

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS:: PARCHUR.

**Present : Sri Mohd. Nazeer Ul Ain,
Junior Civil Judge, Parchur.**

Monday, this the 29th day of April, 2019.

D.V.C.No. 4 of 2017

BETWEEN:-

Kunchala Venkayamma, w/o. Srinivasa Rao,
Aged 26 years, Hindu, Household wife,
Presently residing at Parchur.

.....Petitioner

AND

1. Kunchala Srinivasa Rao, S/o. Veeraswamy,
Aged 29 years, Vaddera Caste, Hindu,
Valaparla Village, Martur Mandal.
2. Kunchala Nagalakshmi, W/o. Veeraswamy,
Aged 60 years, Hindu, House wife,
Valaparla Village, Martur Mandal.
3. Kunchala Sivakrishna @ Siva, S/o. Veeraswamy,
Aged 26 years, Hindu, Engineer,
R/o. Hyderabad, Now residing at Valaparla Village, Martur Mandal.
4. Thanneru Pandu Ranga Kumari @ Pandu, W/o. Suresh,
Aged 21 years, Hindu, Valaparla Village, Martur Mandal.
5. Thanneru Suresh, S/o. Singaiah,
Aged 23 years, Hindu, Valaparla Village, Martur Mandal.

... Respondents

This suit is coming on **25.04.2019** for hearing before me in the presence of **Sri M. Ravindra Reddy**, Advocate for the Petitioner and of **Sri M. Ramanadha Babu**, Advocate for the Respondents No.1 to 4, and the Respondent No.5 remained exparte, and after hearing the arguments of both sides and on perusing the material on record and the matter having stood over for consideration till this day, this court made the following:-

// ORDER //

01. The petitioner has filed this petition under Sec.12 of Domestic Violence Act (D.V.Act) seeking the relief of Residence order under Sec. 19, to provide accommodation or pay rent of Rs.2000/- per month, monetary relief under Sec. 20 for grant of maintenance of Rs.10,000/- per month to the petitioner and her children, to grant educational expenses Rs.30,000/- per year; damages under Sec. 22 for Rs.1,50,000/- and compensation of

Rs.2,00,000/- towards marriage expenses, Rs.2000/- towards medical expenses and for such interim orders.

02. The case of the petitioner is that:

The parents of the petitioner gave Rs.1,50,000/- and 9 sovereigns gold in the presence of elders to the respondents and after taking the same, the 1st respondent married the petitioner. Later, the petitioner joined the 1st respondent and they started living at Valaparla Village of Martur Mandal. The couple were blessed with two children. The 1st respondent has spent the dowry amount and gold for his sister's marriage and education of his brother. Later, the 1st respondent and his family members started harassing the petitioner to bring additional dowry of Rs.1,00,000/- and also subjected her to cruelty by abusing her physically and verbally. The petitioner bore the harassment for the sake of her children. Later, the 1st respondent eloped with one Meharun. The parents of the petitioner searched the eloped couple and brought the 1st respondent back. On that day, the 1st respondent and his family members attempted to kill the petitioner by opening the gas cylinder. Luckily, the petitioner escaped and informed the same to her parents. When the parents of petitioner questioned the respondents, they demanded additional dowry of Rs.1,00,000/-. The 1st respondents has been continuing his adulterous life with Meharun. Thus, the 1st respondent has neglected the petitioner. Hence, the petitioner reached to the house of parents of petitioner and living on the bounty of elders. The 1st respondent own auto, house, shops and also cultivating Ac.1.75 cents at Valaparla Village and thereby earning Rs.30,000/- per month. As the 1st respondent, despite having sufficient means, neglected the petitioner, she has filed this petition seeking the residence order under Sec. 19, maintenance order under Sec. 30 and damages under Sec. 22 of the Domestic Violence Act.

03. On the other hand, the respondents have submitted their counter denying the allegation in the petition and contended that the petitioner has suppressed several material facts and filed this case in continuation of her illegal acts to harass the 1st respondent and his family members. The 1st respondent never harassed the petitioner for additional dowry. The petitioner herself deserted the 1st respondent as she has no interest towards him. Later, she filed several cases against the 1st respondent and his family members. Despite these cases, the 1st respondent is ready to reign the petitioner. The 1st respondent has no landed property or job. Hence, he has no income. The petitioner is a private employee earning Rs.6,000/- per month and she can maintain herself. As the petitioner willfully deserted the respondent, she is not entitled for maintenance. The petitioner has filed 498-A IPC vide C.C.19/13 on the file of this Court and the case on hand to harass the respondents. In these circumstances, the respondents have sought for dismissal of the application.

04. Heard both sides. Perused the case record.

05. Now the point that arises for determination is:

Whether the petitioner is entitled for the relief of residence order under Sec. 19, maintenance order under Sec. 20, and damages under Sec. 22 of the Domestic Violence Act as prayed for?

