

IN THE COURT OF THE JUDICIAL MAGISTRATE OF THE IST CLASS- II, HARIPAD

Present :- Smt.Sreelakshmi C., Judicial Magistrate of the Ist Class-II

Saturday, the 30th day of September, 2023/8th Aswina, 1945

M.C.No.1/2020

(Filed on 01..01..2020)

- Petitioners : 1. Arathi, aged 25, W/o.Manu,
"Arathi", Pathiyoor Padinjare Muri,
Pathiyoor Village. From
Pushpamangalam Veedu,
Valanja Nadakkavu Muri, Krishnapuram Village.
2. Arav, aged 3½, S/o.Manu, ...do...
(Minor petitioner represented by 1st petitioner-mother)
(By Adv.Sri.R.Aravindakshan)
- Respondent : 1. Manu G., aged 34, S/o.Gopalakrishnan,
Pushpamangalam House,
Valanja Nadakkavu Muri,
Krishnapuram Village.
2. Pushpa, aged 60, W/o.Gopalakrishnan, ...do...
(By Adv.Sri.Anil Babu)
- Petition : U/s.12 of the Protection of Women from Domestic
Violence Act, 2005
- Sentence/Order : Petition is allowed in part.

This petition was finally heard on 30..09..2023 and the Court on the same day passed the following :

ORDER

This is a petition filed under Section 12 of the Protection of Women From Domestic Violence Act, 2005 (hereinafter referred to as 'the Act').

2. The case of the petitioners, in nut-shell, are as follows:

1st respondent is the husband of the 1st petitioner and father of the 2nd petitioner. 2nd respondent is the mother of 1st respondent. The case of the petitioners is that the marriage between the 1st petitioner and 1st respondent was solemnized on 02..09..2013 according to the Hindu religious rites and ceremonies at Pathiyoor Devi Temple. At the time of wedding engagement, father of 1st petitioner entrusted the respondent ₹5,00,000/- in view of securing the future welfare of 1st petitioner. The 1st respondent utilised the said amount for clearing his debt and his personal use. At the time of marriage, the 1st petitioner's parents gifted her 85 sovereigns of gold ornaments. Apart from this, a gold chain weighing 4½ sovereigns was gifted to 1st respondent on the wedding occasion by her parents. Moreover, a bangle having 2½ sovereigns was gifted to 2nd respondent by the 1st petitioner. At the time of 'adukkala kanal' ceremony, gold coin having 4 sovereigns and other household articles were also gifted to the respondents. After marriage, 1st petitioner and 1st respondent lived together as husband and wife at the matrimonial house. The respondents took all the gold ornaments of the 1st petitioner except thali chain, wedding ring and ear rings in their custody. The 1st respondent is working in Military service. After one month of marriage he returned to his place of work and came back on December 2013 during his leave. While so, the respondents sold out 12½ sovereigns of gold ornaments for clearing off their debts by promising to return the same in one year. The respondents tortured the 1st petitioner saying that the money and gold ornaments given to her at the time of marriage is very

less. During the first wedding anniversary of 1st petitioner and 1st respondent, the 1st petitioner's parents gifted her with diamond earrings and a gold ring to 1st respondent. During the period when 1st respondent was not in station, the 1st petitioner was never allowed to go to her parental house nor to contact her parents through phone. When the 1st respondent came to his native place on leave, the respondents demanded the petitioner to sell out the remaining gold ornaments, the 1st petitioner did not heed to that demand. The respondents brutally manhandled the 1st petitioner on that occasion in demand of more dowry. In the month of April, 2015, 1st petitioner went along with 1st respondent to his place of employment at Jammu Kashmir. During that period also, the 1st respondent harassed the 1st petitioner imputing her chastity and demanded more gold ornaments and dowry. Even during her pregnancy stage, 1st petitioner was brutally assaulted by the 1st respondent and she was subjected to physical and mental torture. A child was prematurely born on 21.03.2016. About 18 sovereigns of gold ornaments which were received during the naming ceremony of 2nd petitioner was misappropriated by the 1st respondent for his personal needs. The 1st respondent neither bothered to take care of his child, who is suffering from serious Haemophilia by birth. The 2nd petitioner needs regular treatment for life and costly medicines for his survival. The treatment expenses are very high. Even after knowing the fact of his child's illness, the 1st respondent used to come home in an intoxicated manner and assaulted the 1st petitioner. The 1st respondent has not fulfilled his obligations as the husband of the 1st petitioner and father of the 2nd petitioner. The 1st respondent is

earning a monthly income above ₹60,000/-.Hence the petitioners claim for protection order against the respondents, to prevent them from taking forcible custody of the 2nd petitioner and to direct the 1st respondent to pay ₹30,000/- for 2nd petitioner and ₹10,000/- for 1st petitioner as monthly maintenance.

