

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

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

Wednesday, the Twenty First (21<sup>st</sup>) day of June,  
Two thousand and Seventeen.

**DVC. No. 44 of 2016**

**Between**

1. M.Shasheena, Aged 38 years, W/o M.Anwar,
2. M.Afiya Taj (Minor), Aged 14 years, D/o M.Anwar,
3. M.Aseem Basha (Minor), Aged about 13 years, S/o M.Anwar.

All are Muslims, Minors 2 and 3 are rep. by their mother and natural guardian 1<sup>st</sup> petitioner M.Shaheena W/o M.Anwar.

All are r/a D.No.28-1073, K.N.Colony, Chittoor, A.P. and at present r/a at 10-255, Gandhi Road, Chittoor Town and District.

... Petitioners

**And**

1. M.Anwar S/o M.Allabakash, Aged about 45 years,
2. M.Abbida, W/o Allabakash, aged 65 years,

R/a Opp: to the house of Ex-councillor G.Krishnamurthy, Paipula Street, Ramanagar Colony, Chittoor Town and District.

3. M.Akbar, s/o Allabakash, Aged about 40 years,

Working as Hindi Teacher at Z.P. High School, Somala Village, Post and Mandal.

... Respondents

This case is coming on 16-06-2017 for hearing in the presence of the Sri C.Hari Krishna, Advocates for Petitioners; Sri S.K.Abdul Rahiman, Advocate for respondents; and having stood over to this day for consideration; this Court made the following:

**ORDER**

**01.** The petitioners filed this petition under Sec.9(b)(e)(h), 12, 17(1), 18 (a)(b)(e)(f)(g), 19(e), d (f) and 20 1(b),(d) and 21 (3) of the Domestic Violence Act, for seeking reliefs in the said sections.

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

The petitioners submitted that the 1<sup>st</sup> respondent is working as Junior Assistant in Joint Director of Agriculture Office, Chittoor. The 1<sup>st</sup> respondent always suspecting of fidelity of 1<sup>st</sup>petitioner and he used to beat the

1<sup>st</sup>petitioner and her children and use to abuse in filthy language and he did not allow the 1<sup>st</sup> petitioner to come out side of the house. He used to kick the 1<sup>st</sup> petitioner by holding her tuft and used to throw her in front waranda and lock the doors and finally necked her and her children. The respondents 1 to 3 used to abuse in filthy language and brutally beat the petitioner without any reason what so ever and they used to insult the petitioners with filthy language and making mental torture agony and respondents 1 to 3 used to abuse the 1<sup>st</sup> petitioner to go and beg and earn money. The 1<sup>st</sup> respondent without providing food, shelter, medicines, maintenance used to abuse the petitioners and threatening not to ask anything from him. The 1<sup>st</sup> respondent and his mother 2<sup>nd</sup> respondent refused to give back the gold and house hold articles etc., are given by the 1<sup>st</sup> petitioner, which is in the custody of respondents 1 to 3 and the respondents 1 to 3 demanded additional dowry of Rs.50,000/- from the mother of the 1<sup>st</sup> petitioner and caused much violence to the petitioners and the petitioners suffered a lot. The respondents harassed the 1<sup>st</sup> petitioner by pressuring to give concern divorce. The 1<sup>st</sup> respondent keeping a kept mistress at Punganur for the past one year and is completely neglected the petitioners, the 1<sup>st</sup> respondent even did not pay house rent and did not provide necessities for the minor children for their education food, clothes etc., the petitioner need protection under Domestic Violence Act. Hence, the petition.

