IN THE COURT OF THE II ADDL. JUDICIAL FIRST CLASS MAGISTRATE, NUZVID.

#### Present: - Sri G. Sai Krishna,

II Additional Judicial Magistrate of First Class, Nuzvid.

Monday, this the 30<sup>th</sup> day of April, 2018.

#### M.C.No.8/2016

#### **BEWEEN:**

- 1.Byru Rajeswari, W/o.Suresh Babu, Aged: 25 years, Hindu, House Wife, R/o.C/o.Pallgani Satyanarayana, Koyyru Village, Bapulapadu mandal, Krishna District.
- 2.Byru Hemanth, S/o.Suresh Babu, Aged: 3 Years, Hindu, R/o.C/o.Pallgani Satyanarayana, Koyyru Village, Bapulapadu mandal, Krishna District. (The  $2^{nd}$  Petitioner being minor represented by his mother/natural guardian i.e., the  $1^{st}$  Petitioner)

...Petitioner.

#### AND

Byru Suresh Babu, S/o.Sambasiva Rao, Aged: 26 years, Hindu, Cultivation and Business, R/o.Elukapadu Village, Unguturu mandal, Krishna District.

...Respondent.

This case is coming upon before me in the presence of Sri M.Basava Rao, Counsel for Petitioners and of Sri B.chandra Sekhara Rao, Counsel for Respondent and upon perusing the Petition, Counter and other connected material papers on record, this Court delivered the following:

#### **ORDER**

This is a Petition filed under section 125 Cr.P.C by the  $1^{\text{st}}$  Petitioner on herself and on behalf of minor son i.e,.  $2^{\text{nd}}$  Petitioner seeking order of this court for grant of maintenance from Respondent for a sum of Rs.10,000/- per month for herself and Rs.5,000/- per month for the  $2^{\text{nd}}$  Petitioner.

#### 2) The gist of the facts of the petition are as follows:

The 1<sup>st</sup> Petitioner is the legally wedded wife of the Respondent and the 2<sup>nd</sup> Petitioner is son born to both the parties. The Respondent is son of 1<sup>st</sup> Petitioner's paternal uncle and their marriage was performed on 13.06.2012 at Dwaraka Tirumala. On 04.6.12 the Petitioners parents have given Rs.6,00,000/-in cash as Pasupu Kumkuma to the Respondents and his parents at Koyuru Village in the house of the 1<sup>st</sup> Petitioner. The 1<sup>st</sup> Petitioner joined the Respondent for marital life at Elukapadu village along with Sare Saman worth of Rs.1,00,000/-. Since the date of her arrival the 1<sup>st</sup> Petitioner was harassed and

abused by the parents of the Respondent as she could not send the Lanchanams as per their status. The Respondent and his parents used to make the Petitioner do all household works, dairy works regularly. The 1st Petitioner demanded Rs.5,00,000/- additional dowry one year after her marriage with the Respondent. Further they denied meals with Curd and Butter milk to the 1st Petitioner as she failed to meet thier demand for additional dowry and she used to have starch meals. They used to instigate the 1st Petitioner to commit suicide by hanging or consuming pesticide. The 1st Petitioner after becoming pregnant was not provided sufficient food and nutrition and was looked after by her parents and she gave birth to the 2<sup>nd</sup> Petitioner in the year 2013 at the expense of her parents. In the year 2014 in the month of January 2<sup>nd</sup> Petitioner suffered with severe Typhoid fever, but Respondent and his parents did not provide treatment to him and 2<sup>nd</sup> Petitioner went into Coma. Thereafter, the parents of the 1<sup>st</sup> Petitioner took the 2<sup>nd</sup> Petitioner and got him admitted in a Private Hospital, Eluru and spent money for his treatment. The Respondent and his parents did not even come to see the 2<sup>nd</sup> Petitioner. The 1<sup>st</sup> Petitioner took the 2<sup>nd</sup> Petitioner to their house after treatment at hospital until their recovery from ill-health. Despite mediation through elders viz., Gogineni Venkata Suryanarayana, Mallela Sivayya and Pallagani Anjaneyuylu, the Respondent refused to take the Petitioners back and openly declared that they will kill the 1st Petitioner.

