

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE – I,
HOSDURG**

Present: Sri. Abdul Rasik.C, Judicial First Class Magistrate-I, Hosdurg

Dated this the 6th day of June, 2026/ 16th day of Jyaishta 1947

MC 72/2021

Petitioner	:	Shifah.M, Aged 23 years, D/o Basheer Ismail, Pilavalappil House, Valiyapoyil, Cheruvathur, Valiyapoyil.P.O, Hosdurg Taluk, Kasaragod (District) (Within the limits of Chandra P.S)
		Represented by Adv. M.Abdul Kareem, Hosdurg)
Respondents	1.	Aboobacker.K, Aged 31 years, S/o Ibrahimkutty
	2.	Ibrahimkutty, Aged 60 years, S/o Lahin Haji
	3.	Nabeesa, Aged 50 years, W/o Ibrahimkutty, All are R/at Koleth House, Puthiriyamkallu, Kunnumkai, West Eleri.P.O, Vellarikundu Taluk (Within the limits of Chittarikkal P.S)
		Represented by Adv. P.Narayanan, Hosdurg)

ORDER

Petition filed by the petitioner u/s. 12(1) of the Protection of Women from Domestic Violence Act, 2005 (hereinafter the Act).

2. **Brief facts as per the petition:-** The petitioner is the legally wedded wife of the respondent No. 1. Their marriage was solemnized on 01.05.2018 in accordance with the customs and practices prevailing in the Muslim community. The marriage was consummated on 04.11.2018, and thereafter the petitioner and the respondent No. 1 lived together as husband and wife, alternately residing in the houses

of both families. Out of the said wedlock, a male child, namely Ashmaan Haziq, aged about 1 ½ years, was born. The minor child is presently under the care and custody of the petitioner. The petitioner is a homemaker. The respondent No. 2 and 3 are the parents of the respondent No. 1.

3. The respondent No.1 is a Diploma holder in Automobile Engineering and was employed as a mechanic at Popular Automobiles, Panoor. The petitioner studied up to the 10th standard at East Coast English Medium School, Dubai. Thereafter, she joined B.Com. course at Sharaf College, Padne. The marriage was solemnized while she was pursuing her B.Com. studies, and the respondent No.1 compelled her to discontinue her education after the marriage. The respondent No. 1 was residing at the place of his employment. Despite her repeated requests to take her to and reside with her at his place of work, he paid no heed to such requests.

4. At the time of marriage, the parents of the petitioner entrusted 40 sovereigns of gold ornaments to her. The respondent No.1 forcibly took away 13 sovereigns of her gold ornaments and concealed them at an unknown place. The marital relationship

remained cordial during the initial four months after the marriage. However, thereafter, the conduct and behaviour of the respondent No.1 changed. He began subjecting her to frequent verbal abuse by using filthy and derogatory language. He started physically assaulting her on various occasions. During her matrimonial life, she was subjected to continuous physical, emotional, verbal and economic abuse. When she was seven months pregnant, the respondent No.1 kicked her on the abdomen while she was residing at her parental home. Even during her hospitalization after delivery, the respondent No.1 caught hold of her neck and assaulted her in the presence of a nurse and the respondent No.3 for a trivial reason. The respondent No.3 supported the conduct of the respondent No.1 instead of intervening to protect her. On 04.11.2020 at about 8.00 p.m., the respondent No.1 again assaulted her at her parental house without any provocation. The respondents No. 2 and 3 supported the conduct of the respondent No.1.

5. On 14.05.2021 she happened to see certain videos and photographs stored in the mobile phone of the respondent No.1,

which depicted the respondent No.1 engaged in sexual relations with another woman. When she questioned the respondent No.1 regarding the same, he failed to offer any satisfactory explanation. The petitioner informed her father, who was then employed in Dubai, about the incident. On the same night, she left the matrimonial home along with her child and returned to her parental house. Thereafter the respondent No.1 neither contacted her nor the child and failed to provide any maintenance. Thereafter, the petitioner lodged a complaint before the Station House Officer, Chandra Police Station and a case was registered against the respondents for the offence punishable under Section 498A of the Indian Penal Code, and investigation in progress.

6. The respondent No.1 is employed as an automobile mechanic and earns approximately ₹ 40,000/- (Forty Thousand Rupees only) per month. Moreover, he owns landed properties from which he derives an income of about ₹ 10,000/- (Ten Thousand Rupees only) per month. He is the owner of a Ritz car bearing Registration No. KL-60-H-286. The petitioner has no independent source of income and is presently residing with her parents along with the

minor child. She and the child are entirely dependent upon her parents for their livelihood. Hence, the petition.