**03. Brief averments of the Counter of 1<sup>st</sup>respondent and adoption by respondents 2 and 3 are as follows:**

**A.** The respondents denied the allegations made by the petitioners in the complaint. Further he admitted relationship of the parties, but denied that respondents 2 and 3 are the supporters of the 1<sup>st</sup> respondent and the alleged incident of domestic violence, sexual violence, verbal and emotional abuse and economic violence are totally not correct and the 1<sup>st</sup>petitioner has put to strict proof of the same and the petitioners are not entitled any protection orders. The 1<sup>st</sup> respondent is a physically handicapped by attacking polio as such both the legs of him are not working and he 100% disabled

person and a medical certificate also issued by Medical Board for physically handicapped, Chittoor, He is unable to walk without assistance of sticks or a person. He became graduate. The 1<sup>st</sup> petitioner hails from a poor family having no support of others and the 1<sup>st</sup> petitioner agreed to marry with him considering the education qualifications of him. So he never expected anything from the side of the 1<sup>st</sup> petitioner's parents and he has presented some gold jewels to the 1<sup>st</sup> petitioner and performed his marriage with the 1<sup>st</sup> petitioner by incurring by marriage expenditure. After the marriage the 1<sup>st</sup> petitioner came to his house at Chowdepalle and resided for a period of one year and later he got a private job in the year 2002 in Sanatorium Hospital, Madanapalle. By the time the 1<sup>st</sup> petitioner blessed with a daughter i.e., 2<sup>nd</sup> petitioner through him and he shifted his family to the Sanatorium and there the 1<sup>st</sup> petitioner begotten 3<sup>rd</sup> petitioner through him. Afterwards the 1<sup>st</sup> petitioner developed illicit intimacy with a friend of him and on that he advised her to amend such bad ways and to lead happy marital life with him.

**B.** Further he submitted that he got a Junior Assistant job in Agricultural Department under handicapped Quota and after getting his job he shifted his family to ram Nagar, Chittoor. His mother 2<sup>nd</sup> respondent occasionally six months once she used to come to his house, but the 1<sup>st</sup> petitioner is not liking her visits and used to quarrel with her and send her away from out of the house. The 1<sup>st</sup> petitioner continued illicit intimacy with his friend even at Chittoor also and the said person used to visit his house secretly. After knowing the said illicit intimacy of the 1<sup>st</sup> petitioner, the owner of the house asked him to vacate the house. As such he shifted his house to the separate street and the 1<sup>st</sup> petitioner even after shifting the house developed illicit intimacy with some neighbours and used to talk in cell phones hours together. After knowing the said attitude of the 1<sup>st</sup> petitioner, he questioned her and the 1<sup>st</sup> petitioner openly declared that he is a physically handicapped person and not fit for to lead happy marital life and he married the 1<sup>st</sup> petitioner having no other alternative and insulted him by pointing out his

physical disability by abusing in filthy language.

**C.** Further he submitted that he shifted his family to Kannnaiah Naidu Colony, Chittoor - Palamaner road due to indecent behaviour of the 1<sup>st</sup> petitioner, but the 1<sup>st</sup> petitioner has not changed her attitude and continuously leading adulteries life. One day he came from office in the year 2013 found that the 1<sup>st</sup> petitioner hiding one male person underneath of cot and after pointing out the same by him that the male person apologies to him and went away. The 1<sup>st</sup> petitioner used to give evasive answers and asked him that the 1<sup>st</sup> petitioner not liking him and the 1<sup>st</sup> petitioner wants to desert him. He sustained much mental agony due to unbearable cruelty and torture made by the 1<sup>st</sup> petitioner and he unable to attend his duties properly and he physically affected by suffering with B.P. and he also desperate several times to commit suicide, but due to the welfare and future of the petitioners 2 and 3 he stopped such attempts. Further he expecting change in the attitude of 1<sup>st</sup> petitioner, he purchased a house site in Punganure town in the name of 1<sup>st</sup> petitioner by obtaining loan from the Bank, but in spite of purchasing of the site the 1<sup>st</sup> petitioner has not changed her adverse attitude and continuously leading adulteries life. In such course a person who is having illicit intimacy with the 1<sup>st</sup> petitioner faced many problems through his wife and the said wife beat the 1<sup>st</sup> petitioner and filed cases against her husband for divorce and other reliefs. Even after that the 1<sup>st</sup> petitioner has not changed her attitude continuously living in adulteries life. He also made several mediations through elders and the said mediations were ended in futile and the 1<sup>st</sup> petitioner insulted him by exposing his physically handicapedness.