(b) On 23.01.2016 at about 2.00 p.m, when the 1<sup>st</sup> Petitioner was at her parents house Respondent and his father came to their house and demanded the 1<sup>st</sup> Petitioner to sign on certain divorce papers and the same was refused by the 1<sup>st</sup> Petitioner. Thereupon the Respondent and his father pressed neck of the 1<sup>st</sup> Petitioner and threatened that they will kill her if she did not sign the papers. On intervention of the elders the Respondent and his father went away. As further mediation in this matter failed, the 1<sup>st</sup> Petitioner lodged a

Complaint against the Respondent and his parents on 19.02.2016 in Crime No.38/2016 u/section 498-A IPC and the matter is pending before this Court.

(C) The Respondent has own house at Elukapadu village and is only son to his parents. The Respondent is having Ac.0.8 cents of land and he is earning Rs.4,00,000/- per annum from the said land and he is also running a dairy form and earning Rs.50,000/- per month from the same and he is doing money lending business to an extent of Rs.30,00,000/- lakhs and earning Rs.1,00,000/- per month from the same. The 1<sup>st</sup> Petitioner is entitled Rs.10,000/- per month as maintenance and 2<sup>nd</sup> Petitioner is entitled for Rs.5,000/- per month for maintenance.

#### 3) The gist of the facts as per the counter are as follows:

The  $1^{st}$  Petitioner is wife of the Respondent and the  $2^{nd}$  Petitioner is son of the Respondent and all other allegations of the Petitioner were denied.

The Petitioners family did not have the capacity to gift (b) Rs.6,00,000/- in cash as Pasupu Kumkuma prior to her marriage and Rs.1,00,000/- as Sare Saman after her marriage. The 1st Petitioner and the Respondent lived happily for four months at Elikapadu Village after their marriage and thereafter Petitioner started to insult and harass the Respondent stating that he passed only X class, whereas she passed Graduation and therefore their match is not compatible. The 1st Petitioner used to leave her parents house frequently in the absence of the Respondent and his parents. Upon birth of the 2<sup>nd</sup> Petitioner at Eluru Government Hospital, his parents visited the 1st Petitioner and were successful in bringing back the 1st Petitioner to their home when the 2<sup>nd</sup> Petitioner was aged five months and thereafter they have celebrated Annaprasana function of the 2<sup>nd</sup> Petitioner at Ratnallamma Temple in Ratnalakunta Village. When the 2<sup>nd</sup> Petitioner was seven month old, in the absence of the Respondent and his parents, the 1st Petitioner left to her parents house along with the 2<sup>nd</sup> Petitioner without informing the same to the Respondent family. The 1<sup>st</sup> Petitioner deserted Respondent voluntarily without any reasonable cause in the month of March, 2014 and despite efforts by the Respondent to take her back with the help of elders she refused to join the Respondent stating that he is not fit for her. Since March, 2014 the 1<sup>st</sup> Petitioner has been residing at her parents house at Koyuru village and has been conducting tuitions and earning Rs.6,000/- per month. The Respondent does not have any properties except for Ac.0.3 cents of house site falling to his share. The Respondent earns only Rs.100/- to Rs.150/- per day when agriculture works are available. Hence, he prayed the Hon'ble Court the Petition of the 1<sup>st</sup> Petitioner ought to be dismissed.

- 4) Heard the learned counsel for the Petitioners and the Respondent and perused the averments of the Petition and counter and the evidence produced by both parties.
- 5) Upon commencement of the enquiry the Petitioners adduced evidence of P.Ws.1 and 2 and no documents was marked on behalf of the Petitioners. On behalf of the Respondent he himself was examined as R.W.1 and Exs.R-1 to R-5 were marked through R.W.1.
- 6) Although a petition for grant of interim maintenance was also filed since the parties did not evince interest in submitting their arguments in the same and the main case was proceeded, the proceeding in the interim petition was closed.
- 7) On perusal of the Petition, Counter and the documents filed by the parties and the evidence adduced on both sides and after hearing counsels for both parties the following points arised for determination by this Court:
  - 1) Whether the Respondent neglected to take care of the needs of 1<sup>st</sup> and 2<sup>nd</sup> Petitioner and failed to look after their welfare despite having sufficient mens?
  - 2) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner are unable to maintain themselves?