3. The respondents filed objection stating as follows:

The petition is not maintainable either in law or on facts. The petition is filed without any bonafides only to harass the respondents. The respondents have never mentally or physically harassed the 1st petitioner and he is providing maintenance to both 1st petitioner and 2nd petitioner. The allegation of entrustment of cash and gold etc. are not fully correct. They have neither demanded for gold ornaments nor money from the 1st petitioner. The 1st respondent never harassed the 1st petitioner either mentally or physically demanding more dowry. On the other hand, the 1st petitioner harassed the 1st respondent in front of her relatives, friends stating that the 1st respondent is not fair as of her and he has less education. The allegation of harassment in the name of more dowry is not correct. The 1st petitioner was in possession and absolute custody of all her gold ornaments. The alleged incident at Jammu Kashmir was false and hence denied. If such an incident happens at his place of employment, certainly the officials will interfere and the 1st respondent would be booked for the alleged harassment. The 1st respondent has never denied in providing maintenance for the child and that the allegation raised against him is an absolute falsehood. It is true that 2nd petitioner is affected with Hemophilia. However, it is not required to take

medicines in every month. The medicine is used only if any wound happened to the child. Moreover the medicine is given to child in free of cost by the State Government and army. It is further alleged that the 1st petitioner is working in a private firm and is conducting private chitty also. She is earning ₹2,50,000/- per year and she has sufficient income to maintain herself. Therefore, there is no bonafides in the petition. Hence the petition has to be dismissed.

4. The points that arise for determination are;

1. Whether the 1st petitioner was subjected to any kind of domestic violence in order to entitle her for the protection under the Act?
2. Are the petitioners entitled for protection order, as prayed for?
3. Are the petitioners entitled for monthly maintenance, as claimed for?
4. Reliefs and costs.

5. From the side of the petitioners, 1st petitioner was examined as PW1 and Ext.P1 to P3 were marked. From side of respondents, Exts.D1 was marked subject to objection. No oral evidence was adduced on the side of respondents.

6. Heard the learned counsel for petitioners and respondents.

7. **Point No.1 and 2** :- For the sake of convenience in discussion and for avoiding repetition of facts and evidence, these points are discussed together.

8. The 1st petitioner was examined as PW1. She filed affidavit in lieu of her examination in chief. The 1st respondent is her husband and 2nd respondent is her

mother in law. PW1 deposed that the marriage between 1st respondent and herself was solemnized on 02..09..2013 at Pathiyoor Devi Temple, in accordance with Hindu rites and customs. The marriage between 1st petitioner and 1st respondent is admitted. According to her, she was subjected to physical and mental harassment at her matrimonial house and that the respondents demanded more dowry in connection with the marriage from her parents. There are many fold allegations that the respondents subjected the 1st petitioner to physical and mental harassment in demand of gold ornaments and money which itself comes within the purview of domestic violence under the Protection of Women from Domestic Violence Act.

9. On going through the evidence adduced by PW1, it is evident that 1st respondent was her husband. Then there was a domestic relationship within the meaning of Section 2 of the Act. There are also averments to the effect that the 1st petitioner was constantly subjected to physical and mental harassment and hence she can be considered as an aggrieved person coming within the ambit of Section 2(a) of the Act. Now Section 3 defines the word “domestic violence” which includes mental abuse/physical abuse/emotional abuse/sexual harassment, economic abuse, etc.

10. The petitioners herein seek protection order to shield themselves from the alleged physical and mental harassments from the side of the Respondents. On the other hand, the Respondents had denied all the allegations of harassment and asserted that they had never assaulted her. However, from the argumentation of the parties would by itself speak in gravity of the strained relationship between the parties. It is

pertinent to note that the Respondents in their contention have gone to the extent of alleging extra marital affair for 1st petitioner. However, respondents failed to substantiate the said allegations. In the absence of any material on the board in that respect, it has to be rounded off that the said allegation was a baseless one. This by itself would reveal that 1st petitioner was subjected to mental harassment.

11. In regard to the physical violence no medical record or a complaint lodged immediately after any of alleged incidents could be furnished by the 1st Petitioner. But that by itself does not mean that there was no domestic violence at all. “Domestic violence” has been defined in Section 3 of the Act, which includes economic abuse as defined in Explanation 1 (iv) to Section 3, as:

“Economic abuse which means deprivation of all or any economic or financial resources, to which the aggrieved person is entitled under any law or custom, whether payable under an order of a Court or otherwise, or which the aggrieved person requires out of necessity, including but not limited to household necessities for the aggrieved person, or her children.”