7. The respondents appeared through counsel and filed counter statement.

8. **Brief facts as per the counter statement:-** The petition is devoid of any merit. All the averments in the petition are false and specifically denied. The respondents have not committed any domestic violence against the petitioner. The petitioner did not possess 40 sovereigns of gold ornaments at the time of marriage and the respondent No.1 had never taken any gold ornaments belonging to her. The petitioner was unwilling to reside in the matrimonial home and insisted that the respondent No.1 should live in her parental house in accordance with the custom prevailing in her locality. Despite repeated requests by the respondent No.1 to reside with him and his parents, the petitioner refused to do so.

9. The petitioner frequently insulted respondents No. 2 and 3 and the father of the respondent no.1. She often humiliated the respondent No.1 and his family by comparing their financial status with that of her family. The respondent No.1 was working as an

automobile mechanic and earning about ₹ 10,000/- (Ten Thousand Rupees only) per month, out of which he had to meet his living expenses. He was unable to take a separate residence at his workplace and, therefore, requested the petitioner to reside in the matrimonial home. The respondents met the delivery expenses. The petitioner voluntarily left the company of the respondent No.1 without any reasonable cause. The criminal case registered against the respondent No.1 is the result of a conspiracy to harass him. The petitioner is employed as an accountant and earns approximately ₹ 20,000/- (Twenty Thousand Rupees only) per month. Therefore, she is not entitled to claim maintenance or any other relief under the Act. Accordingly, it is prayed to dismiss the petition.

10. When the case was posted for evidence, Power of Attorney Holder of the petitioner and the petitioner were examined as PW1 and PW2 respectively and Ext. P1 to P5 were marked. The respondent was examined as RW1. Ext. B1 is marked.

11. Heard both sides. Perused the records.

12. The following points arise for consideration:-

- 1) *Is the petitioner an aggrieved person?*
- 2) *Is the petitioner entitled for a protection order u/s.18(a) of the*

Act?

- 3) *Is the petitioner entitled for an amount of ₹ 10,000/- (Ten Thousand Rupees only) to the petitioner and ₹ 5,000/- (Five Thousand Rupees only) to the minor child as monthly maintenance u/s. 20(1)(d) of the Act?*
- 4) *Is the petitioner entitled for an order directing the respondents to return back 13 sovereigns of gold ornaments or its market value, u/s. 19(8) of the Act?*
- 5) *Is the petitioner entitled to get compensation from the respondents u/s. 22 of the Act?*
- 6) *Reliefs and costs?*

13. **Points No.1 and 2** : In the case on hand, the marriage between the parties and the existence of a domestic relationship are admitted. The paternity of the child born in the wedlock is also not in dispute. The petitioner was examined as PW2. In her examination-in-chief, she deposed various acts of cruelty committed by the respondents. Her specific case is that the respondent No.1 was maintaining an illicit relationship with another woman. According to the petitioner, on 14.05.2021, she came across certain photographs and videos stored in his mobile phone, which depicted him engaging in sexual intercourse with the said woman. When she questioned the respondent No.1 regarding the said materials, he failed to offer any satisfactory explanation. According to her, the discovery of the said

photographs and videos caused her severe mental agony and emotional distress. PW1 further deposed that she had been subjected to physical assault by the respondent No.1 on several occasions during the subsistence of the matrimonial relationship. She also narrated specific instances of such abuse before the Court.

14. The learned counsel appearing for the petitioner submitted that the evidence on record clearly establishes that the petitioner was subjected to domestic violence at the hands of the respondents. It was argued that the acts of physical assault, mental cruelty arising from the respondent's illicit relationship, and the economic neglect in failing to maintain the petitioner and the child, would squarely fall within the definition of "domestic violence." Therefore, it was contended that the petitioner is entitled to the reliefs claimed in the petition. Per contra, the learned counsel appearing for the respondents contended that the allegations of domestic violence are false and baseless. According to the learned counsel, the respondents have not committed any act of domestic violence. Hence, it was submitted that the petition

is liable to be dismissed.

15. It is pertinent to note that, for granting a protection order under Section 18 of the Act, the petitioner is only required to establish a prima facie case of domestic violence. The petitioner has deposed some acts of domestic violence with specific dates. Despite a detailed cross-examination, nothing material could be elicited to discredit the testimony of PW2 regarding the domestic violence committed by the respondent No.1. However, there are no materials on record to establish that the petitioner was subjected to any act of domestic violence by respondents No. 2 and 3. It is further evident from the testimony of PW2 that she returned to her parental home with the assistance and support of respondents No. 2 and 3. On an appreciation of the evidence on record, this Court is satisfied that the petitioner has succeeded in making out such a prima facie case that she was subjected to domestic violence by the respondent No.1. On an appreciation of the oral testimony of PW2 and Exts. P2 and P3, it is evident that the allegations of domestic violence are primarily directed against the respondent No.1 and there is no substantial material to attribute any specific

act of domestic violence to the other respondents. Therefore, this Court is unable to hold that respondents No. 2 and 3 committed any act of domestic violence against the petitioner. Accordingly, these points are found partly in favour of the petitioner.