# 3) Whether the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners are entitled for relief as prayed for in their Petition?

- The 1st Petitioner reiterated the facts in her chief-affidavit. In her 8) cross-examination she admitted that the Respondent is doing cultivation and attending to coolie works and her parents are also doing cultivation and attending to coolie works. She admitted that both her families have got she buffaloes and female persons in the house used to look after she buffaloes. She admitted that she Graduation. She admitted that she has not informed the harassment by the Respondent to her village elders and to her neighbours. She stated that after her marriage she used to reside in a Thatched house and her inlaws used to stay in the Vasara in the said house. She specifically admitted that the Respondent issued a notice for Restitution of Conjugal Rights and that she is not interested in joining the Respondent though the Respondent assured her that he will look after her well. P.W.1 stated that Respondent harassed her mentally and physically and as such she does not intend to join him. She further admitted that herself and the Respondent lived happily for one and half year after their marriage and her in-laws accepted her as their daughter-in-law. She further admitted that at the time of birth of her child her in-laws and Respondent came to the hospital. She admitted that she has been residing with her parents since March, 2014.
- 9) P.W.2, the father of P.W.1 reiterated the facts stated by P.W.1 in her evidence. During the cross-examination P.W.2 admitted that his wife used to attend to MGNREGS works and he trained P.W.1 also to do the same. He stated that they had cordial relationship with the Respondent parents before and after birth of the 2<sup>nd</sup> Petitioner and the Respondent has taken the 1<sup>st</sup> Petitioner and 2<sup>nd</sup> Petitioner to his house when the 2<sup>nd</sup> Petitioner was five months old. He admitted that Annaprasanna ceremony was performed at Ratnalamma Temple by the Respondent parents and he also attended the ceremony. He specifically stated that after the said ceremony the Petitioners returned back to the Respondent's

home and after the 2<sup>nd</sup> Petitioner fell sick when he was nine months old the 1<sup>st</sup> Petitioner took her to Gannavaram Hospital. That one month after the said treatment the Petitioners and Respondents came to his home and they (1st Petitioner and 2<sup>nd</sup> Petitioner) returned to the Respondent's home after ten days. He admitted that the 1<sup>st</sup> Petitioner along with the 2<sup>nd</sup> Petitioner came to his home when the 2<sup>nd</sup> Petitioner was aged 11 months and thereafter she stayed with him. He admitted that 1st Petitioner studied till Graduation and Respondent failed in his X Class. He admitted that the Respondent visited their home when the 2<sup>nd</sup> Petitioner was 11 months old and none afterwards. He admitted that on 04.04.17 the parents of the Respondent along with elders approached the President of their village and tried to call her back. Further he admitted that he did not say anything to their village President and elders about sending the 1st Petitioner back to Respondent's home. He also admitted that Respondent sent a notice to their house calling the Petitioner back to lead matrimonial life with the Respondent. It is elicited from P.W.1 that the 1st Petitioner did not try to join the company of her husband and he did not try to send the 1st Petitioner to the Respondent's home. He further deposed that he is not willing to send P.W.1 to her in-laws house although the Respondent is willing to take her back and live happily with her. He stated that he did not give any complaint to Police and neither his daughter gave any complaint regarding dowry demand harassment from the Respondent till date.

10) With regard to means of the Respondent, the following admission of facts by the witnesses are relevant:

During the cross-examination, P.W.1 admitted that Respondent is doing cultivation and coolie works. She further admitted that her in-laws are middle class family and there is no chance to live of luxurious life. She further admitted that except doing cultivation the Respondent does not know any other occupation. She admitted that she has not filed any document to show that

Respondent is having 0.8 cents of land and earning Rs.4,00,000/- per annum and she does not know how much milk is being sold by the Respondent and that he is earning Rs.50,000/- and that no documentary evidence is available to show that the Respondent is earning Rs.50,000/- per month. She further admitted that to whom the Respondent lent money on interest. She deposed that her father P.W.2 informed her about money lending by the Respondent and he is having 0.8 cents of land. It is elicited from P.W.2 that he did not file any land documents relating to the Respondent and he cannot say the name of the dairy form owned by the Respondent and that he cannot say the names of the persons to whom the Respondent lent money. He admitted that he did not file any proof to show that the Respondent is carrying on money lending business.