**D.** On 16-6-2015 the 1<sup>st</sup> petitioner has voluntarily pronounced 'Qula' in the presence of elders and he accepted the same in the presence of Govt. District Khazi, Chittoor and others in writing. As per the said Qula the 1<sup>st</sup> petitioner has received her mehar amount and relinquished all her rights to claim maintenance and agreed to look after the 2<sup>nd</sup> petitioner with her and also agreed to send the 3<sup>rd</sup> petitioner to the custody of him, but the 1<sup>st</sup> petitioner

not inclined to send the 3<sup>rd</sup> petitioner to the custody of him as on today. He has to look after his old aged mother who is residing at Chowdepalle separately. His brother by name Akbar who is a respondent No.3 is residing separately having his own job. The respondents 2 and 3 are nothing do with the family affairs of the 1<sup>st</sup> petitioner and him. The 2<sup>nd</sup> respondent is aged about 70 years and suffering with all physical infirmities. He is residing in a rented house and he is not having any other properties and any source of income except the income derived from his job. He got transferred his job from Chittoor to Punganur in the month of October, 2015 having no support of others at Chittoor. The 1<sup>st</sup> petitioner has got house site in Punganur Town which is purchased by him out of his earnings and bank loan and the said bank loan is even now subsisting and he getting a sum of Rs.24,000/- per month towards salary after deducting all the cuttings. The said amount is not sufficient to meet out the house rent, hospital expenses and for lively hood of him, his mother 2<sup>nd</sup> respondent and that he is a need of a personal assistance to look after his daily affairs. The 1<sup>st</sup> petitioner got suppressed all the said facts like pronouncing of Qula and also relinquishing all her maintenance rights, property rights from him got filed the present case with an intent to harass respondents 1 to 3. The 1<sup>st</sup> respondent is ready to look after the petitioners 2 and 3 by taking into custody even though as per terms and conditions of the Qula the 1<sup>st</sup> petitioner agreed to look after 2<sup>nd</sup> petitioner only, therefore he prays to dismiss the petition with costs.

**04.** To prove her case, the complainant examined herself as P.W.1 and no document is marked on behalf of petitioners. On behalf of respondents, 1<sup>st</sup> respondent examined as R.W.1 and Exs.R.2 to 4 and 6 marked through him. Ex.R.1 marked through P.W.1. One Govt. District Khazi examined as R.W.2 and Ex.R.5 marked through him and one Syed Ali Saheb examined as R.W.3.

**05.** Heard on both sides. Perused the entire material on record.

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

***Whether the petitioners are entitled for the reliefs, as prayed for?***

**07. POINT :**

**A.** To prove the case of petitioners, 1<sup>st</sup> petitioner herself examined as P.W.1 and she re-iterated the contents of her complaint in her chief examination affidavit. In her cross examination she deposed that she is an illiterate and that she knows to read Arabic and she can read Quran and that she also teach Quran to Children and she also called as Ahamadbhanu and that she married 1<sup>st</sup> respondent 15 years ago, and that she has not filed any documents and receipts to show about the alleged 5 sov. Gold and Rs.50,000/- household article and marriage expenses for Rs.1,00,000/- was given to 1<sup>st</sup> respondent and that she confronted with the zerox copy of Qulanama and she identified her photograph and her signature of her and that the photo graph and her signature on the said copy of the Qulanama is marked as **Ex.R.1** and that 1<sup>st</sup> respondent is 100 % polio attached sufferer and that in the last 15 years she have not given any police report against respondents and that she has not given any legal notice to 1<sup>st</sup> respondent before filing this case and that she never complaint before Khazi about the suspicious behaviour of 1<sup>st</sup> respondent and that no police report was given against 1<sup>st</sup>respondent for allegedly beating her children and that she does not know the name and address of the woman with whom 1<sup>st</sup> respondent is having alleged intimacy and that she never reside in Ramanagar Colony and that again she stated that they reside in Ramanagar colony near Sahana School and that she does not know who Hemanth was and that the mediation was held in the house of her sister at Ganganapalle and that she does not know who Khaleel Basha, Syed Alisaheb, Imran and Imthiyza and that she does not know even who the khazi was and that her brother purchased it in her name and that her brother name is Baba and he died 10 years ago and that 1<sup>st</sup> respondent is affected with polio even prior to the marriage and that 1<sup>st</sup> respondent cannot stand without having the support of sticks. She does