On perusal of records it is found that this court as per the order in CMP No.10/2020 dated 03.12.2021 had directed the 1st Respondent to pay ₹10,000/- as monthly maintenance to the petitioners. Admittedly huge sums are due as arrears on that count. This would go to show that the petitioners are continuously being subjected to economic abuse which would squarely come within the ambit of domestic violence as provided under Section 3 of the Act .This attitude of the respondents in not valuing the

order of this Court will establish the fact that the petitioners are still being subjected to economic abuse and thus domestic violence, despite an affirmative order from this Court. Therefore it is necessary to grant protection order in favour of petitioners.

12. So also, though respondent has contended that he is taking care of the medical expenses of 2nd petitioner, who is suffering from serious Haemophilia by birth. However no single document is produced to prove the said fact. Furthermore, during cross examination of PW1, she has stated that the treatment of 2nd petitioner is covered under the scheme of Kerala Government and not in Army hospital. Though respondent has contended that the medical expenses are met by him, no evidence is produced to substantiate the same. So also, 1st respondent is working in Military and is employed in Delhi and the 2nd petitioner has been residing with the 1st petitioner since his birth. Thus for the benefit of the child there shall be an order to prevent such forcible taking of the 2nd petitioner out of the custody of the 1st petitioner. For the aforesaid reasons, the petitioners are very much entitled in law for the protection orders, as sought for. Hence points No.1 and 2 are found in favour of petitioners.

13. **Point No.3** :- The next question to be answered is with respect to the claim of maintenance. PW1 deposed that all her gold ornaments and money given by her parents for her future welfare were misappropriated by the respondents in accordance with their whims and fancies. Under the head of maintenance, the petitioners claimed ₹30,000/- per month for medical expenses of 2nd petitioner and ₹10,000/- for 1st petitioner.

Section 20 of the Act entitles the Petitioners to seek monetary relief from the 1st respondent. It reads as follows:

“20. Monetary reliefs -(1) 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 domestic violence and such relief may include, but is not limited to,-

- (a) the loss of earnings;*
- (b) the medical expenses;*
- (c) the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person; and*
- (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 (2 of 1974) or any other law for the time being in force.*

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.”

From this provision itself, aggrieved persons like the petitioners herein, can seek maintenance including an order under or in addition to an order of maintenance under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force. As the Petitioners herein contended that they are not being provided with adequate maintenance sum by the 1st respondent, who is legally bound to do it, they have a case of domestic violence and the present application is maintainable on that ground also. The statutory standard prescribed for such maintenance is that it *shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed*. Petitioners herein seek maintenance as monthly payments, as contemplated under Section 20(3) of the Act.

14. The Hon’ble Supreme Court in *Rejanesh v. Neha and Another, (2021) 2 SCC 324* has laid down guidelines to deal with the claim of maintenance, as of the present kind. The rationale behind the ordering of maintenance was explained therein in the following manner:

“The objective of granting interim/permanent alimony is to ensure that the dependant spouse is not reduced to destitution or vagrancy on account of the failure of the marriage, and not as a punishment to the other spouse. There is

no straitjacket formula for fixing the quantum of maintenance to be awarded.”

The factors enlisted therein as the criteria for determining the quantum of maintenance can be catalogued as follows for easy reference:

“1. Status of the parties. 2. Reasonable wants of the claimant. 3. The independent income and property of the claimant. 4. The number of persons, the non-applicant has to maintain. 5. The amount should aid the applicant to live in a similar lifestyle as he/she enjoyed in the matrimonial home. 6. Non-applicant’s liabilities, if any. 7. Provisions for food, clothing, shelter, education, medical attendance and treatment etc. of the applicant. 8. Payment capacity of the non-applicant. 9. Some guess work is not ruled out while estimating the income of the non-applicant when all the sources or correct sources are not disclosed. 10. The non-applicant to defray the cost of litigation. 11. The amount awarded u/s 125 Cr.P.C. is adjustable against the amount awarded u/ 24 of the Act. 17. 12. Age and employment of parties. 13. Right to residence 14. Where wife is earning some income 15. Maintenance of minor children 16. Serious disability or ill health.”

