

IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC**MUDHOL****Present :**

Smt. Saraswati Hotakar,
L.L.B.,L.L.M.
Addl. Civil Judge & JMFC Mudhol

ON TODAY THIS THE 16th DAY OF MARCH - 2022**Crl. Misc No: 24/2018**

1. Smt.Nagaratna W/o. Raju Bhovi and two others
Petitioner/s

- v/s -

1. Raju S/o. Shivappa Bhovi and others
Respondent/s

PARTIES IN IA.No.1

1. Smt.Nagaratna W/o. Raju Bhovi
2. kum. Sahana D/o. Raju Bhovi
Age: 11 years
3. Kum. Manjunath S/o. Raju Bhovi
Age: 09 year
(Since minors R/by. Their next friend mother)

All are R/o: Lokapur, Tq: Mudhol, Dist: Bagalkot.

...Applicant/Petitioner

- V/s -

1. Raju S/o. Shivappa Bhovi,
Age; 37 years, Occ: Security Guard at JK cement Factory,
R/o: Lokapur, Tq: Mudhol, Dist: Bagalkot.

..Opponent No.1/Respondent No.1

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Applicant/Petitioner by Sri KMK , advocate
Opponent /Respondent by Sri AAM, Advocate

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:: ORDER ON I.A-1 ::

1. Petitioners have filed I.A-1 U/s.23 of Protection Of Women from Domestic Violence Act 2005, seeking to award interim monthly maintenance of Rs.10,000/- for herself and Rs.5,000/- each to her minor children i.e., petitioner No.2 and 3 from the date of application to till disposal of the main petition.

2. **Brief facts of the case is as under;**

The petitioner No.1 is wife and petitioner No.2 and 3 are daughter and son of respondent No.1, respondent Nos.2, 3 are the father and brother of respondent No.1. The petitioners have filed application U/s.12 of the Protection of Woman from Domestic Violence Act, 2005 againsts the respondents seeking various reliefs under the said Act. The petitioner has filed this interim application U/s.23 of Protection of woman from Domestic Violence Act 2005 claiming interim maintainance of Rs.20,000/- to herself and to petitioner No.2 and 3 from the respondent No.1. The respondent has filed detailed objections to main

petition and files memo stating that to treat the contents of objections to main petition as objections to I.A.No.1.

3. The petitioner and respondent No.1 have filed their affidavits in compliance with the judgment of Hon'ble Apex Court in the case of **Rajanish V/s. Neha**.
4. On the basis of above pleadings the following points arise for my consideration;

Point No-1: Whether petitioner is entitled for interim monthly maintenance of Rs.20,000/- for herself and her minor children?

Point No.2 : What order?

5. I have heard arguments of both the parties and perused the materials available on record.
6. My answers to the above points are as under:-

Point No1 : In Partly Affirmative;

Point No.2 : As per final order for the following ..

:: REASONS::

7. **Point No.1:-** Petitioner has filed this interim application U/s.23 of Protection Of Women from Domestic Violence Act 2005 against respondents claiming Rs.20,000/- pm as interim monthly maintenance to herself and her minor children petitioner No.2 and 3.

8. The counsel for petitioner argued that the respondents have caused domestic violence against the petitioner and also they have given physical and mental harassment to the petitioners. Further argued that the marriage between the petitioner No.1 and respondent No.1 took place 15 years back and they have separated since from 05 years. Since 2017 petitioner and her minor children are depending on parents of petitioner No.1 for their livelihood. Further contended that at the time of marriage the petitioner has given 1-½ tolas of gold and Rs.10,000/- cash towards dowry to respondent No.1. Such being the situation the petitioner is being house wife and not earning and prays for interim maintenance from respondent No.1.
9. On the other hand, the learned counsel for respondents argued that the application is not maintainable either in law or on facts and submitted that petitioner No.1 is earning Rs.400/- per day by coolie and she is capable to maintain herself. Further contended that the petitioner has suppressed material facts before this court and even she has not stated true facts in her affidavit as she has already filed Crl. Misc., Nos.110/2012, 285/2016 and 503/2014 before Prl. Civil Judge and JMFC, Bailahongal

and which were withdrawn on 05.03.2013 and 15.07.2017 respectively by the petitioner. Further respondent No.1 contended that she is capable to maintain herself. The respondent No.1 has to maintain his father and brother, respondent No.1 is earning Rs.45/- per day as security guard at J.K. cement factory and he is not in position to pay interim maintenance to the petitioners. Therefore prays to reject the application.