not know a Qulanama was executed and she gave the custody of her son to 1<sup>st</sup> respondent and that she does not know whether a clause was mentioned in the Qulanama by conferring visiting rights to children to their parents and that I have not obtained any permission from the court to file this case on behalf of her children in the capacity of guardian. She does not know whether 1<sup>st</sup> respondent is paying EMI towards the plot purchased in Punganure. She has not filed any documents to show that 1<sup>st</sup> respondent is doing money lending business with rs.3,00,000/- and earning rs.15,000/- per month. Further she denied the suggestion that she agreed to transfer the house plot in Punganure in the name of her daughter towards maintenance and marriage expenses of her daughter. So that she will waive her right of maintenance right and that in the said mediation they agreed for mutual divorce and went to khazi for divorce/Qula and that she stated name before Khazi as Saheena @ Ahamadbhanu and that she waived right of maintenance mehar in lieu of Qulanama and that she received her jewels and other belongings from her husband. And that due to the condition was mentioned in the Qulanama and she agreed to transfer the house plot in Punganure in the name of her daughter towards maintenance and marriage expenses of her daughter and that she has not going to District Khazi alleged by her.

**B.** To prove the case of respondents, the 1<sup>st</sup> respondent examined himself as RW-1 and Exs.R.2 to R.4 and R.6 are marked. **Ex.R.2** is the attested copy of Qulanama by Govt. District Khazi, Chittoor along with translated copy, **Ex.R-3** is the attested copy of certificate of Qula (divorce) by Govt. District Khazi, Chittoor. **Ex.P-4** is the handicapped certificated dt. 23-12-2003. **Ex.R.6** is original certificate issued by Muthavalli and members of Jamal Masjid, Peddaupparapalle Village, Somala Mandal, Chittoor Dist dt. 21-9-2016, along with attested copy of marriage register Serial No.53, dt. 27-11-1999 and English translated copy of the same. Ex.R-2 and R-3 are marked subject to objection proof and relevance. In his cross examination, he deposed that he secured job after his marriage and that he has no other source of income at the

time of his marriage. He was 100% handicapped and that he undergone surgery to both legs in CMC Hospital and that he was admitted in Sanatorium Hospital for one month and the petitioner looked after his during said period and that he was admitted due to injury of his leg and that due to disability after discharged from Sanatorium Hospital his wife attended his personal needs also and that their marriage was performed by the sister and parents of his wife and that he and his wife were living separately from June, 2015 and that he personally went to Masjid for Qula and he has not received any notice and he filed application made by P.W.1 for Qula and that they belongs to Chowdepalle and that two witnesses from PW-1's behalf also attested in Qula and that the Khazi asked him to come to Masjid 3 days prior to 16-6-2015 and that he does not know about the conduct and character of Khazi and son is studying 9<sup>th</sup> standard and that he paid Rs.18,000/- fee to his son and paid Rs.10,000/- fee to his daughter and that he filed suit for declaration of Ex.R-2 Qula and the same is pending and that he is drawing a net salary of Rs.29,000/- and that he is paying house loan for Rs.15,000/- per month from net salary and that his sister is working as Private Hindi Teacher and that his brother is working as Govt. Teacher and his mother is doing vegetable business at home and that he purchased by obtaining loan and he also have documents and that he has not filed any loan documents pertaining to the house site and that she took the household articles at the time of Qula and that he has not taken any separate receipt and the same was covered in Ex.R.2. Further he denied the suggestion the parents of PW-1 gave 5 sov. Of gold and Rs.50,000/- worth of household articles during marriage and that he obtained Ex.R.4 though he is not handicapped by 100% and that Ex.R.4 was obtained for job purpose and that Exs.R.2 and R-3 are prepared in collusion with District Khazi and that he paid only part amount of fee to his son and the remaining was paid by P.W.1 and he did not pay any fee to his daughter and that after June, 2015 he has not provide any necessities to his children till now and that he is liable to pay maintenance as prayed by the P.W.1 and he should