16. **Point No. 3:-** The petitioner has claimed monthly maintenance at the rate of ₹ 10,000/- (Ten Thousand Rupees only) to the petitioner and ₹ 5,000/- (Five Thousand Rupees only) to the minor child. According to the petitioner, she has no independent avocation or source of income. It is her case that the respondent is working as an automobile engineer and earning a considerable monthly income. The learned counsel for the petitioner submitted that the petitioner has no independent source of income and is entirely dependent upon her relatives for meeting her day-to-day expenses. Per contra, the learned counsel appearing for the respondents contended that the petitioner is employed abroad in a Gulf country and is earning a substantial income. According to the respondents, the petitioner is financially independent and capable of maintaining herself. Therefore, it was argued that she is not entitled to claim maintenance from the respondents.

17. The case of the respondent No. 1 is that he is earning only ₹ 10,000/- (Ten Thousand Rupees only) per month from his job. In his cross-examination, RW1 deposed that he had disclosed in his affidavit of assets and liabilities that his monthly income is ₹ 12,000/- (Twelve Thousand Rupees only). Although the petitioner contended that the respondent No.1 is earning ₹ 40,000/- (Forty Thousand Rupees only) per month, no documentary evidence has been produced to substantiate the said contention. It is further evident from Ext. B1 that the Hon'ble Family Court, Kasaragod, has directed the respondent No.1 to pay monthly maintenance at the rate of ₹ 5,000/- (Five Thousand Rupees only) to the petitioner and ₹ 3,000/- (Three Thousand Rupees only) to the minor child. It is also pertinent to note that this Court had earlier granted interim maintenance of ₹ 4,000/- (Four Thousand Rupees only) per month to the petitioner and ₹ 2,000/- (Two Thousand Rupees only) per month to the child. Admittedly, the respondent No.1 has monthly income of ₹ 12,000/- (Twelve Thousand Rupees only). The evidence of PW2 further reveals that the petitioner has been frequently travelling to Gulf countries and, for that reason, had executed a power of attorney authorising

PW2 to prosecute the case on her behalf. Though the specific case of the petitioner is that her visits to the Gulf were only for visiting purposes and not for employment, she has not produced her passport before the Court. PW2 herself admitted in cross-examination that the passport is the best document to establish the nature and purpose of such travel. She further deposed that a visit visa is ordinarily valid only for a limited period and that any prolonged stay would require an appropriate residence visa. It also came out in evidence that the petitioner had travelled to the United Arab Emirates in December, 2023. PW2 admitted that she was aware of the contention raised by the respondents that she was employed in the Gulf. Despite such contention, no passport or other relevant document was produced by the petitioner to dispel the said allegation. An adverse inference can therefore be drawn against the petitioner for withholding the best available evidence regarding the nature of her stay abroad. In the above circumstances, the evidence on record creates a reasonable inference that the petitioner is either gainfully employed in a Gulf country or is permanently residing there. While determining the quantum of maintenance, this aspect cannot be ignored and is liable

to be taken into consideration. Considering all these facts, this court is of the view that a reasonable amount of maintenance alone can be awarded. It is also pertinent that the amounts claimed by the petitioner appear exorbitant and disproportionate to the financial capacity of the respondent No.1.

18. At this juncture, it is apposite to note the observation of Hon'ble Supreme Court in **Rajnesh v. Neha (2020 (6) KHC 1)**, wherein the court observed that:

“On the other hand, the financial capacity of the husband, his actual income, reasonable expenses for his own maintenance, and dependant family members whom he is obliged to maintain under the law, liabilities if any, wouldbe required to be taken into consideration, to arrive at the appropriate quantum of maintenance to be paid. The Court must have due regard to the standard of living of the husband, as well as the spiralling inflation rates and high costs of living. The plea of the husband that he does not possess any source of income ipso facto does not absolve him of his moral duty to maintain his wife if he is able bodied and has educational qualifications. Reema Salkan v Sumer Singh Salkan (2019) 12 SCC 303.

77. (ii) *A careful and just balance must be drawn between all relevant factors. The test for determination of maintenance in matrimonial disputes depends on the financial status of the respondent, and the standard of living that the applicant was accustomed to in her*

matrimonial home. Chaturbhuji v Sita Bai (2008) 2 SCC 316.

The maintenance amount awarded must be reasonable and realistic, and avoid either of the two extremes i.e. maintenance awarded to the wife should neither be so extravagant which becomes oppressive and unbearable for the respondent, nor should it be so meagre that it drives the wife to penury. The sufficiency of the quantum has to be adjudged so that the wife is able to maintain herself with reasonable comfort.”

