

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 30th day of December, 2019.

M.C.No.14 of 2016

BETWEEN:

1) Palagani Samrajyam, W/o.Naga Raju, D/o.Mallavalli Srimannarayana, Hindu, Aged about; 26 years, R/o.D.No.2-190C, Nugundapalli Village, Agiripalli Mandal, Krishna District.

2) Palagani Pallavi, D/o.Naga Raju, Hindu, Aged about 8 years, Being Minor Rep. by her mother and natural guardian i.e., 1st Petitioner herein R/o.D.No.2-190C, Nugundapalli Village, Agiripalli Mandal, Krishna District.

...Petitioner.

AND

Palagani Nagaraju, S/o.Koteswara Rao, Hindu, Aged about: 30 Years, R/o.Nugundapalli Village, Agiripalli Mandal, Krishna District.

...Respondent.

This case is coming upon before me in the presence of Sri G.Rambabu, Counsel for Petitioner and of Sri M.Basava 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 by the Petitioners under Section 125 of Cr.P.C seeking an Order directing the Respondent to pay monthly maintenance of Rs.4,000/- per month to the each of the Petitioners from the date of the Petition and for costs of the Petition.

2. *The averments of the Petition in brief are as follows:*

The marriage of the 1st Petitioner was performed on 25-03-2006 at Respondent's house in Nugundapalli Village, Agiripalli Mandal as per the Hindu Rites and Customs and thereafter their marriage was consummated and both of them led marital life in Nugundapalli Village at the house of the Respondent. The 1st Petitioner and the Respondent were blessed with 2nd Petitioner now aged 8 years. That at the time of marriage an amount of Rs.20,000/- towards Pasupu Kumkuma, Two silvers of Gold, Household articles worth of Rs.20,000/- were

given to the Respondent as per their demand by the parents of the 1st Petitioner. Both the parties led happy marital life for one year and thereafter Respondent used to behave in a cruel manner towards first Petitioner and used to make demand for additional dowry of Rs.50,000/- from her parents and used to beat her whenever she expressed her inability to bring the said amount. The Respondent got addicted to vices like drinking, playing cards and gambling and used to threaten the 1st Petitioner and beat her indiscriminately. On several occasions the Respondent necked out 1st Petitioner from matrimonial house and it happened on four occasion and only after the matter was placed before the elders, the Respondent took the 1st Petitioner to his fold.

b) On 27.05.2015, at about 7.00 p.m., the Respondent held the hair of 1st Petitioner and hit her on to the wall and as a result, she received bleeding head injury and he also beat her on the waist and thereafter he necked her out of matrimonial house. The 1st Petitioner requested the Respondent to send 2nd Petitioner also with her, but the Respondent refused to her request. On 28.05.2015, the 1st Petitioner informed about the incident to her parents and the parents of the 1st Petitioner reached the matrimonial house of the 1st Petitioner and requested the Respondent to take her back, but the Respondent refused. Thereafter the 1st Petitioner was taken by her parents to their house. On 28.05.2015, the 1st Petitioner lodged a report with S.H.O Agiripalli and the same was registered as First Information Report in Crime No.115/2015 under Section 498-A IPC. Thereafter the mother of the Respondent dropped the 2nd Petitioner in the parent's house of the 1st Petitioner.

c) The Respondent is working as Contract Labourer in Vijayawada Municipal Corporation and earning Rs.18,000/- per month and he is also having agricultural land in an extent of Ac.2.00 and also other movable properties in his native place. The Respondent intentionally and willfully deserted the Petitioners and neglected them without providing any maintenance to them.

The parents of the 1st Petitioner have become old and are not in a position to maintain the Petitioners.

3. Notice was issued to the Respondent and Counter was filed on 29.09.2016 for the Respondent.

4. ***The averments of the Counter in brief are as follows:***

It is true the 1st Petitioner is the wife of the Respondent and the 2nd Petitioner is their daughter. Prior to the marriage, the 1st Petitioner is the daughter of paternal aunt of Respondent. The parents of the 1st Petitioner gifted Ac.0.50 cents of wetland to the 1st Petitioner and Respondent jointly under a registered gift deed at the time of the marriage. No dowry or presents were given at the time of the marriage. The aforesaid property is in the possession and enjoyment of the 1st Petitioner since the date of the gift till today and she earns Rs.25,000/- per year on the said property. The 1st Petitioner and Respondent led happy marital life for five years after their marriage and thereafter the 1st Petitioner starting visiting her parent's house frequently by disputing with the Respondent on every trivial issues. The 1st Petitioner did not attend to the household works and used to stay at her parents house for days together.

