at any point of time. They tried his level best to take back the petitioner with help of elders, but the petitioner not chosen any interest to come and join with the respondents, there is no cause of action to file the present petition and that there is no jurisdiction

to file the present petition before this court as she resides and left the company of them from Bangalore and that if she wants to file complaint at Bangalore only. Further the respondents 2 and 3 are unnecessary parties and they have no way connection to the present facts of the case. So it clearly shows that only in order to harass and blackmail the respondents, they were added as parties in the above matter. Hence prays to dismiss the petition with exemplary costs.

04. On behalf of petitioner, she examined herself as P.W.1 and one third party examined as PW-2, and marked Exs.P.1 and P.2 through PW-1. No oral or documentary evidence was adduced on behalf of respondents.

05. Heard. Perused the entire material on record.

06. **Now the points for determination is :-**

- 1) Whether this court has jurisdiction to try the matter?**
- 2) Whether the petitioner is entitled for the reliefs as prayed for?**
- 3) To what relief?**

07. **POINT NO. 1:-**

Whether this court has jurisdiction to try the matter?

A. The complainant herself examined as PW-1 and she re-iterated the contents of complaint in her chief examination affidavit and Ex.P.1 and P.2 are marked. **Ex.P.1** is the marriage photos of petitioner and 1st respondent. **Ex.P.2** is the wedding card.

B. To prove the case of petitioner, she examined one Third party in this case as PW-2. P.W.2 stated the same lines stated by PW-1 in his chief examination affidavit and further he stated after reaching her parents house, the petitioner stated about the said entire facts to him and others. Hence himself Manohar Babu, Ravi, Prakash, Sudershan along with petitioner and her aged parents went to the place of 1st respondent and held mediation by requesting him to look after the petitioner in well by providing all day to day needs and requirements to her as she is the legally wedded wife of 1st respondent and daughter in law of 2nd respondent to stop his illicit intimacy with the Padma, but the respondents have threatened the other mediators with dire consequences by stating that if again tried to held mediation they are going to do him and others and to escape from the criminal liability. All their efforts of amicable mediation between the petitioner and 1st respondent are in vain.

C. The respondents though availing sufficient time they did not come forward to contest the matter and they are set exparte at the time of

trial and did not cross examine the PWs 1 and 2.

D. As per the complaint, at present the petitioner has been residing at her parents' house at Gangadhara Nellore, which is within the jurisdiction of this court. As per Sec.27 of Domestic Violence Act, that where aggrieved person permanently or temporarily resides, or carries on business or is employed, so the aggrieved person can file case where she resides. So this court has jurisdiction to try the matter, as the petitioner resides within jurisdiction of the court. Hence this point is answered against the respondents.

08. POINT NO. 2:-

Whether the petitioner is entitled for the reliefs as prayed for?

A. As per complaint and evidence of PWs 1 and 2, PW-1 resides with 1st respondent since 2006 to 2015. As per counter, PW-1 left voluntarily with the company of 1st respondent, but in counter period of living in the house of 1st respondent with PW-1 is not mentioned to prove that how much days PW-1 and 1st respondent living together in the said house. 1st respondent stated, that he has ready and willing to take back the petitioner, but she failed to come forward to take the petitioner as remained set exparte. There is no proof to show that 1st respondent and PW-1 resides from 2006 to 2015 in one roof in the same house by paying rent, as a owner of the said house is a material witness to state that the PW-1 and 1st respondent residing in her house for rent purpose and by saying what amount 1st respondent paying to her as a rent, so she is a material witness. As well as cruelty of 1st respondent and 1st respondent living with his mistress Padma and their male child in the said house along with the petitioner. But why the owner of rented house where they resides was not examine, best known to the petitioner. The petitioner kept quite during the year 2013 to 2015, i.e. in the said period Padma along with her son resides in their house is not believable. PW-1 not stated owner Prasanna was objected to reside Padma with 1st residing and PW-1 and P.W.1 also not complained before police, that the 1st respondent harassing her. With regard to this reasons were stated by the petitioner is not believable. The petitioner is not mentioned the costs of rent in which they are residing. As per provisions mentioned in Sec.19 of Domestic Violence Act 1st respondent can be directed not to send out the petitioner and petitioner can be provided a fixed share in the domestic place where she has been residing with her husband or alternative accommodation. In the circumstance of the case on record period of living by both the petitioner and 1st respondent together was not shown exact period. As per the above discussion, the petitioner is not

entitled for shelter with 1st respondent. So this point is answered against the petitioner.

B. It is also clear that the Complainant/ Petitioner did not produce any proof to show that her parents have given dowry and presentations at the time of her marriage with the Respondent No.1. She did not produce any document, even a Photograph of her marriage, to prove that her marriage was performed in a grand manner, by incurring huge expenses. As such, this Court is of the opinion that the Complainant/ Petitioner had failed to prove the aspect of giving of dowry and presentations i.e., gold ornaments, household articles to the Respondents at the time of her marriage with the Respondent No.1. The petitioner never stated that the respondents came to her parents house and threatened her. So the petitioner is not entitled for the relief of protection orders.

C. It is the contention of the petitioner, that 1st respondent is having sufficient means as he has been working as plumber by profession and earns Rs.50,000/- to 70,000/- per month, but no document filed to prove the same. On the other hand 1st respondent stated in his counter, that due to ill-health he is not doing any work and there is no any income. Admittedly the petitioner and 1st respondent are living separately at present. Hence 1st respondent is liable to pay maintenance to his wife. Therefore, this court concludes that the petitioner is unable to prove the reliefs as prayed for, except monetary relief. Hence, this point is answered accordingly.

09. POINT NO.3 :-

To What relief?

In view of the discussion on point No. 2, the petitioner is entitled to the monetary relief in part as prayed for and not entitled to the rest of the reliefs.

In the result, the petition is allowed in part, directing the 1st respondent to pay a sum of Rs.10,000/- (Rupees Ten thousand only) Per Month towards maintenance of complainant/petitioner from the date of this order on or before 10th day of every month along with costs and rest of the reliefs claimed by the complainant/petitioner is dismissed. Complaint/Petition against R-2 and R-3 is dismissed.

Dictated to the personal Assistant, transcribed by her corrected and pronounced by me in Open Court on this the 13th day of June, 2017.

Sd/S.Sailaja
III ADDL. JUDICIAL MAGISTRATE OF I CLASS,
CHITTOOR.

APPENDIX OF EVIDENCE
WITNESS EXAMINED FOR

PETITIONER:

PW-1 : K.Pooja Sri
PW-2 : P.Dilli Babu.

RESPONDENTS:

- NIL -

EXHIBITS MARKED FOR

PETITIONER:

Ex.P-1 : Marriage photos of petitioner and 1st respondent.
Ex.P-2 : Wedding card.

RESPONDENTS: - NIL -

Sd/S.Sailaja
III ADDL. JUDICIAL MAGISTRATE OF I CLASS,
CHITTOOR.