provide shared house to P.W.1. **Ex.R.6** is original certificate issued by Muthavalli and members of Jamal Masjid, Peddaupparapalle Village, Somala Mandal, Chittoor Dist. dt. 21-9-2016, along with attested copy of marriage register Serial No.53, dt. 27-11-1999 and English translated copy of the same. The original name of petitioner is Shaheena and name was changed into Ahmadha Bhanu at the time of marriage and that they changed the name as per their convenience.

**C.** To prove the case of respondent the District Khazi examined as R.W.3, he stated in his chief examination affidavit that he brought Qulanama of P.W.1 and R.W.1. The original Qulanama is compared with Ex.R.2 and found the contents are same and that 3 days prior to 16-6-2015 both P.W.1 and 1<sup>st</sup> respondent approached him seeking divorce and that then he asked them to appear along with witness from each side and accordingly on 16-6-2015 Qulanama was executed and that on the said day the petitioner along with her witness and 1<sup>st</sup> respondent along with his witness came to his office for Qula and that the 1st para of Qulanama was stated by the petitioner and that Qula is given in lieu of Mehar and maintenance of petitioner and that the petitioner offered Qula in lieu of Mehar and maintenance and that after Qula the petitioner wife is not having any right to seek maintenance and that the Qula was recorded by him and that the photo affixed in Qulanama are given by respective parties. Qula was executed under proceedings Q/36 of 2015 of District Khazi Office, Chittoor dt. 16-6-2015 and that as per Qula it is offered by the petitioner under the terms stated therein along with the custody of children, visiting rights, waiving the right of Mehar and maintenance and receipt of jewels and belongings and that the said Qula was accepted by the respondent as per the terms and that Qula was declared by petitioner and that he brought original certificate of Qula dt. 28-6-2015 issued by District Khazi Office, Chittoor and that a copy of it is received by 1<sup>st</sup> respondent and that the petitioner did not receive the copy of Qula certificate and that the respondent submitted the original house site documents in the District Khazi Office at the

time of Qula. The same is submitted by the witness and it is marked as **Ex.R-5**. As per Ex.R.2 Qulanama the marital status of P.W.1 and 1<sup>st</sup> respondent came to end and that there is no compulsion on either parties for signing Qulanama. In his cross examination he deposed that they maintain records in Khazi Office and that he did not give any identity card to proof of his name and there is no written petition in this case for Qula and that there is no necessity to written application from the parties seeking Qula and that if one party approaches his office then he only seeks written application for Qula and that he has not mentioned in Ex.R.2 that petitioner and 1<sup>st</sup> respondent approached his office 3 days prior to 16-6-2015 and that he is not submitted the statue authorizing to pronounce Qula in this case and the Mehar amount of Rs.5,250/- as per the marriage record and that no separate endorsement was executed for the said receipt of jewels and belongings and that he adds they agreed before him and that Qula is disputed then it should be questioned and declared by court. Further he denied the suggestion that the petitioner never produced witness on behalf and they never attested in the Qula and after obtaining of signature on white paper and that Khazi office do not have jurisdiction to decide maintenance and property rights and that Ex.R-2 was prepared with convenience of 1<sup>st</sup> respondent. Chittoor Khazi office did not have jurisdiction to declare Qula as the marriage was performed in Peddapapparapalle Masjid and that Qula in this case was executed without giving notice to petitioner, hence copy of was not issued to her and that the petitioner did not gave her photographs.

