



**IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AND
J.M.F.C., AT TARIKERE**

Present: Sri Shivakumar.R. B.A.L., LL.B.,
Addl. Civil Judge & JMFC, Tarikere.

Dated: 2nd Day of March 2023

CRIMINAL MISC. CASE NO.270/2022

PETITIONER/S :

- 1) Yasmin Taj W/o Phayaz Ahamed, aged 36 years, Housewife,
- 2) Muskan D/o Phayaz Ahamed, aged 15 years,
- 3) Sumaiyya Taj D/o Phayaz Ahamed, aged 11 years,
- 4) Joya Taj D/o Phayaz Ahamed, aged 8 years,

Petitioners No.2 to 4 are minors, represented by their natural guardian mother petitioner No.1

All are R/o Bukkambudhi Village, Shivani Hobli, Ajjampura Taluk, Chikkamagaluru District, Now R/o Ward No.19, Hosamma Extension, Birur Town, Kadur Taluk.

(Reptd. By : Sri T.N.M., Advocate.)

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Vs.

RESPONDENT/S :

Phayaz Ahamed S/o Basheer Sab, aged 42 years, R/o Bukkambudhi Village, Shivani Hobli, Ajjampura Taluk, Chikkamagaluru District.

(Reptd. By : Sri G.N.C., Advocate.)

ORDER

The petitioners have filed this petition u/s 12 of Protection of Women from Domestic Violence Act, 2005 against the respondent praying to grant the relief of maintenance of Rs.10,000/- per month to the petitioner No.1 and Rs.5,000/- per month each to the petitioners No.2 to 4 for their food, cloth, residence, medical expenses and educational expenses of petitioners No.2 to 4 and also for separate residence.

2. The brief facts of the case of the petitioners is that:

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The marriage between the petitioner No.1 and respondent was held on 20.08.2006 at Sri Patre K.Channaveerappaiah Kalyana Mantap, Birur. After their marriage, they have led happy marital life for some years. Due to their wedlock, the petitioner No.1 has gave birth to three daughters who are petitioners No.2 to 4 herein. Since two years, the respondent was abusing the petitioner No.1 stating that she is unable to gave birth to male child and also abused petitioner No.1 in filthy language. It is further submitted that the respondent told the petitioner No.1 that he will get male child by marrying another woman. In this regard, the respondent has started giving mental and physical torture to the petitioner No.1 and also demanded the petitioner No.1 to bring dowry.

3. It is further submitted that, the respondent is doing garage work at Bukkambudhi village and he is earning

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sufficient income from that. The respondent has addicted to bad habits and he has neglected the petitioners and he is not talking with the petitioners in a lovely manner. It is further submitted that the respondent has illicit relationship with one lady namely Yasmin Taj. Whenever the talks comes in respect of said Yasmin Taj, the respondent has given mental and physical torture to the petitioner No.1 and made attempts to kill the petitioner No.1. The respondent has also slapped on the cheek of petitioner No.2. It is further submitted that in this regard, the petitioner No.1 has lodged the complaint before Ajjampura Police, but the said police have advised the petitioner No.1 to lead life with the respondent. After that also, the respondent has made an attempt to kill the petitioner No.1 with chopper, fortunately the petitioner No.1 has escaped.

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4. It is further submitted that in order to bring the equipments to run the garage, the petitioner No.1 had borrowed the loan from Dharmastala Swasahaya Sangha and Grameena Koota, but the said loan amount was spent for said Yasmin Taj. The respondent has not repaid the said loan amount to the petitioner No.1. In this regard, so many panchayaths were held, but they have not yield any fruitful result. The petitioner No.1 has tolerated the illegal acts of the respondent and she led marital life with the respondent. The respondent has driven out the petitioners from his house on 10.08.2021 and now the petitioners are residing in the parental house of the petitioner No.1 at Birur. It is further submitted that the petitioners have lodged the complaint against the respondent at Ajjampura Police Station on 14.08.2021, on the basis of said complaint, the Ajjampura Police have registered criminal case against the respondent. It is further submitted that the petitioner No.1 is unable to

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maintain herself and also petitioners No.2 to 4, they have no source of income, but the respondent is doing garage work and he is earning more than Rs.40,000/- per month. The respondent has totally neglected the petitioners without providing basic necessities to them. Hence, this petition.

