

IN THE COURT OF THE JUDICIAL MAGISTRATE OF I CLASS,
SPECIAL MOBILE COURT, ONGOLE.

Present :: **Sri Kumar Vivek,**
Judl. Magistrate of I Class,
Special Mobile Court, Ongole.

Tuesday, this the 22st day of December, 2015.

D.V.C.No. 4 of 2014

Between:

Kandula Lakshmi W/o Raghava Rao, 31 years,
D/o M.Srinivasa Rao, Doddavarapadu village,
Maddipadu mandal

....Petitioner

and

Kandula Raghava Rao S/o Peddanna, 40 years,
Excise police constable,
Chimakurthy.

....Respondent

This case coming on 11-12-2015 for final hearing before me in the presence of Sri S.V.Mallakharjuna Rao, Advocate for petitioner, and of Sri M.Mallikarjuna Reddy, Advocate for respondent having stood over for consideration till this day, this Court delivered the following:

// O R D E R //

1. This is the petition filed under section 12 of the Protection of the Women from the Domestic Violence Act, 2005, by the petitioner(wife) against the respondent(husband) alleging that the petitioner has been subjected to domestic violence at the hands of the respondent, and thereby she has claimed the reliefs of protection order under section 18, residence order under section 19, monetary reliefs(maintenance) under section 20, and compensation order under section 22 of the Protection of the Women from the Domestic Violence Act, 2005.

2. The factual matrix of the case of the petitioner as set out in the petition in brief is that she is the legally wedded wife of the respondent and she is blessed with one daughter by name K.Haripriya out of the said wedlock; that the respondent has subjected the petitioner to domestic violence for additional dowry, and later the respondent has performed another marriage during the lifetime of the petitioner, and the respondent has neglected to maintain the petitioner and their daughter in-spite of having sufficient means as salaried government employee(Excise police constable), therefore, this petition has been filed.

3. The respondent did not choose to file any counter in spite of affording sufficient time, as such the counter of the respondent has been treated as *no counter*. However, the respondent has cross-examined the petitioner that

reveals that the respondent has taken defenses that the petitioner is his 2nd wife and for that reason she is not entitled any reliefs, that she has been filed several cases against the respondent with an intention to harass him, and also that his house at Narasyapalem village is not the shared house hold.

4. On the side of the petitioner, the petitioner herself examined as PW1, and no documents has been exhibited on her side. On the said of the respondent did not adduce any evidence.

5. Heard the arguments on the side of the petitioner. No arguments has been advanced on behalf of the respondent in spite of affording sufficient time, as such the arguments of the respondent has been treated as *heard*.

6. Perused the material on record.

7. **Points for determination:**

i) Whether the petitioner is entitled to the reliefs claimed by her in the petition?

ii) To what relief/reliefs ?

8. **Point No1:-**

It is the version of PW1 before this Court that her marriage with the respondent was performed on 25-04-2002 and immediately after the marriage she joined the company of the respondent at Narasyapalem village; that the respondent has been working as a Excise police constable at Chittor, and later he had been transferred to Chimakurthy; that the respondent was visiting his house at Narasyapalem village, and staying along with her; that after three or four months of their marriage the respondent demanded dowry from her and he was beating her for more dowry and twice she had brought Rs. 50,000/- from her parents; that the respondent was threatening her that he will perform another marriage and later she came to know that the respondent has married one woman and when she questioned the respondent about his 2nd marriage then the respondent started to harass her, threatened her with dire consequences if she inform her parents and relatives about his second marriage; that in the month of April, 2011 on one day during the midnight the respondent brought his friends and asked her to supply food to his friends and threatened her to kill her in the presence of his friends, and necked her out of house and closed the doors of his house; that the neighbors have informed her parents about the said incident, and

that her parents came and brought her to their house; that she has no source of income, and the respondent is not providing maintenance to her though he is an employee and receiving salary; that the respondent is having a house at Narasyapalem village, Ac 1-00 cents of landed property, and two vacant house sites; and that her daughter has been studying 6th class and she require money for meeting her educational expenses. PW1 admits during the course of her cross-examination that she had filed divorce petition as HMOP 47/2011 on the file of Additional Senior Civil Judge, Ongole, and a criminal case as CC 97/2012 and also maintenance case under section 125 of the Criminal Procedure Code on the file of Judl. Magistrate of I-Class, Spl. Mobile Court, Ongole. PW1 has denied suggestions during the course of her cross-examination that she is the 2nd wife of the respondent, and that she is not entitled for any relief as her marriage is a void marriage; that she had filed several cases against the respondent only to harass the respondent, and her parents as affluent, and that she never resided at Narasayapalem.

