

IN THE COURT OF THE CIVIL JUDGE & JMFC.,
PONNAMPET.

Present:- **Sri.Girigowda B.,**
Civil Judge and J.M.F.C.,
Ponnampet.

Dated, the 20th day of December 2019.
Cr.M.C.No.07/2018.

Petitioner: Smt.M.N.Sajida Banu,
W/o: Abdul Wajeed K.M,
Age: 35 years,
R/o: Achappa Layout,
Gonikoppal, Virajpet Taluk.

(By **Sri.K.B.Sanjeev.**, Advocate)

- V/s -

Respondent: Sri.K.M.Abdul Wajeed,
S/o: Late Mohammed,
R/o: No.T2 Block No.12,
Ambidekar Nag Sathagalli,
Badavane, Mysore.

(Exparte)

ORDER

The Petitioner filed petition under Section.12 of the Protection of Women from Domestic Violence Act, 2005 praying for several reliefs under the Act.

2. The case of the Petitioner in brief is as follows:

The petitioner is the legally wedded wife of the respondent. The marriage between the petitioner and respondent was solemnized on 08.05.2016 at petitioner's cousins house at Shatinagar, Mysore as per the Muslim customs and rituals prevailed in their community, the Nikha was held in Durgahi Mosque in Mandi Mohalla, Mysore. The marriage of the petitioner was consummated as per demands of the respondent, the petitioner mother has paid and fulfilled all the demands of the respondents like household things worth about 1,00,000/-, further gave 1 gold ring of 10 grams, gold chain of 15 grams, 1 gold bracelet of 15 grams and valuable dresses worth Rs.30,000/- in all they have spent Rs.5,00,000/- towards marriage expenses. The petitioner is the 2nd wife of the respondent as there was no children out of 1st marriage, the respondent married the petitioner for successor. The life was going smooth for couple of months, by that time the respondent started to pledge her gold jewels for the necessity of 1st wife and also presented petitioner gold jewels to 1st wife. As the gold jewels finished the respondent started neglect the petitioner and also to ill-treat her. 1st wife of the respondent was not able to tolerate the close relationship between the petitioner and respondent and hence she also started to instigate the respondent to harass

and neglect the petitioner. The respondent started to torture petitioner mentally and physically.

3. On 15.11.2016 the respondent assaulted the petitioner by hand and pushed her out of the house. The father of the petitioner is a coolie and mother is housewife, the petitioner is totally depending on her parents. The respondent is not taking care of her properly and he did not have any marital relationship. The petitioner presently residing in a leased house by paying an amount of Rs.50,000/-. The respondent is working as Team manager in Kotak Mahindra Bank. He is earning more than Rs.30,000/- per month and incentives above Rs.25,000/-. The respondent is possessing movable and immovable properties and have a source of monthly rents from the same to the extent of Rs.40,000/-. Hence prayed to grant the relief's as prayed of.

4. In spite of due service of notice to respondent, he remained absent hence placed ex parte.

5. The Petitioner examined herself as P.W.1 and one witness as PW-2 in support of her petition and got marked documents Ex.P.1 to Ex.P.10.

6. Heard counsel for petitioner.

7. The points that arise for consideration are:

- i) Whether the Petitioner has made out a case of Domestic Violence against her by the Respondent?
- ii) Whether the Petitioner proves that she is entitled for all the reliefs, as claimed in petition from the Respondent?
- iii) What order?

8. My findings on the above points are:

Point No. 1 : In the Affirmative

Point No. 2 : Partly In the Affirmative

Point No. 3 : As per final order

for the following

REASONS

Point No.1:-

9. I have carefully perused the oral and documentary evidence on record. In order to prove her case the petitioner examined herself as PW1 and deposed that she is second wife of respondent, initially their marriage life was cordial later respondent started ill-treating, manhandling and assaulting the petitioner. In support of her case she has produced CDPO report at Ex.P.-1, on careful perusal of the report it disclose that petitioner was subjected to ill-