- 11) During cross-examination of R.W.1 it is elicited that prior to his marriage Respondent used to sell 10 liters of milk per day. However, R.W.1 stated that he stopped selling milk after his marriage. He admitted that in his village coolies normally earn Rs.200/- per day and Rs.500/- per day at the time of plantation and Rs.200/- to Rs.300/- per day during harvesting. It is further elicited that himself and his father have not partitioned their ancestral property.
- 12) It is elicited from R.W.2, the president of Elukapadu Village that the Respondents parents have got their own house prior to their marriage and the 1<sup>st</sup> Petitioner also got their own house. He deposed that a person who goes for coolie work earns Rs.300/- per day and if he goes half day he will earn Rs.150/- per a day.
- 13) In connection with means of the Petitioners, it is elicited from P.W.1 that P.W.1 was able to conduct tuitions and she studied Graduation. However, P.W.1 subsequently retracted her statement that she is able to conduct tuitions. It is elicited from P.W.2 that the 2<sup>nd</sup> Petitioner is currently four years old and he is living with P.W.1. It is elicited from P.W.2 that he goes for Food for Work programmes sponsored by the Government and he has got White Ration Card.

P.W.2 admitted that he spent around Rs.10,000/- per month as household expenses for six members. It is elicited from R.W.1 that he does not know the names of the children and the medium of instruction with respect to the alleged tuition classes being conducted by P.W.1 at her parents house. It is elicited from R.W.1 that the 1<sup>st</sup> Petitioner does not have any property in her name and that he has not sent any money or articles for the livelihood of 1<sup>st</sup> and 2<sup>nd</sup> Petitioners for the last three years. It is also elicited that there is one more person in their community who owns Ac.10.00 of land besides him.

Broadly speaking there is no dispute about the legal status of 1<sup>st</sup> Petitioner as lawfully wedded wife of the Respondent and the legal status of the 2<sup>nd</sup> Petitioner as the son of the 1<sup>st</sup> Petitioner and the Respondent. Upon perusal of evidence of P.W.1 and 2 and R.Ws.1 and 2, it is admitted fact that the marriage of 1<sup>st</sup> Petitioner and Respondent was performed on 13.06.2012. Admittedly P.W.1 and Respondent lived happily for one and 1/2 years i.e., only after few months after the birth of the 2<sup>nd</sup> Petitioner in the year 2013. Admittedly, P.W.1 began living away from her husband at her parents house when the 2<sup>nd</sup> Petitioner was aged 11 months old i.e., from March, 2014. There is variation in the evidence of the Petitioners and Respondent as to the exact reasons for separation of P.W.1 from R.W.1. Once it is admitted that P.W.1 is living separately from R.W.1, the burden of proving that she is living separately from R.W.1 for a reasonable cause is on the P.W.1. In support of the same the Petitioner made many allegations regarding the harassment meted out to her at the Respondent's house during her stay with the Respondent. However, she also admitted that she lived happily for one and half years. Although she alleged that the Respondent did not visit hospital after the 2<sup>nd</sup> Petitioner was admitted in Hospital for Typhoid fever, P.W.2 admitted that the Respondents were present at the hospital and subsequently she returned back to Respondent's home. Therefore all the allegations of P.W.1 prior to March, 2014 are not entirely proved. It is admitted by P.W.2 that no

complaint was filed against the Respondent and his family with regard to dowry harassment and neither his daughter P.W.1 gave any such complaint. Although, P.W.1 stated in her chief-affidavit that on 19.02.2016 a Complaint was filed against the Respondent by her and the same was registered as Crime No.38/16 no certified copy of the complaint was filed by her and no exhibit was marked in proof of such complaint. The alleged complaint as per P.W.1 pertains to incident on 23.01.2016 when the Respondent and his parents visited P.W.1's parents house and demanded her signature on divorce papers and pressed her neck and threatened her that they will kill her. Even otherwise the alleged F.I.R in existence relates to incident which occurred in 2016 i.e., two years after P.W.1 started living at her parents house. There are no specific dates mentioned by P.W.1 about the time when she returned to her parents home and the time when she tried to go back to the Respondent's house with the help of mediators. Apart from admitted facts of P.W.1 that Respondent and herself lived happily for one and half years, she admitted that she does not want to go back to the Respondent even after the Respondent is willing to take her back. P.W.2 also deposed that he is not willing to send the 1st Petitioner to the Respondent's fold and there were talks through elders by the Respondents but they have not acted or responded to the same. In such circumstances, it can be said that the 1st Petitioner is living separately at her parents house without any reasonable cause and therefore she is not entitled to claim maintenance. Therefore, point No.1 is answered partly in favour of the Respondent and against the 1<sup>st</sup> Petitioner.