Considering the financial status of both the petitioner and the respondent and the reasons aforementioned, this Court is of the opinion that the petitioner and the minor children are entitled to get a reasonable amount towards their maintenance. Hence, this Court is of the opinion that an amount of ₹ 4,000/- (Four Thousand Rupees only) to the petitioner and ₹ 2000/- (Two Thousand Rupees only) to the child would be just, proper, and sufficient to meet their livelihood, educational, and medical expenses. Thus, this point is found partly in favour of the petitioner.

19. **Point No. 4** :- The petitioner has claimed return of 13 sovereigns of gold ornaments, alleging that the same were taken away by the respondent No.1. The learned counsel for the petitioner contended that the respondent No.1 had taken possession of the said

gold ornaments and is therefore liable to return the same to the petitioner. Per contra, the learned counsel for the respondents contended that the petitioner has failed to establish that she was in possession of 40 sovereigns of gold ornaments at the time of marriage or that 13 sovereigns thereof were taken by the respondents. The specific case of the petitioner is that her parents had given her 40 sovereigns of gold ornaments at the time of marriage. In support of the said contention, the petitioner mainly relied upon Ext. P1 series, photographs. On a perusal of Ext. P1 series, it is evident that the petitioner is seen wearing certain ornaments. However, the photographs do not establish that the ornaments worn by her were gold ornaments. Their weight or quantity is not evident from Ext. P1 series. Further, the petitioner has no specific case that the said ornaments were entrusted to the respondents. PW1, the mother of the petitioner, admitted in her evidence that Ext. P1 series does not show that the ornaments worn by the petitioner were made of gold. She further deposed that no documentary evidence was available to prove that 40 sovereigns of gold ornaments had been given to the petitioner at the time of marriage.

20. Thus, there is no reliable evidence on record to prove that the petitioner was in possession of 40 sovereigns of gold ornaments or that 13 sovereigns thereof were taken by the respondents. Accordingly, this Court is of the considered opinion that the petitioner is not entitled to the relief sought for return of 13 sovereigns of gold ornaments. Hence, this point is found against the petitioner.

21. **Point No. 5** :- PW1 further claimed compensation from the respondent towards the injuries sustained by her on account of the acts of domestic violence, both physical and mental. She has deposed some cruelties. Apart from that, no documents are produced by the petitioner to show the same. Anyhow, it is evident that the petitioner has been subjected to domestic violence. Hence, this Court is of the view that a reasonable amount can be awarded towards compensation to the petitioner. Therefore, this point is found partly in favour of the petitioner.

22. **Point No. 6**:- Based on the findings of this Court on points No. 1 to 5, the petition is partly allowed as follows:-

- 1) The respondent No.1 is prohibited by way of a protection order from committing any acts of physical violence, emotional or verbal abuse on the petitioner u/s 18 of the act.*
- 2) The respondent No.1 is directed to pay ₹ 4,000/- (Four*

Thousand Rupees only) to the petitioner and ₹ 2000/- (Two Thousand Rupees only) to the child towards their monthly maintenance with effect from the date of filing the above MC.

- 3) The respondent is directed to pay ₹ 1,00,000/- (One Lakh Rupees only) as compensation to the petitioner u/s. 22 of the Act within three months from the date of this order.*
- 4) The S.H.O concerned shall assist the petitioner in implementing direction No. 1 in this order on a written petition filed by the petitioner on that behalf.*
- 5) Petitioner is also entitled to the costs of the proceedings.*

(Dictated to the Confidential Assistant typed by her, corrected and pronounced by me in open court, this the 6th day of June, 2026)

JUDICIAL FIRST CLASS MAGISTRATE-I
HOSDURG

APPENDIX

Witnesses examined on the side of petitioner

PW1 : Bepathumma, Aged 48 years, D/o Muhammed, Klayikode Village, Hosdurg Taluk, Kasaragod (District)

PW2 : Shifah.M, Aged 23 years, D/o Basheer Ismail, Pilavalappil House, Valiyapoyil, Cheruvathur, Valiyapoyil.P.O, Hosdurg Taluk, Kasaragod (District)

Exhibits marked on the side of petitioner :

P1 : Marriage Photographs

P2 : FIR in Crime No. 339/2021.

P3 : Final Report in Crime No. 339/2021.

P4 : Free copy of the judgment in OP No. 475/23.

P5 : Electoral ID.

Witnesses Examined For Respondent :

RW1 - Aboobacker.K, Aged 31 years, S/o Ibrahimkutty, Koleth House, Puthiriyamkallu, Kunnumkai, West Eleri.P.O, Vellarikundu Taluk

Exhibits Marked For Respondent :

B1 - Order in MC 88/2022 of Family Court, Kasaragod dated 15.01.2024.

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE I,
HOSDURG.

//True Copy//

JUDICIAL FIRST CLASS MAGISTRATE I,
HOSDURG.