treatment by the respondent demanding dowry and also abused the petitioner verbally and caused harassment to petitioner by taking all her jewels and other belongings of petitioner. The FIR copy produced at Ex.P.2 disclose that the case has been registered against the respondent in Crime no.36/17 before Women Police Station at Mysore for the offence P/U/Sec.498A, 342, 114 of IPC and under Sec. 3 & 4 of Dowry Prohibition Act. The petitioner has also produced photograph to show that the respondent assaulted her. All the documents produced by the petitioner goes to show that prior to filing this petition on several occasions petitioner was ill treated, abused, assaulted and subjected to harassment by the respondent demanding to bring car from petitioner parents. The petitioner has also produced the certified copy of order sheet in O.S.No.52/17 on the file of Family Court, Mysore and petition copy filed by the respondent seeking restitution of conjugal rights, but there is no material to show about case status filed by the respondent against the petitioner. The respondent has not produced any material to show that he has got restitution of conjugal rights order in his favour. In the complaint registered before Mahila Police Station, the petitioner has alleged that her husband demanding to bring dowry ill treated her for which negotiations talks were held, elders advised the respondent to mend his behaviour but the respondent never changed his attitude and continued his ill

act and driven out the petitioner from the matrimonial house. Hence petitioner was forced to take shelter at petitioner parents house.

10. In the present case, though the Respondent was served with the notice he remained absent, neither cross examined PW1 nor led his evidence. As such evidence of P.W.1 is remained unchallenged and stands un-rebutted. The oral evidence of P.W.1 coupled with the documentary evidence fully corroborated the version of PW1. Under such circumstances, when there is absolutely no rebuttal materials from the respondent I am inclined to accept the case put forward by the petitioners. Therefore, at this juncture by careful analysis of the oral and documentary evidence placed on record by the Petitioners, it can be reasonably presumed that, the petitioner No.1 was humiliated and subjected to cruelty by the Respondent.

11. On careful perusal of evidence of PW1 there is no reason to disbelieve her version. There has to be a strong reason to leave the husband. Under Section.114 of Indian Evidence Act the court can presume that no woman leaves company of her husband unless for compelling reasons and after such a long stay a woman can't take such a drastic decision without strong reasons. The respondent hasn't led any evidence in this regard to discharge his onus of proof.

12. The conduct of the respondent is also relevant here, the Respondent not only denied maintenance to his wife but also demanded to bring dowry. Further, failure to maintain the wife amounts to “Economic Abuse” as per Section.3 of PWDV Act. Hence the version of petitioner appears to be more probable. For these reasons, I hold that the Petitioner has made out a clear case of Domestic Violence. Accordingly, I answer Point No.1 in the **Affirmative**.

Point No. 2:-

13. The Petitioner deposed that she requires Rs.20,000/- for a month. I have carefully perused the materials on record, the petitioner has summoned the salary certificate of respondent and examined PW-2, the Manager of Kotak Mahindra Life Insurance Company. PW-2 deposed that the respondent is working in their company as agency partner since 4 years and as per Ex.P.9 & 10 the respondent has got monthly salary. On perusal of Ex.P.9 and 10, payslip for the month of September and October 2019 disclose that the respondent is getting annual net salary of Rs.2,26,526/-. If the said income is taken into consideration the respondent would receive average net salary of Rs.20,000/- per month. The respondent has not denied the said fact by filing objections. Hence in view of legal dictum held in Saravanan Singh vs State of Punjab AIR 2002 SC 3652, the version of petitioner is to be accepted. The respondent hasn't led any evidence in his defense, hence the oral evidence of P.W.1 can't be brushed aside in the absence of evidence to the contrary. Moreover Section 106 of the Indian Evidence Act specifically casts the burden of proving the income of the husband on the husband himself since the relevant facts relating to his income cannot be within the specific knowledge of the wife.

14. In the present case, evidence of P.W.1 is remained unchallenged and stands un-rebutted. There is no contra evidence lead by Respondent. The oral evidence of P.W.1 coupled with the documentary evidence fully corroborated the version of PW1. Under such circumstances, when there is absolutely no rebuttal materials from the respondent I am inclined to accept the case put forward by the petitioners. Therefore, at this juncture by careful analysis of the oral and documentary evidence placed on record by the Petitioner, the alleged financial abuse can be safely presumed to be true.

15. In *Jabsir Kaur Sehgal v. District Judge Dehradun & Ors* (1997) 7 SCC 7 Hon'ble Supreme Court held

“The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate.”