5. After service of notice, the respondent has appeared before the court through his counsel and filed detailed statement of objections. The respondent in his statement of objections he has admitted his relationship with the petitioners and denied rest of the averments made out in the petition and inter alia contended that, after marriage the petitioner No.1 was residing with the respondent for a period of one year. The petitioner No.1 was having the habit of going to her parental house often and often without intimating the respondent. It is further contended that the petitioner No.1 has put restrictions to the respondent that he has to reside

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with the petitioner No.1 in her parental house. In this regard, the respondent has lived with the petitioner No.1 in the parental house of the petitioner No.1, at that time the petitioner No.1 colluded with her family members, assaulted the respondent and driven out the respondent from her parental house. It is further contended that the respondent has spent medical expenses of his mother-in-law when he was residing in the parental house of the petitioner No.1. It is further contended that the respondent has not neglected the petitioners, but the petitioner No.1 has driven out the respondent from her parental house without any reasons. It is further contended that the respondent is ready to get back the petitioners to his house to lead happy life. The respondent is doing garage work and he is getting meager income and hence, he has no sufficient means to provide maintenance to the petitioners as sought in the petition. For all these

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grounds, the respondent prays for to dismiss the petition filed by the petitioners with cost.

6. In order to prove the case of the petitioners, the petitioner No.1 herself examined as PW.1 and got marked Ex.P.1 to 3 and closed their side. On the other hand, in support his contention, the respondent himself examined as RW.1 and he has not got marked any documents on his behalf.

7. Heard arguments of both sides and perused the materials on record.

8. The points that arise for consideration are :

- 1) Whether the petitioners prove that, petitioner No.1 is the victim of domestic violence by the respondent?
- 2) Whether the petitioners are entitled for the relief of maintenance as sought for?
- 3) Whether the petitioners are entitled for separate residence as sought for?

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4) What Order?

9. My findings on the above points are as follows:-

Point No.1 : In the Affirmative,

Point No.2 : Partly Affirmative,

Point No.3 : In the Affirmative,

Point No.4 : As per the final order,

for the following:

REASONS

10. **POINT NO.1 AND 2** : These points are inter-related each other, to avoid repetition of facts, these points are taken up together for common discussion. Admittedly the petitioners have filed this petition u/s 12 of Protection of Women from Domestic Violence Act against the respondent praying to grant the relief of maintenance of Rs.10,000/- per month to the petitioner No.1 and Rs.5,000/- per month each to the petitioners No.2 to 4 from the respondent and also sought for to provide separate residence.

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11. I have already narrated in brief what is the case of the petitioners is and what is the defence of the respondent is. In order to prove the case of the petitioners, the petitioner No.1 herself filed evidence affidavit and examined as PW.1. The PW.1 in her chief examination she has reiterated the petition averments and in support their claim, she has got marked 3 documents as Ex.P.1 to 3. Ex.P.1 is the marriage invitation card. Ex.P.2 is the acknowledgment given by the Ajjampura Police. Ex.P.3 is also acknowledgment dated 26.07.2021 issued by Ajjampura Police.

12. In order to disprove the case of the petitioners, the respondent himself filed evidence affidavit and examined as RW.1. The RW.1 in his chief examination he has deposed entire averments made in the statement of objections. In support of his case, the respondent has not got marked any documents on his behalf.

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13. On perusal of oral and documentary evidence adduced by both parties and also other materials placed on record, it is undisputed fact that the petitioner No.1 is the wife of the respondent, petitioners No.2 to 4 are the children of petitioner No.1 and respondent. According to the petitioner No.1, after marriage the respondent has given mental and physical torture to the petitioner No.1 without any valid reasons and also abused her in filthy language stating that she is unable to give birth to male child and he will marry another lady to get the male child and he tried to kill the petitioner No.1 and he has also slapped on the cheek of petitioner No.2, the respondent has illicit relationship with one lady namely Yasmin Taj, thereafter the respondent has neglected the petitioners without providing basic necessities to them. The petitioner No.1 has borrowed loan from Sri Dharmasthala Swasahaya Sangha and Grameena Koota for purchasing the equipments to the garage, but he has not

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repaid the said amount to the petitioner No.1. In this regard, so many panchayaths were held, but it does not yield any fruitful result. Now the petitioners are residing at the parental house of the petitioner No.1.