10. In support of their contentions the counsel for petitioners obtained salary certificate of respondent No.1 from his employer and counsel for respondents produced certified copies in Crl. Misc., Nos.110/2012, 285/2016 and 503/2014 and MC No.9/2012.
11. In compliance with judgment to the Hon'ble Apex Court in the case of **Rajanish V/s. Neha** and others both the parties have filed their affidavits. The petitioner in her affidavit stated that, now she is not working and residing at parental house at Lokapur. In the personal information column-A at para No.7 she stated that her general monthly expenses (rent, household expenses, medical bills, transportation etc.,) Rs.20,000/- per month. At column-B details of legal proceedings and maintenance being paid, the petitioner has not disclosed about

previously filed afore mentioned Crl. Misc., petitions before Prl. Civil Judge & JMFC, Bailahongal.

12. The counsel for respondents produced certified copies of the said Crl. Misc., petitions. On perusal of the same it reveals that the petitioner had filed above said Crl. Misc., petitions against respondents for maintenance but same were came to be withdrawn by the petitioner, even though the petitioner has not disclosed about prviously filed petitions against respondent, the petitioner in her argument admitted about filing of afore mentioned Crl. Misc., petitions and also stated that those petitions are already been closed as withdrawn. Further petitioner argued that the said petitions were withdrawn by the undertaking - promise made by respondent taking care of these petitioners and believing the words of respondent had withdrawn the previously instituted criminal petition filed before Prl. Civil Judge & JMFC, Bailahongal. At this stage in the opinion of this court is that, mere non disclosing of previously filed criminal petitions by petitioner does not put any bar on this court in granting any interim maintenance as it is mere irregularity which can be cured. Section 23 of Protection of Woman from Domestic Violence Act 2005 has conferred the powers to

pass an interim order on the basis of application filed by the petitioner, if court is satisfied, and court can order for interim maintenance without considering the averments of the objections by the respondent. At column-C details of dependent family members at 1 (b) age and sex of the dependent i.e., female-13 and male-11 years is shown. At column-F details of income of the deponent at (1 to 3 - nil) as being unemployed and house wife, at column-J information with respect to the income, assets and liabilities of respondent No.1, the petitioner has stated that the respondent No.1 is working as Private Security Guard in J.K cement factory also owned houses at Lokapur and getting Rs.2,00,000/- from house rent per year.

13. The respondent No.1 in his affidavit states that at column-A personal information at para No.7 general monthly expenses of the applicant (rent, household expenses, medical bills, transportation etc.,) Rs.10,000/- per month. At column-E details of the children of parties at para No.4(a) towards food, clothing and medical expenses per month Rs.40,000/-, at 4(b) towards expenses for education, and summary of general expenses Rs.50,000/- also stated that he has voluntarily given Rs.1,00,000/- to petitioners.

14. Perusal of the documents, pleadings of the parties it reveals that respondent No.1 categorically admitted his relationship with the petitioners as husband to the petitioner No.1 and father to the petitioner No.2 and 3. Further respondent No.1 admitted that he is working at J.K cement factory, their marriage was taken place around 16 years back and since 2017 they are living separately. On perusal of the documents produced by the petitioner, it reveals that there is domestic violence caused against the petitioner by the respondents and she has been ill treated by the respondents and caused physical and mental harassment itself proves that respondent has committed act of domestic violence against petitioner. During the course of arguments learned counsel for respondents submitted that the petitioner has not disclosed about previously instituted Crl. Misc., petitions before Prl. Civil Judge & JMFC, Mudhol, before filing this Crl. Misc., petitioner. The petitioner filed Crl. Misc., No.110/2012, Crl. Misc., 285/2016 and Crl. Misc., 503/2014 before Prl. Civil Judge & JMFC, Bailahongal which were came to be withdrawn on 05.03.2013 and 15.07.2017 respectively. Further respondent No.1 has filed M.C.No.9/2012 for restitution and same is settled as compromised on

