

KAHV300000072021



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC  
AT HANGAL**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Senior Civil Judge & JMFC.,  
Hangal.

**Dated this the 21<sup>st</sup> day of September, 2023.**

**Crl.Misc.No.4/2021**

Petitioner: Smt.Bibi Khutija @ Hajra,  
W/o Mahammad Mustaf,  
Aged 34 years, Household work,  
R/at Labour Colony, 7<sup>th</sup> Cross,  
Davanagere, Presently residing at  
Yeli Oni, Near Jamiya Masjeed, Hangal,  
Hangal Taluk, Haveri District.

**(By: Sri.S.A.Kulakarni, Advocate)**

-Vs-

Respondents: 1. Mahammad Mustaf, S/o R.Mahammad  
Hanifsab,  
2. Smt.Parijan, W/o R.Mahammad Hanifsab,  
3. Mahammad Allabhaksh, S/o R.Mahammad  
Hanifsab,

All are residing at Labour Colony,  
7<sup>th</sup> Cross, Davanagere.

**(By: Sri.H.Hanumantappa, Advocate)**

1. Provision under which the application is filed : Under Section 311 of Cr.P.C
2. Relief sought for : Reopen the case and to recall PW1 for the purpose of cross-examination
3. The date on which the application is filed : 01.07.2023
4. Number of the application : Nil
5. The date on which the objection is filed by the opponent : 03.07.2023
6. The date on which the orders passed on the said application : 20.09.2023

**ORDERS PASSED ON AN APPLICATION FILED UNDER SECTION 311 OF CR.P.C.**

The learned counsel for the respondents filed the present application under Section 311 of Cr.P.C to reopen the case and to recall PW1 for the purpose of cross-examination.

2. In the application it is stated that, the petitioner has filed the petition against the respondents seeking the reliefs under the provisions of Protection of Women From Domestic Violence Act. The petitioner was examined as PW1 and learned counsel for the respondent sought time to defer the cross-examination and this court rejected the prayer of learned counsel for the respondent and taken the cross-examination as nil and posted the case for arguments. In order to prove the case of the respondents it is just and necessary to recall PW1 and subject her for cross-examination. The respondents having

good merits on the case and if the case is proceeded without cross-examining PW1 then the respondents will be put to great hardship. On the other-hand no hardship will be caused to the other side. It is also stated that, the petitioner has sought time for settlement of the case and this court has provided several opportunity and both the petitioner and respondent were residing in a rented house at Davanagere from 16.12.2022 till today. Hence, prayed to allow the application.

3. On the other-hand the learned counsel for the petitioner filed the objection contending that, the application is not maintainable under law or on facts. It is also contended that, there was no mention in the order sheet that there was no cross-examination of PW1. The order sheet it goes to shows that, this Court has granted sufficient opportunity for the respondents to cross-examine PW1. Already the evidence of the petitioner was over and when the case was posted for judgment the case has been reopened. It is also contended that, on 13.01.2023 and 20.01.2023 the case has been posted for arguments. It is further contended that, the application is filed with an intention protract the proceedings. Hence, prayed to dismiss the application with costs.

4. Thereafter, heard arguments addressed by learned counsel for the petitioner and learned counsel for the respondents and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that

arise for consideration are as hereunder:

**POINTS**

1. Whether the respondents have made out sufficient grounds to reopen the case and to recall PW1 for the purpose of cross-examination?
2. What order?
5. The findings on the above points are as hereunder:  
Point No.1: In the Affirmative.  
Point No.2: As per the final order for the following:

**REASONS**

6. **Point No.1:** This is the petition presented before the court by The Protection Officer attached to the office of CDPO, Hangal and the petition is filed seeking the reliefs under the provisions of Protection of Women From Domestic Violence Act against the respondents. As per the petitioner she is the legally wedded wife of the 1<sup>st</sup> respondent and respondents No. 2 and 3 are her in-laws. It is the specific case of the petitioner that, the respondents have subjected her to mental and physical cruelty which led to filing a complaint against the respondents. Along with the petition the Domestic Incident Report is also called for and received by this Court. Thereafter, this Court issued notice to the respondents. Initially on 18.03.2021 the respondents appeared through their respective counsel. This Court provided sufficient opportunity for the respondents to file the objection but, they have not chosen to file the objection and on

13.08.2021 the objection has been taken nil and the case was posted for enquiry.