**D.** One 3<sup>rd</sup> party examined as R.W.3, he deposed in his chief examination affidavit, that at the request of 1<sup>st</sup> respondent he stood as witness on behalf him for dissolving the marriage of him and the 1<sup>st</sup> petitioner by way of Qula and that accordingly, on 16-6-2015 he attended at District Govt. Khazi's Office, Chittoor and on 16-6-2015, the 1<sup>st</sup> petitioner and 1<sup>st</sup> respondent both are agreed to dissolve their marriage by way of Qula, accordingly the Govt. District Khazi, Chittoor scribed the Qulanama and that the 1<sup>st</sup> petitioner affixed

her signature as executants on the above said Qulanama and along with him other witnesses affixed their signatures as witnesses for the same, afterwards the 1<sup>st</sup> respondent affixed his signature as executants on the above said Qulanama along with him other witnesses affixed their signatures as witnesses for the same. In his cross examination he deposed that 1<sup>st</sup> respondent called him two days prior to 16-6-2015 to Chittoor and that Qulanama is valid if it is done with the consent of both parties and he knows the petitioner since her marriage and that the marriage of petitioner was done in Peedaupparapalle and as per his knowledge, Qulanama shall be executed in the same Mazid where the marriage was performed and that Qulanama was executed in a white paper in which the petitioner also signed and that 2 or 3 relatives of petitioner also present during Qula but he has not enquired them and that he has not asked about the maintenance of petitioner and her children in Qula. Further he denied the suggestion that 1<sup>st</sup> respondent obtained his signature in collusion with Khazi and he did not know any facts of the case.

**E.** The Learned counsel for petitioner argued, that the 1<sup>st</sup> respondent blamed the character of 1<sup>st</sup> petitioner. Qulanama is created one. As per Qulanama it appears that the same day the petitioner applied divorce and on the same day the Khazi declared concerned divorce between the 1<sup>st</sup> petitioner and 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent got job after their marriage and getting salary of Rs.40,000/- and 1<sup>st</sup> respondent is physically handicapped. Whether the 1<sup>st</sup> petitioner is not liable for maintenance or not ? If Qulanama is declared. After filing of the petition why the 1<sup>st</sup> petitioner applied for Qulanama. Further he submitted that where the marriage took place on that place only Qulanama is declared. Qulanama declared by competent authorities. 1<sup>st</sup> respondent filed suit in competent court to declare Qula. The document Qulanama filed by the 1<sup>st</sup> respondent.

**F.** On other hand the Learned counsel for respondents argued, that the the petition is maintainability under Domestic Violence Act, Sec. 2(a) the aggrieved person and 2(f) relationship. The 1<sup>st</sup> petitioner is a divorced

woman so she is not aggrieved person and not in relationship with 1<sup>st</sup> respondent. As on 16.6.2015 the petitioner separated from 1<sup>st</sup> respondent. As per act Domestic Violence Act is present not as past. In the above petition as per cause title the petitioners address and the address of respondents are different. It shows the petitioners living separately at the time of filing the above petition. The petitioner failed to file any petition to set aside the Qulanama at any appropriate authorities. Until and Unless set aside the Qulanama it is valid one. In Muslim custom mother is not natural guardian to her children. As per sec. 64 of Muslim Law divorce made concern. There is no format to Qulanama. In Qulanama the petitioner Waivining her right i.e., Maintenance etc., Ex.R.5 document marked through R.W.2 Govt. Khazi. Ex.R.1 is written in white paper, the first para shows offering and 2nd para accepting by husband. The petitioner not mentioned particular dates of violence in the above petition. The 1<sup>st</sup> petitioner never given any complaint before 15 years against 1<sup>st</sup> respondent. Except P.W.1 none were examined on her behalf. The 1<sup>st</sup> petitioner admitted photo and signature in qulanama. So the Qulanama is valid one. 1<sup>st</sup> petitioner herself deserted the 1<sup>st</sup> respondent and gave Qula. Qulanama is not created one. 1<sup>st</sup> petitioner not obtained permission from the court for acting as guardian on behalf of 2<sup>nd</sup> and 3<sup>rd</sup> petitioners. As per Muslims custom father is natural guardian to his children. The 1<sup>st</sup> petitioner herself harassed the 1<sup>st</sup> respondent by saying that he is physically handicapped. The 1<sup>st</sup> respondent purchased property in the name of 1<sup>st</sup> petitioner. The 1<sup>st</sup> respondent ready to look after his daughter though there is no terms in the Qulanama.

