

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, MANNARKKAD
Present:- Smt. Kavya Soman,B.Com., LL.B., Judicial Magistrate of First Class

Monday, the 3rd day of October, 2022
11th day of Aswinam, 1944,S.E

MC No.67/2021

Ajitha, Aged 30 years, D/o Viswanathan, Santhiruththi Veedu, Mundambalamkunnu, Muthukurssi P.O., Mannarkkad Taluk. (Rep by Sri.P.R.Jayakrishnan, Advocates) (Kalladikkode Police Station Limit)	Petitioner+
Pramod, aged 40 years, husband, S/o Chandran, Pachani Veedu, Kongad P.O., Palakkad District. (Kongad Police Station Limit)	Respondent

O R D E R

This is an Application filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2. The petition averments in brief is as follows:- The petitioner and the respondent are wife and husband. Their marriage was solemnized as per the religious rites and rituals on 08.09.2012 at KGM auditorium in Thachampara in the presence of their friends and relatives. Thereafter they lived at the ancestral house of the respondent at Kongadu. Two issues were born out of the said wedlock and both are minors. For the first two years after the marriage there were no issues between the petitioner and the respondent. The petitioner was gifted with 10 sovereigns of gold ornaments and Rs.25,000/-(Rupees twenty five thousand only) by her family members at the time of marriage. The respondent is a building constructor and is also engaged in real estate business. Then the respondent and his family members began to state that the gold and money which were received by the petitioner at the time of marriage is not enough and to invest into the

contract works of the respondent, the petitioner should bring more gold and money from the petitioner's house and the petitioner expressed inability and thus animosity arose against the petitioner and due to the same, the respondent under the influence of the alcohol often harassed the petitioner. The respondent and his family treated the petitioner as an outsider and even does not allow the petitioner to eat food on time and thus mentally harassed the petitioner. The petitioner remained at the respondent's house suffering all these harassment keeping in mind the future of her minor children and out of the hope that all will be well eventually. The death of the father of the respondent occurred on 03.11.2018 and after that the harassment demanding money and gold increased from the part of the respondent towards the petitioner. The respondent blocked the petitioner from calling her parents over phone. In the month of January, 2018, the petitioner informed about the harassment from the part of the respondent to her parents and thus the parents of the petitioner along with the petitioner went to Kalladikode police station and filed petition with respect to the harassment from the part of the respondent. The police called the respondent and enquired about it and upon assurance from the respondent that no issues will be caused by him in future, the petitioner had went to the house of the respondent and started to reside there. The mobile phone which the petitioner's family members have given to the petitioner was thrown away and thus destroyed by the respondent. Then on 24.05.2019 the petitioner went to a function conducted by the relative of the respondent and returned back to the house of the respondent by 3 p.m. and then the respondent inside the house of the respondent, using a wooden stick beat on the petitioner's back and using hand of the respondent beat on the face of the petitioner and when the petitioner fell down, the respondent stamped on the lower abdomen of the petitioner and uttered obscene words towards the petitioner. The petitioner roared for help but as the doors were locked, the petitioner was not able to escape. Due to the actions from the part

of the respondent, the petitioner even thought of committing suicide. As no information about the petitioner was known to the petitioner's parents, the parent of the petitioner came to the house of the respondent to enquire and saw the petitioner in bad shape and thus the petitioner along with her younger minor child were taken back to her ancestral house by her parents on the same vehicle in which they came there. Eventhough petition was filed before Kalladikode police regarding subsequent harassment from the part of the respondent, the police did not act but they made the minor children of the petitioner stay with the respondent. After that for months the petitioner was not able to see, speak, bring back or telephone the minor children as the respondent did not gave permission to do so. Thus the petitioner again approached Kalladikode police station and thus the police directed the respondent to make arrangement for the stay of the said minor children with the petitioner but the petitioner failed to comply with that. Thus on 14.02.2021, out of animosity from the matter of the petitioner filing petition before police, the respondent trespassed into the house of the petitioner and caught hold of the neck of the petitioner's father and pushed down the father of the petitioner and using a knife tried to stab and kill him and when the petitioner tried to interfere, the respondent using his hand beat on the back and face of the petitioner. Then her family members made hue and cry and hearing the same neighbours came by and removed the respondent from his act. The police was informed and they came there and seized the knife from the respondent. The minor children are forcefully made to stay at the house of the respondent. The respondent had not taken care of any needs of the petitioner after ousting the petitioner from his house. No maintenance amount is also given to the petitioner by the respondent. The respondent from his real estate business and from building contract work is earning more than Rs.1,00,000/- per month after deducting all expenses. Through intermediaries, the respondent was sought to return the gold ornaments of the

petitioner which the petitioner received as gift at her marriage and taken away by the respondent from the petitioner and also sought maintenance amount but the respondent refused to return back the gold and money nor cared to give maintenance amount to the petitioner. The respondent is bound to give maintenance to the petitioner. The respondent is purposefully evading from the said responsibility. The petitioner has no job of her own and is living under the mercy of her family members. Thus this petition seeking Order of Protection, Maintenance, monetary relief and Custody of the children.