7. On 22.12.2021 the petitioner appeared and filed her chief-examination affidavit, examined as PW1 and got marked three documents. Since, the respondents have not chosen to file the objection the cross-examination of PW1 has been taken as nil and the case was posted for further evidence of the petitioner. The order sheet goes to show that, this Court provided six adjournments for leading further evidence of the petitioner and at last on 02.07.2022 this court taken the further evidence of petitioner as nil and also taken the respondents evidence taken nil since the respondents not filed the objection statement and posted the case for arguments. On 12.07.2022 the respondents counsel appeared before the Court and filed IA.No.1 under Section 126 of Cr.P.C., seeking permission to file the objection. On 23.08.2022 this court allowed the said application and received the objection statement of the respondents and posted the case for arguments. Both the petitioners have taken sufficient opportunity for addressing the arguments.

8. In the meantime on 20.09.2022 the petitioner was present and counsel for the petitioner filed application under Section 311 of Cr.P.C., which came to allowed on 29.09.2022 and PW1 was further chief-examined and the case was posted for cross-examination. On 15.10.2022 there was no

representation from the respondents side, as such the cross-examination of PW1 was taken as nil and the case was posted for respondents evidence. However, on 03.11.2022 the respondents and their counsel remained absent and this court taken the respondents evidence as nil and posted the case for arguments. Again on 14.11.2022 the respondents counsel filed application under Section 311 Cr.P.C., to reopen the case for the purpose of cross-examination and the said application came to be allowed on the same day with costs of Rs.500/- and this court posted the case for cross-examination of PW1.

9. On 17.11.2022 the parties have stated that, they are going to compromise the case. This Court provided four adjournments for the parties to settle the dispute and in spite of it the respondents have remained absent. On 13.01.2023 PW1 was present and the respondents as well as their counsel remained absent. As such once again the cross-examination of PW1 was taken as nil and posted the case for arguments. Again the parties have approached the court with request for settlement. Again this Court has provided seven adjournments for settlement and thereafter on 22.05.2023 the case was posted for arguments. Since the respondents have not chosen to appear before the Court this Court has taken their arguments as not addressed and posted the case for judgment by 03.07.2023.

10. On 27.06.2023 the case has been advanced by the learned counsel for the respondents with a request for permitting the respondent to settle the case. On the said date the petitioner was present and on enquiry she has stated that there is no such compromise. Hence, the case was posted for judgment. On 03.07.2023 an application under Section 311 of Cr.P.C., was filed and by way of filing said application again the respondents seeking permission of this court to reopen the case and to recall PW1 for the purpose of subjecting her for cross-examination. The above discussion clearly goes to show that, this court has provided sufficient opportunity for the respondents to cross-examine PW1. On two occasions the case has been reopened by the respondent and in spite of presence of the petitioner, the respondents not chosen to cross-examine her. Admittedly, on several occasions there was proposal for compromise between the parties but, it was not reported. Admittedly, the petition is filed under Section 12 of Protection of Women From Domestic Violence Act and the petition involves the family life of the petitioner as well as the 1<sup>st</sup> respondent. Admittedly, if an opportunity is not given to the respondents to cross-examine PW1 the right of the respondents to cross-examine PW1 will be curtailed which will prejudice the right of the respondents. Therefore, as per the principles of natural justice it is just and necessary to provide an opportunity for the respondents to cross-examine PW1 which will enable this

Court to come to a just conclusion. If the petitioner is subjected for cross-examination, no hardship is going to be caused to her. Hence, this Court comes to the conclusion that, the respondents have made out sufficient grounds to reopen the case and to recall PW1 for the purpose of cross-examination. The delay caused by the respondents could be compensated by imposing costs. Accordingly, point No.1 is answered in the affirmative.

11. **Point No.2:** In view of the reasons discussed above, this court proceeds to pass the following:

**ORDER**

The application filed by the respondents under Section 311 of Cr.P.C is hereby allowed with costs of Rs.750/-.

Accordingly, the case is reopened and PW1 is recalled for the purpose of cross-examination subject to payment of costs.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 21<sup>st</sup> day of September, 2023.)

Sd/-  
**(Anitha)**  
Senior Civil Judge and JMFC.,  
Hangal.