14. On the other hand, the respondent has contended that the petitioner No.1 has cultivated the habit of going to her parental house often and often without intimating the respondent and thereafter she put restrictions to the respondent that he has to live with the petitioner No.1 in the house of her parents, the respondent has obliged the same and he has resided with the petitioner No.1 in her parental house and when he was residing in her mother-in-law's house, the petitioner No.1 colluded with her family members and assaulted the respondent and driven out him from their house. The respondent is ready to take back the petitioners

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with him, he has no source of income to provide maintenance as sought in the petition.

15. In the instant case, the petitioner No.1 has contended that the respondent has given mental and physical torture to the petitioners and in this regard, they have lodged complaint against the respondent before Ajjampura Police. In order to substantiate their contention, the PW.1 has mainly relied upon Ex.P.2 and 3 i.e., acknowledgments issued by Ajjampura Police, on perusal of the same it discloses that the petitioner No.1 has lodged the complaint against the respondent before the Ajjampura Police. As per Ex.P.3 the Ajjampura Police have issued acknowledgment to the petitioner No.1 on 26.07.2021, it shows that there is harassment given by the respondent to the petitioners. Moreover, the petitioner No.1 in the petition specifically pleaded that the respondent has abused the petitioner No.1 in filthy

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language that she will unable to give birth to male child and he will marry the another lady to get male child. It is very pertinent to note that, the learned counsel for the respondent while cross examining the PW.1 he has not put suggestion in this regard. The learned counsel for the respondent has vehemently argued that the petitioner No.1 herself has given mental and physical torture to the respondent. It is very pertinent to note that, in this regard, there is no whisper in the statement of objections filed by the respondent. It is well settled law that the parties cannot travel beyond their pleadings. Therefore the arguments canvassed by the learned counsel for the respondent is not helpful to the case of the respondent.

16. The respondent has taken specific contention that he is ready to take back the petitioners with him to lead happy life. But, after filing of this petition, the respondent has

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not made any attempt to take back the petitioners to his house. Mere self swearing statement of respondent itself is not sufficient to prove that he is ready to take back the petitioners with him. Except oral say of RW.1, he has not examined any other witnesses to substantiate his contention. In the absence of the same, the defence set up by the respondent is not tenable in the eye of law. The respondent has not disputed that the petitioners are residing in the parental house of the petitioner No.1 at Birur. It is not the case of the respondent, he is providing basic necessities to the petitioners. Admittedly the petitioners are residing at Birur in the house of parents of the petitioner No.1. Though the learned counsel for the respondent has lengthily cross examined PW.1, but he has not elicited anything from the mouth of PW.1 to substantiate the case of the respondent.

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17. It is significant to note that, normally no married woman would like to reside in a separate house without any reasons. If there was any dispute or domestic violence against her in her husband's house, then the situation arises to the petitioner No.1 to reside in her parental house or in a separate house. On perusal of the evidence and pleadings available on record, now petitioner No.1 and her children i.e., petitioners No.2 to 4 are residing in the parental house of the petitioner No.1 at Birur, the said fact is not disputed by the respondent.

18. On perusal of the materials placed on record, it clearly shows that in the present case on hand, the respondent has given mental, physical, economic and emotional abuse to the petitioner No.1 and not provided basic necessities to the petitioners. It is not the case of the respondent that he is providing the basic necessities to the

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petitioners. The aforesaid acts of the respondent shows that there is a physical abuse, mental abuse, emotional abuse and economical abuse which was caused by the respondent to the petitioner No.1 and there is domestic violence against the petitioner No.1 caused by the respondent. The aforesaid acts of the respondent comes under the purview of concept of the domestic violence as defined under Section 3 of the Protection of Women from Domestic Violence Act.

