

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-I  
KAYAMKULAM**

Present: Smt. Aiswaryarani, Judicial First Class Magistrate

Dated this the 31<sup>st</sup> day of March, 2026

**CMP 5243/2025 in M.C. No: 88/2024**

Complainant/ Petitioners	1	Veena Vijayan, Aged 35 years, W/o. Sooraj Susheelan, Bhavanika, Puthupally P O, Puthupally Village, Kayamkulam
	2	Janvi Sooraj, Aged 11 years - do - (Minor represented by mother Veen Vijayan)
	3	Bhavani Lekshmi, Aged 6 years, - do - (By Adv. Safiya Sudheer)
Counter petitioner /Respondent	1	Sooraj Susheelan, Aged 6 yeas, Bhavanika, Puthupally P O, Puthupally Village,
	2	Kayamkulam
	3	Sudha, Aged 64 years, - do - Suseelan, Aged 70 years - do - (By Adv. Ashapoorna Dev)
Reliefs sought	:	Order U/s. 21 of the Protection of Women from Domestic Violence Act.
Order	:	Dismissed

This case having been heard on 31.03.26 and the court on the same day delivered the following:-

**O R D E R**

Petition filed under Section 21 of the Protection of Women from Domestic Violence Act.

2. Petition averments in brief are as follows: The 1<sup>st</sup> petitioner has been voluntarily and regularly paying monthly maintenance for his two minor children without any default. The 3<sup>rd</sup> respondent has been diagnosed with mild Autism Spectrum Disorder, requiring continuous therapy, special education, and medical attention. She is currently undergoing treatment at the Padashala Center for Special Needs, Kayamkulam. In addition to the regular maintenance, the 1<sup>st</sup>

petitioner has been separately transferring funds specifically earmarked for the 3<sup>rd</sup> respondent's therapy and treatment, as evidenced by bank transfer records. Despite receiving these payments, the 1<sup>st</sup> respondent is failing to provide the required therapy and medical treatment to the child on a regular basis. This willful neglect is causing mental and developmental regression in the minor child and is believed to be a deliberate act used to emotionally harass the 1<sup>st</sup> petitioner. Further, the 1<sup>st</sup> respondent is denying the 1<sup>st</sup> petitioner access to the child's medical records and information, compounding the concern for the child's welfare. Invoking Section 21 of the Protection of Women from Domestic Violence Act, the court may direct the 1<sup>st</sup> respondent to ensure the 3<sup>rd</sup> respondent receives regular therapy, education, and treatment at the Padashala Center for Special Needs, Kayamkulam, and to submit periodic progress reports before the court, along with any other orders deemed fit in the interest of the child's welfare. Hence, this petition.

3. The respondent filed an objection stating the following: The petition is not maintainable either in law or on facts. The respondent is the aggrieved person under the Domestic Violence Act. Filing such petitions against the aggrieved person is contrary to the provisions of Section 2(a) of the Domestic Violence Act and is therefore not sustainable. The petitioner is employed abroad and earns a monthly salary exceeding Rs. 4,50,000/-. Despite this, the respondent sends only a meagre sum of Rs. 5,000 per month, which is wholly inadequate to meet the needs of both children. The elder child, who has autism, requires speech therapy, special education, medicines, food, and caregiving, all of which cost over Rs. 25,000 per month. The younger child's monthly expenses exceed Rs. 15,000. The 1<sup>st</sup> respondent has only a temporary job whose income is insufficient

even for her own daily needs. The 1<sup>st</sup> respondent denies the petitioner's claim that the child has only mild autism. While the petitioner occasionally sends Rs. 5,000 describing it as therapy funds, the accompanying covering letter labels it as maintenance, revealing the contradictory and misleading nature of the payment. The respondent is regularly taking the child to therapy as prescribed and is properly caring for both children. If separate payments were indeed being made for maintenance and medical treatment, the petitioner ought to produce receipts and records. The therapy fees be paid by the respondent directly to the Padashala Center, rather than routing them through the 1<sup>st</sup> respondent. The petitioner who has not spent even a single rupee on the children's daily needs, has filed this petition with the sole intention of harassing the respondents and fabricating evidence for other pending cases. The petition does not even clearly specify to whom custody is being sought or to whom interim maintenance is to be paid, making it vague and unsustainable. Hence, the petition may be dismissed.