According to PW1, the 1st respondent who is legally bound to provide maintenance to both the petitioners has never bothered to look after or provide maintenance either to 1st petitioner or to the 2nd petitioner, who is suffering from serious Haemophilia by

birth. The 2nd petitioner needs regular treatment for life and costly medicines for his survival. The treatment expenses are very high. The 1st respondent is earning a monthly income above ₹60,000/-. Ext.P1 is the copy of ID card of 2nd petitioner in Karunya Benevolent Fund of Government of Kerala. Ext.P2 is the medical certificate stating that 2nd petitioner is suffering from severe Hemophilia A with recurrent joint bleeding. Also that 2nd petitioner is given injection 'Immunate' twice a week since 7.8.2021 under the Ashadhara programme of Government of Kerala and that this treatment has to be continued lifelong. Ext.P3 is the copy of medical records of 2nd petitioner which would show that he requires injection worth ₹3,489/- twice a week. At the time of adducing evidence originals of Ext.P1 and Ext.P3 were produced and it was returned after retaining the copies as it is required for his medical treatment. According to the petitioners the 1st Respondent is working in Military service and is earning a monthly income of ₹1,20,000/-. Thus, he was earning sufficient sums to pay the claimed sum, it was asserted by PW1, while in the witness box also. During cross examination of PW1 specific question was put forth as the 1st respondent is earning only ₹5,000/- per month. However, no evidence is adduced by the respondent in this regard. The respondent in his objection has contended that he is willing to take care of his wife and child however it is the 1st petitioner who is purposefully making issues in their marital relation. During cross examination of PW1, the copy of train ticket of petitioners and respondent to Delhi was marked as Ext. D1, subject to objection. This was produced to prove that, when they had come to native place, the return tickets were already taken

for petitioners. That being so it is the 1st petitioner who decided not to come with respondent.

15. With this factual matrix in the limelight, let's analyze each of the parameters enlisted above.

16. Coming to the income of the applicant, the petitioner has filed affidavit stating that she has no income. Though respondents in their objection contended that petitioner earns more than ₹2,50,000/- per year no evidence is adduced in this regard. Hence, mere contention in the objection by itself cannot be relied upon. Similarly, the Respondents have no case that the Petitioners have any property in their name. On a conspectus of all the afore analyzed factual and forensic facets it can be rounded off that the 2nd Petitioner is entitled to claim monthly maintenance of ₹30,000/- and ₹10,000/- for the 1st petitioner.

17. In *Rejanesh* case the Hon'ble Supreme Court held that:

“Even though a judicial discretion is conferred upon the Court to grant maintenance either from the date of application or from the date of the order in S.125(2) Cr.P.C., it would be appropriate to grant maintenance from the date of application in all cases, including S.125 Cr.P.C.”

In the light of this dictum, it has to be held that the said maintenance sum shall be paid by the 1st respondent to the Petitioners with effect from 01..01..2020, the date of this application. Any payment effected by the 1st respondent towards maintenance head,

pendente lite, and evidenced by records, if any, can be set off against the sum so payable. Point No. 3 are answered accordingly.

18. **Point No.4** :-Going by the principle enunciated by *Rajnish v. Neha and Another* case, costs of the litigation is to be met by the non-applicant. Hence, the 1st respondent shall pay costs of these proceedings to the petitioners. Point No.4 is so answered.

In the result, the petition is allowed in part as follows:

- (i) Respondents are restrained from causing any physical or mental harassment to the petitioners and from committing any act which will disturb the peaceful life of the petitioners, as stipulated u/s.18(a) of Protection of Women from Domestic Violence Act, 2005.
- (ii) Respondents are restrained from taking forcible custody of the 2nd petitioner.
- (iii) 1st Respondent shall pay ₹30,000/- to the 2nd petitioner and ₹10,000/- to the 1st petitioner as monthly maintenance from 01..01..2020, the date of this application, till this date. Any payment effected by the 1st respondent towards maintenance head *pendente lite* and evidenced by records, if any, can be set off against the sum so payable.
- (iv) 1st respondent shall pay the costs of these proceedings to the ptitioners.

Directly typewritten in my personal laptop and pronounced by me on this the 30th day of September, 2023.

Sd/-
JUDICIAL MAGISTRATE OF THE IST CLASS- II
HARIPAD

APPENDIX

WITNESS FOR THE PETITIONERS :

PW1 : Arathy

EXHIBITS FOR THE PETITIONERS :

P1 : Copy of ID card issued from Karunya Benevolent Fund

P2 : Certificate issued by Dr.Raju Francis dated 216..11..2021

P3 : Copy of medical records issued from District Hospital, Mavelikkara

EXHIBIT FOR THE RESPONDENTS :

D1 : Copy of train tickets

WITNESS FOR THE RESPONDENTS : Nil

Id/-

**JUDICIAL MAGISTRATE OF THE IST CLASS- II
HARIPAD**

//True Copy//

**JUDICIAL MAGISTRATE OF THE IST CLASS- II
HARIPAD**

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ORDER IN
M.C.No.1/2020
DATED 30..09..2023
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