23.01.2013. In para No.8 of objections filed by the respondent it is contended that petitioner has filed afore mentioned Crl. Misc. petitions before Prl. Civil Judge & JMFC, Bailahongal court and in the same para he categorically contended that on the request of elders petitioner has withdrawn the said Crl. Misc. petitions. In reply to this aspect petitioner admitted about previous petitions and argued that she has withdrawn the said petitions on the request of elders and by the undertaking of respondent to take care of petitioners. Therefore, non disclosing of past legal proceedings instituted against the respondents is mere irregularity but does not bars the petitioners right of interim maintainance. Further respondent in his affidavit stated as he has made voluntary contribution of Rs.1,00,000/- to the petitioners but not produced any documents to substantiate his contention. Further the petitioner has obtained salary certificate of respondent No.1 from his employer wherein it depicts that respondent No.1 is working as Head guard in JK cement factory and getting gross salary of Rs.13,251/- per month and further contended that respondent No.1 is getting Rs.2,00,000/- per year from house rent. The respondent submitted that petitioner is

earning Rs.400/- per day from coolie and she has enough means to maintain herself and petitioner No.2 and 3. But now at this stage there is no material to show that the petitioner is earning Rs.400/- per day for her livelihood and her minor children.

15. In the case of **Pilli Rajkumar v/s. Pilli Siva Kumari and another reported in 2001 (2) KCCR 190**, wherein it was held that,

'maintaining wife and children is not moral obligation but a legal duty cast upon the husband and he is bound to maintain his wife and children'.

16. Further the contention raised by the respondent No.1 that he has no sufficient means to maintain petitioners does not stand good. The means contemplated are not confined only to visible means such as lands and other properties or employment. If a person is healthy and able bodied, he must be held to have the means to support his wife, children and parents. This was held in **Vasant Kumar Mohanti v/s Sharad Kumar Mohanti reported in 1982 Crl.LJ 485**.
17. Therefore, from the pleadings, affidavits and all the materials on record it shows that the respondent No.1 has

caused domestic violence against petitioner and he has sufficient source of income to maintain his wife and minor children. Hence, this court is of the opinion that from the past 5-6 years petitioner is living separately with her minor children. It is the duty of the husband to take care of his wife and children. On perusal of the affidavit filed by the respondent No.1 it reveals that he has not given correct particulars with respect to his income and expenses. Therefore considering the status of the parties and also cost of living nowadays this court is of the opinion that if maintenance of Rs.6,000/- pm to petitioner and her minor children is awarded, it will meet the ends of justice. **Therefore, I answer point No.1 in Affirmative.**

18. **POINT No.2**:- In view of the discussion made above and findings given on Point No.1, I proceed to pass the following;

: O R D E R :

I.A.No.1 filed by the petitioner U/s.23 of Protection Of Women from Domestic Violence Act, 2005 is hereby partly allowed.

Accordingly, petitioner No.1 is entitled for interim monthly maintenance of Rs.2,000/-.

Petitioner No.2 is entitled for interim monthly maintenance of Rs.2,000/-.

Petitioner No.3 is also entitled for interim monthly maintenance of Rs.2,000/-.

Therefore petitioner no.1 to 3 are entitle for interim monthly maintenance of Rs.6000/- from the date of application.

Respondent no1 is hereby directed to pay the interim monthly maintenance of Rs.6000/- to the petitioner no.1 to 3 within first week of every month.

Office is directed to supply the free copy of this order to the petitioner.

Office is further directed to issue the copy of this order to the jurisdictional PSI of concerned police station and also to the Protection Officer.

(Dictated to stenographer directly on compute, typed by him, script corrected, signed and then pronounced in the open court by me on this the **16th DAY OF MARCH - 2022**)

(Saraswati Hotakar)
Addl. Civil Judge & JMFC Mudhol

(Order pronounced in the open court, wide separate order)

: O R D E R :

I.A.No.1 filed by the petitioner U/s.23 of Protection Of Women from Domestic Violence Act, 2005 is hereby allowed.

Accordingly, petitioner No.1 is entitled for interim monthly maintenance of Rs.2,000/-.

Petitioner No.2 is entitled for interim monthly maintenance of Rs.2,000/-.

Petitioner No.2 is entitled for interim monthly maintenance of Rs.2,000/-.

Respondent No.1 is hereby directed to pay the interim monthly maintenance of Rs.6,000/- to the petitioner No.1 to 3 within first week of every month.

Office is directed to supply the free copy of this order to the petitioner.

Office is further directed to issue the copy of this order to the jurisdictional PSI of concerned police station and also to the Protection Officer.

For petitioner evidence.

Call on

Addl. Civil Judge & JMFC Mudhol