**G.** To prove their case, the Learned Counsel for respondents relied up on the decisions:

**1.** In the case of *Inderjit Singh Grewal Vs. State of Punjab and another, in Crl. Appeal No. 1635/2011*. It was held that “it is a settled principle of law even a void order is required to be set aside by a competent court of law, in as much as an order may be void in respect of one person but

may be valid in respect of another. An order cannot be declared to be void in collateral proceedings and that in the absence of authorities who were authors thereof”.

**2. AIR 1996 page No. 1003 in case of Meethiyan Sidhiqu Vs. Muhammed Kunju Pareeth Kutty and others.** It was held that “minor has no means of support except the property, mother must apply to the court for sanction in order to deal with the property. Father is the natural guardian and in his absence other legal guardians would be entitled to act”.

**3. In the case of Nagamuthula Kondaiah Vs State of A.P. in criminal Petn. No.4140/2010.** It was held that “by virtue of sec.2(a)of Act aggrieved person means any woman who is, or has been in a Domestic relationship with the respondent and who alleges to have been subjected to any act to Domestic Violence by the respondent. So existence of Domestic relationship and living in shared house as defined in sections.2 (f) and 2(s) of the Act are the conditions precedent for the aggrieved party to initiate proceedings under the Act”.

**4. In Crl. Petn. No.7124/2008 in the case of Sreenivasa Rao and others Vs. State of Andhra Pradesh.** It was held that “when there was no jural relationship of man and his wife between the 1<sup>st</sup> petitioner and 2<sup>nd</sup> respondent by the date of filing of Domestic Violence petitions prima facia is not maintainable and dates when the alleged violations under the Domestic Violence Act have occurred. So wife has not entitled to proceed against her husband under the provision of Domestic Violence Act”.

**5. In Crl.M.Petn. No.1524/11 in the case of Sudama Dutt Sharma and another Vs. State of Rajasthan and another.** It was held that “which is essentially enacted to protect the rights of a woman, but then pre-requisite for taking shelter of the provisions of the Act 2005 is that the woman has been subjected to Domestic Violence by her in-laws, which is

conspicuously missing in the instance case. In the absence of any concurrent proof about domestic relationship with the petitioners i.e., the petitioners and respondent had been living in a shared household and she has been subjected to Domestic Violence and maintainability of complaint itself is under serious clouds”.

**6. Crl. Writ Petn. No.32/14 in the case of Koushik Vs Sau.**

**Sangeeta Koushik Gharami and others.** It was held that “the monetary relief is available for the children for the aggrieved person if the monetary relief is required to meet the expenses incurred by the aggrieved person as a result of Domestic Violence. The monetary relief is also permissible in case losses are suffered by the aggrieved person by the result of Domestic Violence. The Monetary relief is available to the children of the aggrieved person under Sec.20 of the Act. However the aggrieved person is under obligation to establish that she had to meet the expenses incurred and losses suffered due to Domestic Violence on the part of respondent. The Domestic Violence could not be proved and since that finding of the Learned Magistrate has not been challenged by the aggrieved person, it follows that no relief could have been given to Respondents 2 and 3 also”.

**H.** The petitioner contended that she was submitted to Domestic Violence by respondents and asked various reliefs under the Domestic Violence Act. P.W.1 admitted in her evidence that she gave the custody of her son to 1<sup>st</sup> respondent. This aspect was not stated in her complainant. P.W.1 not stated that after living separately the 1<sup>st</sup> respondent harassed her in the house where she resides. P.W.1 deposed in her evidence that for past 15 years she have not given any police report against respondents about domestic violence by respondents and that no police report was given against 1<sup>st</sup>respondent for allegedly beating her children. Generally wife had silent about the beating by her husband, but no mother has kept silent with respect to her children were

beaten by father. With regard to said aspect why no reasons were explained by the P.W.1, best known to her.