16. In *Shamima Farooqui Vs Shahid Khan* AIR 2015 SC 2025 Hon'ble Supreme Court held

“..Be it clarified that sustenance does not mean and can never allow to mean a mere survival. A woman, who is constrained to leave the marital home, should

not be allowed to feel that she has fallen from grace and move hither and thither arranging for sustenance. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. And that is where the status and strata of the husband comes into play and that is where the legal obligation of the husband becomes a prominent one. As long as the wife is held entitled to grant of maintenance within the parameters of Section 125 CrPC, it has to be adequate so that she can live with dignity as she would have lived in her matrimonial home. She cannot be compelled to become a destitute or a beggar.”

17. I have considered the above the above legal principles. The respondent has an obligation to maintain the petitioners as per his family standard and not just mere survival. Domestic Violence Act being Social Welfare legislation enacted with an aim to protect the rights of the women.. As the marriage between the parties is still subsisting, it is the duty of the husband to maintain his wife and children properly.

18. Regarding the burden casted upon the husband to prove the ability of wife to maintain herself the Hon’ble Apex Court in *Rajathi v. C. Ganesan*, (1999) 6 SCC 326 held as follows:

“7. The words “unable to maintain herself” would mean that means available to the deserted wife while she was living with her husband and would not take within itself the efforts made by the wife after the desertion to survive somehow. Section 125 is enacted on the premise that it is the obligation of the husband

to maintain his wife, children and parents. It will, therefore, be for him to show that he has no sufficient means to discharge his obligation and that he did not neglect or refuse to maintain them or any one of them..... The statement of the wife that she was unable to maintain herself would be enough and it would be for the husband to prove otherwise.”

In the present case the petitioner a house wife and dedicated her whole time for the well being of the family members. After the separation the petitioner is claiming herself to be unable to maintain herself, the respondent hasn't placed any material to disprove her contention. Hence in view of the above judgment the respondent has failed to discharge his burden and the court can safely presume the version of the petitioner as true.

19. In view of the above reasoning and judgment this court holds that the petitioner is partly entitled to the reliefs claimed. However, as far as Petitioner prayer for an order to restrain the respondent from alienating movable and immovable properties she has not produced any document to show what are the properties owned by respondent so as to restrain him from creating encumbrance, there is no cogent evidence lead in that direction and hence the same can't be allowed. Hence this court holds Point No. 2 partly in the Affirmative.

Point No.3:-

20. In view of my findings to Points No. 1 & 2, I proceed to pass the following:

ORDER

The petition filed by the Petitioners under Sec.12 of P.W.D.V.A 2005 is allowed in part.

The Petitioner is entitled to monthly maintenance of Rs.10,000/- [Ten Thousand only] towards her maintenance, with yearly enhancement of 5% on the maintenance of preceding year, to beat the inflation. The Respondent shall pay the monthly maintenance every month before 10th day, with arrears from the date of this petition.

Respondent shall pay Rs.5,000/- [Five Thousand Only] as cost of this petition to Petitioners.

Acting under Sec.22 of P.W.D.V.A 2005 the Respondent is directed to pay Rs.1,00,000/- [Fifty Thousand only] as compensation.

Acting under Sec.18 of P.W.D.V.A 2005 the Respondent is hereby restrained from committing any act of domestic violence against the Petitioner.

Office to send copies of this order to the Protection Officer and the SHO of the concerned Police Station, for proper execution of this order.

Furnish free copy of this order to the Parties.

(Dictated directly on my computer, after clerical additions by the stenographer, corrected and pronounced by me in the Open Court on this the 20th December 2019)

(Girigowda B.,)
Civil Judge and J.M.F.C.
Ponnampet.

ANNEXURE

1) List of Witnesses examined on behalf of the prosecution:-

PW-1 : Smt.Sajida Banu,
PW-2 : Mahesh Gupta,

2) List of documents marked on behalf of prosecution:-

Ex.P.1 : CDPO Report,
Ex.P.2 : Copy of FIR,
Ex.P.3 : Marriage Invitation,
Ex.P.4 : Marriage Photo,
Ex.P.5 : Photo,
Ex.P.6 : Copy of Nikha Nama,
Ex.P.7 : Certified copy of order sheet in
O.S.No.51/19,
Ex.P.8 : Certified copy of plaint in
O.S.No.51/19,
Ex.P.9&10: Salary details.

3) List of witness examined on behalf of Respondent:-

-Nil-

4) List of documents marked on behalf of Respondent:-

-Nil-

sd/-
Civil Judge and J.M.F.C.
Ponnampet.