b) About four years back the 1st Petitioner went to the Sarey Function of her elder sister's daughter and did not return to home for one month and thereafter the Respondent chastised her and on that issue the father of the 1st Petitioner viz., M.Sriman Narayana came to the house of the Respondent along with the ten members, armed with a bamboo handled knife and tried to hack the Respondent and in the process the father of the Respondent viz., Koteswara Rao received deep incision bleeding injury on his neck at the hands of Sriman Narayana. The matter was placed before Village elders and the elders chastised the father of the 1st Petitioner and advised the Respondent and his father not to lodge any Complaint in view of the close relationship between

them. On two occasions, when the mother of the Respondent tried to advise the 1st Petitioner to mend her attitude she beat the mother of the Respondent and abused his entire family.

c) Previously the Respondent used to work as Contract Labourer in Vijayawada Municipal Corporation and he used to come to house late in the night or at early hours. Under such circumstances, the 1st petitioner developed illegal intimacy with M.Rama Krishna, S/o.Prasad of Nugundapalli Village. Despite advise given by Respondent and his parents, the 1st Petitioner did not change her behaviour and about 2 ½ years back the Respondent came to the house at 3.30 a.m., on completion of his work and he noticed the 1st Petitioner in the bedroom along with the said Rama Krishna in inexplicable position. On the same day, the father of the 1st Petitioner beat the Respondent instead of chastising the 1st Petitioner. The Respondent informed about the incident to his relatives and elders viz., Pamarthi Koteswara Rao, Pallagani China Venkateswara Rao and Thommandru Ramu etc., and they advised the 1st Petitioner and Respondents to change the behaviour of the 1st Petitioner. In the month of June, 2014 the 1st Petitioner voluntarily left the Respondent and went to her parents house and thereafter did not return to the matrimonial house and despite several attempts made by the Respondents and elders, she joined the Respondents. About one year back on one day the 1st Petitioner slipped and fell down and taking advantage of head injury received on that occasion, the 1st Petitioner lodged a false Complaint against the Respondent with the allegations of dowry harassment and influenced Agiripalli Police to register the said case. The Respondent is not having his own house and is taking shelter at the house of his relatives and he does not own any movable or immovable properties or source of income. The Vijayawada Municipal Corporation Authorities removed the Respondent from Contract Works. The 1st Petitioner is earning Rs.25,000/- per year from her landed property and is a Tailor and earning Rs.500/- per day

through Tailoring work. The 1st Petitioner is having a dairy with five she-buffaloes and earning gross income of Rs.10,000/- per month, besides the said income the 1st Petitioner is lending Rs.5,00,000/- at high interest rate and earning Rs.15,000/- per month. As such the 1st Petitioner is having sufficient income to maintain not only herself but also the 2nd Petitioner. There is no iota of fault on the part of the Respondent, but the Petitioners are living separately from him. Therefore the 1st Petitioner is not entitled to seek any maintenance from the Respondent.

5. On perusal of Petition and Counter averments and evidence adduced on both sides the following points arise for consideration of this Court:

1) Whether the 1st and 2nd Petitioners are legally wedded wife and legitimate daughter of the Respondent?

2) Whether the Respondent having sufficient means, neglected to look after the welfare of the 1st and 2nd Petitioners.?

3) Whether the Petitioners are unable to maintain themselves?

4) Whether the Petitioners are entitled for maintenance as prayed for in the petition?.

6) **POINT:**

On behalf of the Petitioners, the 1st Petitioner was produced as P.W.1 and Exs.P-1 and P-2 are marked.

7) P.W.1 reiterated the facts stated in the Petition in her chief-affidavit.

During cross-examination, P.W.1 admitted that her parents gifted Ac.0.50 cents of wetland at the time of marriage in her name and in the name of the Respondent jointly and she is still in possession of the same. P.W.1 admitted that she is earning Rs.25,000/- from said land.

P.W.1 admitted that herself and Respondent lived happily for five years and admitted that she attended Sarey Function of her elder sister's daughter four years back. P.W.1 again retracted her statement that she attended the Sarey Function.

8) The father of P.W.1 viz., M.Srimanarayana was produced as P.W.2. P.W.2 reiterated the contents of the Petition in his chief-affidavit.

During cross-examination, P.W.2 admitted that he presented Ac.0.50 cents of dry land to his daughter at the time of marriage and the same is under his possession and enjoyment presently.

9) On behalf of the Respondent, the Respondent was produced as R.W.1 and he reiterated the contents of his Counter in his chief-affidavit.

During cross-examination, R.W.1 admitted that he was working as Contract Worker in Vijayawada Municipal Corporation by the time of his marriage. R.W.1 admitted that in the year 2015 the 1st Petitioner filed a Criminal Case against the Respondent under Section 498-A IPC and that this Maintenance Case was filed subsequent to the filing of Criminal Case filed by the 1st Petitioner. R.W.1 admitted that his father-in-law is old aged person and is not in a position to work any more.

