

KAMS710007862020



Crl.Misc./326/2020

**IN THE COURT OF THE ADDL.CIVIL JUDGE & JMFC.,
AT T.NARASIPURA**

: PRESENT :

**Smt. Anitha Kumarie S, B.Sc., LL.M.,
ADDL. CIVIL JUDGE & JMFC,
T.NARASIPURA**

DATED THIS THE 20th DAY OF JULY, 2021

PETITIONER :-

Smt.Roopa D/o Huchhegowda,
W/o Mahadeva,
Aged about 25 years,
R/at: Madapura village,
Talakadu Hobli,
T.Narasipura Taluk.

(By K.S.S., Advocate)

-v/s-

RESPONDENTS :-

1. Mahadeva
S/o Basavegowda,
Aged about 30 years,

2. Basamma
W/o Basavegowda,
Aged about 50 years,

3. Sundramma
W/o Girish,
Aged about 25 years,

All are R/at: Kalabasavana
hundi village, Talakadu
Hobli, T.Narasipura Taluk.

(By Sri.S.R., Advocate)

**ORDER ON PETITION UNDER SECTION 12 OF PROTECTION
OF WOMEN FROM DOMESTIC VIOLENCE ACT**

The petitioner/applicant by name Smt.Roopa filed this application seeking an order to direct the respondent to a) pay monetary relief of Rs.8,000/- per month under section 20 of the protection of women from domestic violence Act 2005 b) pass protection order under section 18 of the Act c) pass residential order under section 19 of the Act d)pass order for compensation for mental torture and distress and to protect the interest of the applicant under the provisions of the Act in the interest of justice and equity.

2. The averments of the petition in brief as under:-

That the petitioner marriage with the respondent No.1 solemnized on 17-05-2013. During marriage the parents of the petitioner have given cash of Rs,50,000/- and gold ring of 5 grams and a watch. After their marriage they lived together happily for about 3 months. After that the respondent No.2 along with other respondents started subjecting the petitioner to mental and physical cruelty by demanding additional dowry in the form of money. As the days passed by the petitioner got conceived since her mother is age old person she begotten the child at her sister's house. Even, then they continued their torture. Thereafter, once again she got pregnant, when she went to hospital for the check-up and returned home her room door was break opened, when she questioned the same with the respondents they started fighting with her and the mother of first respondent has poured kerosene and blazed fire on the petitioner, at that time she and first respondent screamed for help then the neighbors came and set-off the fire and admitted her to hospital. After that the respondents have never turned up to the hospital. Then her father took her to his house at Madapura. Later a compliant was also lodged against the respondents before the Talakadu Police station. Due to the said incident her body sustained burnt injuries doctor advised for plastic surgery but she was financially not sound

enough and her pregnancy got terminated due to the said incident .therefore she i s unable to bear the medical expenses and to lead her livelihood without financial assistance hence prayed to order for the reliefs as claimed in the petition. The respondent No.1 is having income of Rs.40,000/-per month. The family has landed properties having agricultural income also. Hence, prayed for relief's as prayed in the application.

3. After service of notice, the respondents have not put in their appearance before this court hence they are placed exparte.

4. In support of the petitioner, the petitioner examined herself as PW.1 and Ex.P.1 to 12 were marked. Cross examination was taken as nil.

5. Heard and perused the materials on record.

6. The following points are arise for my consideration:

1. Whether the petitioner is entitled for monetary relief of Rs.8,000/- per month as prayed in the petition?

2. Whether the petitioner is entitled for protection order against the respondents restraining them

from committing any act of Domestic Violence as per section 18 of the Act?

3. *Whether the petitioner is entitled for the Residence order as per section 19 of the Domestic Violence Act?*

4. *Whether the petitioner is entitled for the compensation for mental torture and distress order under section 22 of the Domestic Violence Act?*

5. *What order?*

7. My answer to the above points are as follows:

Point No.1	:-	Partly in the <i>Affirmative.</i>
Point No.2	:-	<i>In the Negative</i>
Point No.3	:-	<i>In the Affirmative</i>
Point No.4	:-	<i>In the Affirmative</i>
Point No.5	:-	As per final order for the following reasons.

:: REASONS ::

8. POINT NO.1 :-

The contention of the petitioner's has already stated above while narrating the facts of their case, in order to avoid the repetition of facts, same is not reiterated.

The applicant has claimed a sum of Rs.8,000/- per month as maintenance. As per the report of the protection officer the applicant requires Rs.8,000/-per month for food, cloths, medicine and other house hold expenses. The marriage between the applicant and the respondent No.1 is not in dispute. The documents produced by the petitioner is also not in dispute. Now to consider the relief claimed by the applicant, this court has to see what section 12 of the D.V.Act contemplates. As per section 12 of the Act, The Magistrate can grant one or more reliefs provided under the Act. The relevant portion of Section 20(1) reads as follows:-

“While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited, -

d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the code of Criminal Procedure, 1973 or any other law for the time being in force.”