15) There is no dispute that the 2<sup>nd</sup> Petitioner is aged only four years and he is living with the 1<sup>st</sup> Petitioner. Based on the evidence of P.W.2 with regard to his own income by way of attending to Food for Work programmes of the Government and his expenditure of Rs.10,000/- on household expenses and evidence of P.W.1 that she is a graduate and able to conduct Tuition classes, it can be said that the Respondent was partly successful in establishing that the 1<sup>st</sup>

Petitioner is not entirely unable to maintain herself. However, in view of the means of the Respondent proved by the P.W.1 by way of admission of R.W.1 that he earns atleast Rs.300/- per day by doing coolie works, it can be said that P.W.1 was partly successful in proving the means of the Respondent. The other allegations about the alleged income of the Respondent from dairy farm, money lending business are not proved, as P.W.1 herself admitted that Respondent does not know any occupation other than attending for coolie works.

- 16) Upon perusal of the evidence putforth by the Petitioners and the Respondent this Court is of the opinion that grant of sum of Rs.3,000/- (Rupees Three Thousand Only) to the 2<sup>nd</sup> Petitioner would commensurate with the financial capacity of the Respondent and the needs of the 1<sup>st</sup> Petitioner to look after the welfare of the 2<sup>nd</sup> Petitioner as it appears from the record of the case.
- 17) In the result, this Petition is **PARTLY ALLOWED** in favour of the 2nd Petitioner and the Respondent is hereby ordered to pay a monthly maintenance of Rs.3,000/- (Rupees Three Thousand only) to the  $1^{st}$  Petitioner towards maintenance of  $2^{nd}$  Petitioner.
- (b) The amount of maintenance shall be payable by the Respondent on or before 10<sup>th</sup> of every month from the date of this application;
- (c) The Respondent is also directed to pay arrears of maintenance from the date of this application till the date of this order within a period of two months from the date of this order to the 1<sup>st</sup> Petitioner;
  - (d) The claim of the 1<sup>st</sup> Petitioner is hereby **DISMISSED**;
- (e) A sum of Rs.500/- shall be payable by the Respondent to the 2<sup>nd</sup> Petitioner towards costs of this Petition, same shall be payable within ten days from the ate of this order;

Dictated to the Stenographer Grade-III, transcribed by him, corrected and pronounced by me in the open court, this the  $30^{th}$  day of April, 2018.

Sd/-G.Sai Krishna, II Addl. Judicial Magistrate of I Class, Nuzvid.

## APPENDIX OF EVIDENCE WITNESSES EXAMINED ON BEHALF OF

#### Petitioner: Respondent:

P.W.1: B.Rajeswari. R.W.1: Byru Suresh Babu.

P.W.2: P.Satyanarayana. R.W.2: Azmeera Venakteswara Rao.

### **DOCUMETNS MARKED ON BEHALF OF PETITIONER**

-NIL-

#### **DOCUMENTS MARKED ON BEHALF OF RESPONDENT**

Ex.R-1: Office copy of Registered notice send to 1st Petitioner by the Respondent.

Ex.R-2: Postal Receipt dt.6.12.16.

Ex.R-3: Postal Receipt dt.21.12.16.

Ex.R-4: Postal Acknowledgment from the 1st Petitioner dt.26.12.16.

Ex.R-5: Returned notice as refused by the 1st petitioner.

Sd/-G.Sai Krishna, II Addl. Judicial Magistrate of I Class, Nuzvid.

//True copy//

II Addl. Judicial Magistrate of I Class, Nuzvid.