**I.** P.W.1 deposed that her brother purchased the property in her name and that her brother Baba who died 10 years ago. As seen from the Ex.R.5, it is executed on 11-07-2013. If her brother died about 10 years back, when the Ex.R.5 executed not explained, so it is not believable. With regard to this 1<sup>st</sup> respondent submitted that he purchased the said property in the name of P.W.1 and filed said sale deed through R.W.2 who is District khazi office. R.W.2 stated Ex.R.5 handed over to him at the time of Qula by the RW.1. In this regard no suggestion was put to R.W.1 or R.W.2 that Ex.R5 brought from P.W.1 which is in the custody of P.W.1 and also not stated Ex.R.5 was kept in the house of R.W.1. The 1<sup>st</sup>petitioner nowhere stated particular dates of violence and that the 1<sup>st</sup> petitioner not mentioned particular dates of violence in the above petition. Even the 1<sup>st</sup> petitioner not examine neighbouring witnesses to prove her case with respect to Domestic Violence Incidents. As per the averments in the complaint the petitioner claimed as herself and the 1<sup>st</sup>respondent were residing together, but in her cross examination she has clearly admitted that she had given to Qulanama to the respondent and admitted the signatures and photographs in Qulanama i.e., Ex.R.2.

**J.** The respondents had examined R.W.2 to prove the Qulanama and he has clearly deposed regarding Qulanama by the 1<sup>st</sup>petitioner. So all admissions of P.W.1, the evidence of R.W.1 and 2 clearly shows that there is no marital tie in between P.W.1 and R.W.1 as on the date of filing of the complaint, i.e., complaint filed on 12-10-2015 and Qulanama dt.16-6-2015. It is also clear that the petitioner has suppressed the facts of Qulanama in her complaint. This aspect alone is seen to say that the 1<sup>st</sup>petitioner has suppressed two facts before the court i.e., petitioner not stated about Qulanama in her complaint and not stated about her harassment prior to the Qulanama. Evidence of P.W.1 in her case would have been believed by the

court, so this aspect clearly show there is no reliable evidence regarding living of P.W.1 and 1<sup>st</sup> respondent together even if Qulanama. So evidence of P.W.1 regarding living with her husband cannot be believable. Though the 1<sup>st</sup>petitioner contended that Qulanama is forged one. The evidence of R.W.2 established the Qulanama.

In view of the above discussion, and upon perusing the claim of the Complainant/ Petitioner and admissions of PW1, this Court is of the opinion that the petitioners are not entitled for reliefs as prayed for.

Hence, the Point is answered against the Complainant/ Petitioner accordingly.

**08.** In the result, the petition is dismissed without costs.

Dictated to the personal Assistant, transcribed by her corrected and pronounced by me in Open Court on this the 21<sup>st</sup> day of June, 2017.

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

**APPENDIX OF EVIDENCE**  
**WITNESS EXAMINED FOR**

**PETITIONERS:**

PW-1 : M.Shaheena

**RESPONDENTS:**

RW-1: M.Anwar,  
RW-2: S.M.Kamanullah,  
RW-3: Syed Ali Saheb.

**EXHIBITS MARKED FOR**

**PETITIONERS:** - NIL -

**RESPONDENTS:**

Ex.R-1: Photograph and her signature on the said copy of Qulanama,

Ex.R-2: Attested copy of Qulanama by Govt. District Khazi, Chittoor along with translated copy,

Ex.R-3: Attested copy of certificate of Qula (Divorce) by Govt. District Khazi, Chittoor.

Ex.R-4: Handicap Certificate dt. 23-12-2003.

Ex.R-5: Original House site patta.

Ex.R-6: Original Certificate issued by the Muthavali and Members of Jamai Masjid, Pedda Upparapalle Village, Somala (M).

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

// True copy//

III ADDL. JUDICIAL MAGISTRATE OF I CLASS,  
CHITTOOR.