10) R.W.2, common relative of Petitioners and Respondent, reiterated the facts stated in the Counter in his chief-affidavit.

During cross-examination, R.W.2 admitted that the Respondent and his father and his brother did not partition their properties. R.W.2 admitted that P.W.1 filed a Criminal case against R.W.1 under Section 498-A IPC and the 2nd Petitioner is presently studying in Agiripalli.

11) R.W.3, common relative of Petitioners and Respondent reiterated the facts in the Counter in his affidavit.

During cross-examination, P.W.3 admitted that R.W.1 is doing coolie works and that criminal case was filed by P.,W.1 against R.W.1 in the year 2015. R.W.3 admitted that presently P.W.1 and her daughter are residing at her parent's house and the 2nd Petitioner is studying. R.W.3 admitted that the father of P.W.1 is not having any sons and has three daughters.

12) Perusal of evidence adduced on both sides discloses that the marriage of P.W.1 with the Respondent in the year 2006 is not disputed and the legitimacy of the 2nd Petitioner as the daughter born from the wedlock of P.W.1 with the Respondent is also not disputed. **Therefore Point No.1 is answered in favour of the 1st and 2nd Petitioners.**

13) According to Respondents, the 1st Petitioner voluntarily left the company of the Respondent in the year 2014 and went to her parents house and refused to join him despite several attempts by Respondent. On the other hand, P.Ws.1 and 2 deposed that 1st Petitioner was necked out from matrimonial home on 27-05-2015 after she was severely beaten by the Respondent. It is admitted fact that the Criminal Case was filed by P.W.1 against the Respondent. It is admitted fact that the 1st Petitioner and the 2nd Petitioner are presently residing at the house of parents of 1st Petitioner. The reason for disputes between P.W.1 and the Respondent are not entirely proved. Except for admission of pending Criminal case filed by P.W.1 against the Respondent under Section 498-A IPC and the oral evidence of P.Ws.1 and 2, there is no proof produced on behalf of the Petitioners to prove that the Respondent was responsible for beating her and for demanding additional dowry. The initial burden in a Maintenance Case is on the Petitioner and only after proving the facts stated by her, the burden shifts onto the Respondent. In the instant case, as discussed

above, none of the allegations levelled by the 1st Petitioner against the Respondent have been proved. Since the fact that the 1st Petitioner and 2nd Petitioner are living separately from the Respondent is undisputed and justifiable reasons for living separately are not established by 1st Petitioner, ***Point Nos.2 and 3 are answered against the 1st Petitioner and in favour of the Respondent.***

14) It is elicited from R.Ws.1 to 3 that the 2nd Petitioner is presently living with 1st Petitioner and is studying in Agiripalli. P.Ws.1 and 2 admitted that the Ac.0.50 cents of land was gifted by P.W.2 in favour of P.W.1 and said land is still in possession and enjoyment of P.W.2. R.W.3 admitted that the Respondent is doing coolie works.

15) Considering the over all circumstances of the case and the economic means of the 1st Petitioner and the Respondent as admitted in their evidence, this Court is of the opinion that the claim of the 2nd Petitioner can be allowed in part. Therefore, this Court is of the opinion that awarding a sum of Rs.2,000/- per month to the 2nd Petitioner would suffice the needs of the 2nd Petitioner.

16) **POINT NO:4**

In the result, this petition is DISMISSED, in respect of claim of 1st Petitioner.

17) In the result, this Petition is **allowed in part** in respect of the claim of the 2nd Petitioner and the Respondent is hereby directed to pay monthly maintenance of Rs.2,000/- per month from the date of this order along with costs of Rs.500/-.

b) The monthly maintenance amount awarded to the 2nd Petitioner shall be paid to the 1st Petitioner on behalf of 2nd Petitioner on or before 10th of every month;

Dictated to the Stenographer Grade-III, transcribed by him, corrected and pronounced by me in the open court, this the 30th day of December, 2019.

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

APPENDIX OF EVIDENCE
WITNESSES EXAMINED ON BEHALF OF

Petitioner:

P.W.1- Polagani Samrajyam.
P.W.2- Mallavalli Srimannarayana.

Respondent:

R.W.1-Palagani Naga Raju.
R.W.2-Pamarthi Koteswara Rao.
R.W.3-Palagani China
Venkateswara Rao.

DOCUMENTS MARKED ON BEHALF OF PETITIONERS

Ex.P-1 Wedding Card.
Ex.P-2 Marriage and Group family photo (2 in number).

DOCUMENTS MARKED ON BEHALF OF RESPONDENT

-Nil-

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