3. The respondent was earlier set ex parte due to his non-appearance. Later ex parte order was set aside by passing a conditional order. Due to non-compliance of the said conditional order, the respondent remained ex parte.
4. Petitioner was examined as PW1 from the side of the petitioner.
5. Following points arise for consideration:-
 1. Whether the petitioner is entitled for an order of Protection?
 2. Whether the petitioner entitled for an order of maintenance as sought for?
 3. Whether the petitioner is entitled for the return of Rs.25,000/- (Rupees twenty five thousand only) and 10 sovereigns of gold ornaments or Rs,5,00,000/- as its market value?
 4. Whether the petitioner is entitled for the custody of her minor children?
6. **Point No.01 to 04:-** For the convenience of the discussion Point Nos. 1 to 4 are discussed together. The petitioner was examined as PW1. She deposed in tune with the petition averments. From her deposition it is evident that on several occasions by demanding more dowry the respondent mentally and physically harassed her. PW1 categorically deposed that the respondent assaulted PW1 by consuming liquor and she got sick from the said assault and she is undergoing treatment for the same. So it is evident that the respondent

had committed domestic violence upon PW1. Therefore this court is of the considered opinion that if order of protection as sought for by the petitioner is not granted the chances of committing domestic violence in future is high. Thus Point No.01 is found in favour of the petitioner.

7. According to PW1 the respondent is a building contractor and is having real estate business and is earning Rs.1,00,000/- (Rupees one lakh only) per month as income after deducting expenses. No affidavit disclosing the assets and liabilities of PW1 filed by the petitioner. According to PW1 she is in desperate need of the maintenance and financial help. The petitioner is having no income and is living at the mercy of PW1's aged parents in her paternal house. PW1 has not even stated her educational qualification. From the averments in the application it is clear that the respondent is evading from maintaining the petitioner wilfully. At the same time no reason is shown why the petitioner is not pursuing any job. No ailments of the petitioner are detailed anywhere and no medical records also produced. The respondent has duty to maintain the petitioner. No solid proof is produced by the petitioner to show that the respondent is drawing such a high income. To arrive at a reasonable amount for maintenance, this court relies on principle of natural justice and orders that a sum of Rs.2,500/- (Rupees two thousand and five hundred only) per month to the petitioner as maintenance will meet the ends of justice. Thus the order of maintenance as sought by the petitioner is allowed in part. Thus Point No.02 is found accordingly.
8. The petitioner has 2 minor children born out of the said wedlock. The present situation is that both the children are under the custody of the respondent. No evidence to show that the said custody is a threat to the said minor children is adduced by PW1. The respondent is the natural guardian of the said minor children. The custody of the said minor children in the hands of the respondent is not *per se* illegal. The custody of the minor children has to be dealt by a competent court as no contingency is exhibited. Thus this court is

not inclined to allow the relief as sought. Thus Point No.03 is found against the petitioner.

9. PW1 through her ocular testimony deposed that at the time of her marriage her parents gifted her 10 sovereigns of gold ornaments and Rs.25,000/- (Rupees twenty five thousand only). From the testimony of PW1 it is evident that the respondents had taken custody of her gold ornaments and money which she received as gift at the time of marriage. Even though the respondent had opportunity to defend himself, he cared not to be part of the proceedings. There is nothing before this court to disbelieve the said allegations. Moreover it is quite natural and believes to be customary to gift gold and money to a bride at her marriage by her family and relatives. Thus it will be just and proper to allow the prayer of the petitioners for return of gold and money. Thus Point No.04 is allowed.

10. As Point Nos.01 to 04 are found accordingly, the petition stands allowed in part as under :-

1. The respondent is hereby restrained under section 18 of the aforesaid Act from committing any mental, physical and verbal harassment to the petitioner.
2. The respondent is hereby directed under section 20(1)(d) of the aforesaid Act to pay an amount of Rs.2,500/- (Rupees two thousand and five hundred only) per month to the petitioner as maintenance from the date of the institution of this application.
3. The respondent is hereby directed under section 19 (8) of the aforesaid Act to pay an amount of ₹25,000/- (Rupees twenty five thousand only) and return 10 sovereigns of gold ornaments or ₹5,00,000/- (Rupees five lakh only) (which is its declared value) to the petitioner.
4. The order dated 12.07.2021 in CMP No. 1197 of 2021 in the above application is made merged with this order and any payment made towards the same is liable to be adjusted.

Pronounced by me in the open court on this the 3rd day of October, 2022.

Sd/-

JUDICIAL MAGISTRATE OF FIRST CLASS
MANNARKKAD

APPENDIX

Witnesses examined for petitioners :-

PW1 :Ajitha, D/o Viswanathan, Mannarkkad, examined on 18.02.2022.

Exhibits marked for Petitioner :- Nil

Witnesses examined for Respondent :- Nil

Exhibits marked for Respondent :- Nil

Sd/-

JUDICIAL MAGISTRATE OF FIRST CLASS
MANNARKKAD

(True copy)

JUDICIAL MAGISTRATE OF FIRST CLASS
MANNARKKAD

Fair/Copy of Order in

MC No.67/2021

Dated 3.10.2022.