19. The petitioners have stated in their petition that the petitioner No.1 is unable to maintain herself and her children, hence, she needs Rs.10,000/- per month for herself and Rs.5,000/- each to the petitioners No.2 to 4 for their maintenance from the respondent. The respondent being the husband of petitioner No.1 and father of petitioners No.2 to 4, he is having responsibility to look after his wife and children. The petitioners have pleaded in their petition that the

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respondent is doing garage work at Bukkambudhi and he is earning more than Rs.40,000/- per month. But to substantiate the said contention, the petitioners have not produced any iota of document. The RW.1 in his cross examination he has admitted that the petitioners No.2 to 4 are studying. It is not the case of the respondent that he has borne the educational expenses of the petitioners No.2 to 4. The respondent admitted in his statement of objections that he is doing garage work and getting meager income and he has further contended that he has no sufficient source of income to provide maintenance to the petitioners as sought in the petition. At this juncture, I would like to refer the decision rendered by the Hon'ble Apex Court of India in between **Reema Salkan Vs, Sumer Singh Salkan**, the same is reported in **(2019) 12 SCC 303**. In the said judgment, the Hon'ble Supreme Court of India held that :

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“the plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications.

On perusal of ratio laid down in the aforesaid decision, it is applicable to the present case on hand. In this case also, the respondent has taken a contention that he has no sufficient source of income. The respondent has no sufficient source of income is not a ground to decline the maintenance to the petitioners.

20. By considering the contents of the petition, objections and evidence of both parties, it shows that there is a domestic dispute between the petitioner No.1 and respondent, and petitioner No.1 and her children are residing separately. Such circumstances, the respondent being the husband of the petitioner No.1 and father of petitioner No.2 to 4, it is the bounden duty of the respondent to look after his wife and children as per his status. Therefore, by considering

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the facts and circumstances of the case and cost of living of present days, opinion of this court is that, the petitioner No.1 needs minimum maintenance of Rs.2,000/- per month for herself and Rs.1,000/- each for the maintenance of petitioners No.2 to 4, and the respondent has to pay the said amount to the petitioners. Hence, view of this court is that, the petitioners are entitled for the relief of maintenance against the respondent for a sum of Rs.2,000/- per month to the petitioner No.1 and Rs.1,000/- each to the petitioners No.2 to 4 from the date of petition. For considering all these reasons, I answer Point No.1 in the Affirmative and Point No.2 in partly Affirmative.

21. **POINT NO.3** : In the present case, the petitioners have sought for separate residence. The PW.1 has deposed that at present the petitioners are residing at Birur. It is the duty of the respondent being the husband to bear expenses of

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the residence of the petitioner No.1 and also his children. Hence, by considering the present standard of living, opinion of this court is that, if the respondent is directed to pay a sum of Rs.2,000/- towards separate residence of the petitioners, it will meet the ends of justice. Hence, for the above discussed reasons, opinion of this court is that the petitioners have proved that they are entitled for separate residence order. Hence, for considering all these reasons, I answer Point No.3 in the Affirmative.

22. **POINT NO.4** : In view of my above findings, I proceed to pass the following :

ORDER

The petition filed by the petitioner seeking monetary relief and residential order under the provisions of Protection of Women from Domestic Violence Act, 2005 against the respondent is hereby partly allowed.

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The respondent is hereby directed to do not commit any domestic violence against the petitioner No.1.

The respondent is directed to pay maintenance of Rs.2,000/- per month to the petitioner No.1 and Rs.1,000/- per month to the petitioners No.2 to 4 each from the date of petition.

The respondent is also directed to pay the rent amount of Rs.2,000/- per month for separate residence to petitioners and also pay advance amount to the said rented house.

Office is directed to provide free copy of this order to both parties.

(Dictated to the Stenographer on computer, typed by her, corrected and then pronounced by me in the open court, on this the 2nd day of March 2023.)

sd/-

(SHIVAKUMAR.R.)
ADDL. CIVIL JUDGE AND
J.M.F.C., TARIKERE.

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**ANNEXURE**

List of witness examined for the petitioners:

PW.1 : Yasmin Taj

List of documents exhibited for the petitioners:-

Ex.P.1 : Marriage Invitation Card

Ex.P.2 & 3 : Acknowledgments

List of witnesses examined for the respondent:-

RW.1 : Phayaz Ahamed

List of documents exhibited for the respondent:-

- Nil -

sd/-

**ADDL. CIVIL JUDGE AND
J.M.F.C., TARIKERE.**