4. Heard both sides and pursued the records.

5. The following points arise for determination:

1. Whether the petitioners are entitled to the relief as sought?

2. What is the order or relief?

6. **Point No. 1:** For the sake of convenience, the parties are referred to as their ranks and positions in the petition filed under Section 12 of the Protection of Women from Domestic Violence Act.

7. The primary legal objection raised by the petitioner is that this application filed by the respondent against the aggrieved person is not maintainable under the Act. There is merit in this objection. The Protection of Women from Domestic Violence Act is a beneficial legislation enacted specifically for the benefit of aggrieved persons,

defined under Section 2(a) of the Act as any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence. The scheme of the Act is unambiguous. It confers rights and remedies upon the aggrieved person, and the role of the respondent is to answer the allegations made against him, not to initiate proceedings against the aggrieved person within the same forum. Permitting a respondent to file applications against the aggrieved person within the proceedings would defeat the very object and purpose of the legislation and would amount to using a protective statute as an instrument of harassment.

8. It is also pertinent to note that the 1<sup>st</sup> respondent is employed abroad and admittedly earns a monthly salary exceeding Rs. 1,00,000/-. Despite such financial capacity, the respondent has been sending only Rs. 5,000 per month for the maintenance and medical needs of both children. The 3<sup>rd</sup> petitioner requires continuous therapy, special education, and medical attention on account of her Autism Spectrum Disorder, the monthly cost of which alone exceeds Rs. 25,000 as submitted by the 1<sup>st</sup> petitioner. The total monthly expenses of both children, including therapy fees, transportation, food, medicines, school expenses, and caregiver charges, far exceed the sum being remitted by the respondent. The claim that separate and adequate amounts have been transferred specifically for therapy is not supported by any credible documentary evidence.

9. The further claim of the respondent that the 1<sup>st</sup> petitioner is wilfully neglecting the 3<sup>rd</sup> petitioner's therapy and medical treatment is not substantiated by any reliable material. The allegations made in the application remain unsubstantiated.

10. An application under Section 21 of the Protection of Women from Domestic Violence Act is vague and lacks clarity in material

particulars. Section 21 of the DV Act empowers the Magistrate to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf. The provision is intended to protect the interests of the aggrieved person and the children in her care, and is not designed to be invoked by a respondent against an aggrieved person in the manner attempted herein. The prayer sought by the respondent does not specify to whom custody is to be given and, in fact, has no connection with custody.

11. The welfare of the minor children is undoubtedly a paramount consideration, and this Court is not unmindful of the same. However, the proper remedy for the respondent, if he is genuinely aggrieved by the manner in which the children are being cared for, lies before the appropriate Family Court or under the Guardians and Wards Act, 1890, and not by way of an interlocutory application within the proceedings initiated by the aggrieved person under the Protection of Women from Domestic Violence Act. The 1<sup>st</sup> respondent is at liberty to remit the therapy fees directly to the Padashala Center for Special Needs, Kayamkulam, if he so desires, without routing the same through the petitioner.

12. **Point No. 2:** In view of the foregoing reasons, the present application filed by the 1<sup>st</sup> respondent under Section 21 of the Protection of Women from Domestic Violence Act is not maintainable. The petition is accordingly dismissed.

(Dictated to CA, typed by her, corrected by me and pronounced by me in the open court on this the 31<sup>st</sup> day of March, 2026)

Sd/-

**Judicial First Class Magistrate-I**

//True Copy//

**Judicial First Class Magistrate-**