9. Therefore, keeping in view the above mentioned provision of law this court proceeds to consider whether the applicant is entitled for the relief as claimed in point No.1. The evidence of the petitioner shows that the petitioner and

the respondent No.1 are residing separately. From the oral evidence of petitioner it is clear that she is not willing to go where the respondent is living. But though summons served on them they did not appeared before this court and filed their objections. It seems that the respondent No.1 has not paid and is not paying any amount to the petitioner as maintenance. The respondent No.1 being the husband of the petitioner he is duty bound to maintain the petitioner. Such being the case this court is of the opinion that the petitioner is entitled for monthly maintenance. But the documents produced by the petitioner does not throw light on the exact source of income of the respondent No.1. Even the petitioner who is examined as PW1 she has not stated about the income of the respondent No.1. She has simply stated that he is having income of rs.40,000/- per month. Again no documents are forthcoming to show the income of the respondent.

10. Taking into the above facts and circumstances of the present case this Court is of the opinion that a monthly maintenance of Rs.6,000/- would be reasonable in the absence of proof of income of the respondent. Accordingly, point No.1 is answered ***Partly in the Affirmative.***

11. **Point No.2:-**

The petitioner has prayed for a protection order U/sec.18 of D.V.Act, the said section contemplates as under;

“ 18. Protection Orders-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being Prima-facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented to be the aggrieved person;

(d) attempting to communicate in any form,whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or band accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her Stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate.

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.”

12. From the perusal of the entire materials on record and evidence of the petitioner it is clear that the petitioner

and the respondent are living separately for the last 3 years. As per the evidence of PW1 herself she lived with her husband for a period of 4 years. On perusal of Ex.P-4 to 11 it prima-facie shows that there was matrimonial dispute by the respondents. Hence at present they are not residing in a shared house hold. Hence, the allegations of the applicant attract the grounds provided under section 18 of the Act. Accordingly, Point No.2 is answered in the ***Affirmative***.

13. Point No.3:-

The petitioner has claimed for the order of residence. The marriage of the petitioner and the respondent had taken place on 17-5-2013. According to the petitioner herself she stayed along with her husband for 4 years after the marriage . After that incident he never turned to her, never performed any marital obligation . It seems that after the incident of fire she started living separately such being the case she has filed the present petition.

14. The Act provides that the residence order should be given in the shared house hold. What is shared house hold is defined under section 2(s) of the Act. Shared house hold means a house hold where the person aggrieved lives or at any stage has lived in a domestic relationship along with the

husband. In the present case the petitioner resided for 4 years along with the respondent after her marriage, after the domestic violence had taken place she started to live separately. Based on the oral and documentary evidence of the petitioner the same was not rebutted by the respondents side this court is of the opinion that the petitioner has proved about the domestic violence committed by the respondents against her . Accordingly Point No.3 is answered in the Affirmative.

15. Point No.4:-

The petitioner has claimed compensation for the mental distress caused by the respondents .On perusal of the documents it appears that the petitioner has undergone physical and mental torture caused by the respondents therefore she is definitely entitled for the compensation. Hence, point N.4 is answered in the ***Affirmative***.

16. Point No.5:-

In view of the above reason and discussion, I proceed to pass the following:

ORDER

*The petition filed by the petitioner U/sec.12 of P.W.D.V. Act-2005, is hereby **Partly allowed.***

The Respondent No.1 is hereby directed to pay maintenance amount of Rs.6,000/- p.m., to the Petitioner to meet her household expenses U/sec.20 of the D.V.Act.

The petitioner is entitled for the protection order U/sec.18 of the D.V.Act.

The petitioner is entitled for the residential order or the Respondent No.1 has to pay an amount of Rs.3,000/-p.m., in alternative U/sec.19 of the D.V.Act.

The Respondent No.1 is hereby directed to pay sum of Rs.1,00,000/- to the Petitioner as compensation and damages for mental torture and emotional distress caused to her U/sec.22 of the D.V.Act.

Send the copy of this order to the petitioner and the protection officer.

[Dictated to the Stenographer on computer, typed by her, revised and corrected by me and then pronounced in the Open Court on 20.07.2021.]

(Anitha Kumarie S)
Addl.Civil Judge & JMFC.,
T.Narasipura.

A N N E X U R E

LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONER:-

PW.1: Smt.Roopa

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONER:-

Ex.P.1:	Wedding card
Ex.P.2:	Original lagna patrike
Ex.P.3:	Birther certificate
Ex.P.4:	Discharge Summary
Ex.P.5 to 9:	Photos
Ex.P.10:	C.D.
Ex.P.11:	FIR copy
Ex.P.12:	C.D.P.O. complaint copy

LIST OF WITNESS EXAMINED ON BEHALF OF THE RESPONDENTS:-

.....NIL.....

LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENTS:-

.....NIL.....

Addl.Civil Judge & JMFC.,
T.Narasipura.