9. The respondent do not controvert the evidence of PW1 about her subjection to domestic violence for dowry. The respondent also donot dispute the evidence of PW.1 about twice giving of dowry of Rs.50,000/- to him and also about her knowledge about performing 2nd marriage by the respondent with another woman during her lifetime. Therefore, the unchallenged evidence of PW1 on these counts proves that she has been subjected to domestic violence by the respondent. The respondent did not adduce any evidence to substantiate his alleged defense that the petitioner is his 2nd wife, and therefore, she is not entitled to any reliefs under the Protection of the Women from the Domestic Violence Act, 2005. Resorting to several remedies available under law by PW.1 against the respondent cannot be held to infer that PW.1 is hell bend to harass the respondent. However, there is no evidence of PW1 before this Court that any dowry of cash of Rs.1,50,000/-, gold ornaments weighing 10 sovereigns, and some cash for purchasing house hold articles were given to the respondent in her marriage by her parents. In absence of any such testification of PW.1 before this Court about the presentation of dowry of Rs.1,50,000/- cash, gold ornaments weighing 10 sovereigns and cash of Rs.60,000/- for purchase of house hold articles to the respondent by her parents, the petitioner is not entitled to any

relief against the respondent of return alleged *Stridhan*. However, the undisturbed evidence of PW1 regarding giving of Rs.50,000/- on two occasions as dowry to the respondent entitles the petitioner for return of said *Stridhan* from the respondent. The evidence of PW1 is that the respondent is having a house at Narasyapalem village where she lived in domestic relationship sometime singly and sometime along with the respondent and that said house is shared household, and later she has been necked out by the respondent. There is no cross-examination of PW1 by the respondent disputing her evidence about her living with the respondent in domestic relationship at the said house. Under such circumstance a bare suggestion that PW.1 never stayed at his house at Narasyapalem village is not sufficient to impeach the testimony of PW1 to disbelieve the version of PW.1 that the said house is not a shared household. Section 3(e) (iv) defines "economic violence" to mean prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Hence, denial of access to the shared household is also "domestic violence". However, in a judgment of the hon'ble Madras High Court in **Vandana Vs. Mrs. Jayanthi Krishnamachari** (O.A No. 764/2007), it was observed that in view of Section 17, the married woman has a right to reside in the shared household and even if she has not physically lived in the shared household, she is deemed to have lived in the shared household as it is her *de jure* right. Therefore, the petitioner is entitled to relief of residence in the said house at Narasyapalem village. Furthermore, since the petitioner has been subjected to domestic violence by the respondent, as such she is also entitled to compensation for mental agony and pain sustained by her. During the course of arguments memo is filed on behalf of the petitioner stating that in the MC 5/2011 filed by the petitioner and her daughter against the respondent on the file of this Court has been allowed by granting monthly maintenance @ Rs.4,000/- each to the petitioner and her daughter. When the petitioner has been awarded monetary relief in MC 5/2011, as such, the petitioner do not require any further monetary relief in this petition. This point is answered accordingly.

10. **Point No.2:-**

In view of my finding in point no.1 the petition is allowed in part granting following reliefs to the petitioners.

1. the respondent is prohibited from causing any domestic violence to the petitioner in any manner as described under section 18 of the Protection of the Women from Domestic Violence Act, 2005;
2. the respondent is directed to return Rs.1,00,000/- cash given to him by the petitioner as dowry;
3. the respondent is directed to pay Rs.2,00,000/- to the petitioner towards compensation;
4. the respondent is directed to give access to the petitioner in the shared household at Narasyapalem village, and not to dispossess her from the said shared household or in any other manner to not to disturb the possession of the petitioner from the shared household, and further to not to alienate or dispose-off the shared household or encumber the same, and also to not to renounce his right in the shared household except with the leave of this Court; and
5. the respondent is directed to pay Rs.5,000/- to the petitioner towards costs of this petition.

Dictated to the Personal Assistant, transcribed by him, corrected and pronounced by me in open Court, this the 22nd day of December, 2015.

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

//APPENDIX OF EVIDENCE//

:- WITNESSES EXAMINED :-

For Petitioners
PW1: K.Lakshmi

For Respondent:
- Nil -

// DOCUMENTS MARKED //

For Petitioner: -Nil-

For Respondents: - Nil-

Sd/- Kumar Vivek,
Judicial Magistrate of I Class,
Spl. Mobile Court, Ongole.

// True copy //

Judicial Magistrate of I-Class,
Spl. Mobile Court, Ongole.