POINT:-

06. The petitioner has examined herself as PW1 and got marked two certificates issued by the School Authorities as Ex.P1 & Ex.P2 respectively. She has produced Bathula Ankamma as PW2. On the other hand, the respondent has examined himself as RW1 and got marked certified copy of Calendar and Judgment in C.C.No.19/13 as Ex.R1.

07. The petitioner has sought for several reliefs which include residence Order under Sec. 19, maintenance order under Sec. 20, and

damages under Sec. 22 of the Domestic Violence Act. The petitioner has to establish her case nor get reliance under the aforesaid sections. In order to establish her case, the petitioner has deposed as PW1 and has produced her father Bathula Ankamma as PW2. She has got marked certified copies of certificates issued by the school where her children are studying as Ex.P1 & Ex.P2. Basing on the evidence of PW1 and P2, the learned counsel for the petitioner has vehemently argued that the petitioner is entitled for all the reliefs sought in the petition. On the other hand, the learned counsel for the respondent has drawn the attention of this Court through the certified copy of Calendar and Judgment in c.C.No.19/13 on the file of this Court, marked as Ex.R1 and vehemently argued that the allegations in the DVC are similar to that of the allegations in Sec. 498-A IPC vide C.C.No.10/13 and as the Court already exonerated the respondents from the charges under Sec. 498-A IPC, Sec. 3 & 4 of D.P.Act the question of the petitioner entitled to the reliefs claimed in the petition does not arise.

08. This Court has carefully perused the Ex.R1. The allegations against the respondents in D.V.C. are akin to the allegations in Sec. 498-A IPC case vide C.C.No.19/13. This court has elaborately discussed the allegations against the respondents and acquitted them in C.C.No.19/13. At this juncture, a question arises as to whether the Domestic Violence case can be entertained on the similar ground, urged in a criminal case, which was acquitted by the competent Court. For guidance on this aspect, one can profitably refer to the Judgment of Hon'ble High Court of A.P. between ***Markapuram Siva Rao & Anr. Vs. State of A.P. & Anr. 2013 (2) ALD (crl.)341*** A.P. the Hon'ble Apex Court has held as hereunder:

“one of the main ingredient to be established for claiming benefit under the provisions of DV Act is that there should be domestic violence as defined under Sec. 3 of the Act. When the allegations of domestic violence made in a case instituted at the behest of the respondent were formed to be false and baseless by a criminal court after a full fledged trial and when identical allegations are made in present complaint made under Sec. 12 of the Act, I am of the opinion that continuation of proceedings against the petitioners, who are acquitted in earlier criminal case,

though may not amount to double jeopardy, but the same will definitely amount to an abuse of process of the Court. No useful purpose will be served in continuing such proceedings as the acts of domestic violence were found to be false by a criminal court and the findings given by the said Court have become final

In Geeta Mehrotra & Anr Vs. State of U.P. & Am\nr. (2012) 10 SCC 741, the Apex Court has categorically held that " casual reference of the names of family members in a matrimonial dispute without allegation of active involvement in the matter would not justify in taking cognizance against them over looking the fact borne out of experience that there is a tendency to involved the entire family members of the house hold in domestic quarrel taking place in a matrimonial dispute specifically if it happens soon after the wedding."

09. As seen from the Judgment of Hon'ble High Court of A.P. between Markapuram Siva Rao's case, persons who were acquitted in the criminal case cannot be tried for same allegations in D.V.Act cases and such trial was considered as abuse of process of law, by the Hon'ble High Court. Hence, this Court is of the opinion that, as the criminal case vide C.C.No.19/13 was acquitted disbelieving the evidence of the petitioner, no reliance can be placed upon the same testimony of the same witnesses in the case on hand. Hence, this Court is of the considered opinion that the petitioner is not entitled for any maintenance as sought in the petition. The case of the petitioner is liable to be dismissed.

10. In the result, the petition is dismissed.

Dictated to the Personal Assistant, transcribed by her, corrected and pronounced by me in the open court this the 29th day of April, 2019.

**(Sd/-Mohd.Nazeer Ul Ain)
Judicial Magistrate of First Class,
Parchur.**

**//APPENDIX OF EVIDENCE//
Witnesses Examined**

For Petitioner:

PW1: Kunchala Venkayamma
PW2: Bathula Ankamma

For Respondent:

RW1: Kunchala Srinivasa Rao

DOCUMENTS MARKED ON BEHALF OF THE PETITIONER

Ex.P1 : Certificate dated 26.11.2018 issued by the Head Master, MRR English Medium High School, Parchur

Ex.P2 : Receipt dated 15.11.2018 issued by the Secretary, Oxford High School. Parchur.

DOCUMENTS MARKED ON BEHALF OF THE RESPONDENT

Ex.R1 : Certified copy of Calendar & Judgment in C.C.No.99/13 on the file of this Court.

(Sd/-Mohd.Nazeer Ul Ain)
J.F.C.M, PARCHUR.

//TRUE COPY//

**Judicial Magistrate of First Class,
Parchur.**