

**IN THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE – II,
PERAMBRA**

Present: Sri. Sivadas S, BA L, LLB, Judicial First Class
Magistrate-II

Dated this the 15th day of July, 2019

MC.10/2014

Sreeja, D/o.Shekharan, 'Shekharshanthi'
House, Ulliyeri

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Applicant

(Rep.By Advs. Sri.V.Hemil Kumar &
Sri.P.Nandakumar)

Kumaran, S/o.Kannankutty, Valloparambil
Meethal(H), Kuruvattur
(Rep.by Adv.Smt.P.A.Abija)

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Respondent

Proceedings

: U/s. 12 of Protection of
Women from Domestic
Violence Act, 2005

ORDER

This is an application filed by the applicant against the respondent under Section 12 of The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred as “The Act”).

2. The allegation in the petition in brief are as follows.

3.The marriage of the applicant and respondent was solemnized on 23/01/1999 at Palathulla Shiva Temple according to Hindu customary rites and thereafter they lived as husband and wife at

the residence of the respondent . During the initial days after marriage the respondent behaved with the applicant in a good manner. But after that he used to mentally and physically harass her by saying that she is not good looking and the gold ornaments given to her was so less. At the time of marriage the applicant was given 15 sovereigns of gold and the parents of the applicant has given a chain weighing 3 sovereigns and a ring weighing 1 sovereign to the respondent. The respondent was a soldier. When ever he comes on leave he used to take the gold ornaments from the applicant forcefully and used to sell it and the sale proceeds were taken by the respondent and he used to spendthrift it for his personal use. He used to beat the applicant. Apart from that he has sold all the ornaments belonging to the applicant except one sovereigns of ear ring. The respondent is a drunkard and he used to call his friends to home for playing cards and drinking alcohol. When the applicant asked to take her to the work place of the respondent he used to tell her that she is not good looking and only if she give 25 sovereigns of gold he will think about it. After some years of marriage as there were no issues she had taken the respondent to the doctor and after examination it was found that the count of the respondent is low and that is the reason why she has not became pregnant. After that the respondent threatened her that if she tell about this to others he will divorce her. When ever the respondent comes home on leave he used to mentally and physically harass her demanding more dowry. On 26/02/08 while the respondent and his friends were consuming alcohol the respondent asked

the applicant to supply alcohol to his friends for which she was not amenable. At that time the respondent beat her and criminally intimidated her that he will kill her. At that time the applicant had gone to her house. After that the respondent cancelled his leave and had gone to his work place. After that he had not returned to house nor had tried to take her back. Within that period she got disease of uterine fibroid for which the doctor advised for a surgery. Even though she informed about that matter to the respondent, the respondent has not cared enough and he had not given any amount to the applicant. Later she has filed a petition for maintenance before the Hon'ble Family Court, Kozhikode as MC.113/10 and as per the order dated 29/07/10 the Hon'ble Family Court has ordered to pay Rs.1500/- (Rupees One Thousand and Five Hundred Only) per month. After that the respondent came to her and told her that if she proceeds with the case it will affect his job and so she had signed in the papers brought by the respondent. After that the respondent had not taken her to the house of the respondent. Only on 23/01/12 he had taken the applicant to his home. But his attitude was not changed. On 17/02/12 at about 1.30 hours the respondent came in a drunken manner and beat her and pulled her head towards the wall and beat her on her left ear and had returned to his work place. On 18/12/12 she had gone to consult an ENT doctor and after taking scan she came to understand that her left ear has got damaged. But as she wants to continue the matrimonial relationship she has not spoken about that fact to the doctor. In the year 2013 March after

repeated demands and after filing a petition before Army Woman Welfare Association the respondent had taken the applicant to his work place at Baroda and after 20 days he had dropped the applicant back to home. By the time the respondent retired from service, but the attitude of the respondent towards the applicant was not changed. The respondent used to illtreat her and used to avoid sexual relationship with her. He used to go to some place 3 to 4 days in every month and on enquiry she found some tickets from the pockets of the respondent and when she enquired about it the respondent told her that he is having another wife at Coimbatore and so he does not need her. When she questioned about it he beat her and had dropped her near her house. The applicant is not having any house for her residence. She does not have any job . Now the applicant and her mother is residing at her brother's house. Her brother is not in a position to go for any job as he is laid up due to stroke. Now they are depending upon the sole income of her brother's wife who is an Anganvadi worker. So she is in need of a house for her residence. She need Rs.8000/-rupees(Rupees Eight Thousand Only) per month as maintenance . The respondent was a military personal and he has got lot of money as retirement benefit. Apart from that he is having Rs.25,000/-(Rupees Twenty Five Thousand Only) as income from other source. So she has prayed the relief as sought for in the application.

4.On filing this application, the application was taken on file

as MC.10/2014 and notice was issued to the respondent through Women Protection Officer, Kozhikode. The respondent was served with the notice but he has not appeared in this case and hence his name was called and he was set exparte and thereafter the case was posted for evidence.

5.The petitioner in this case was examined as PW1 and Ext.P1 to P18 rejected in evidence being photocopies and Exts.P19 to P24documents were marked on the side of petitioner. Ext.P19 is the prescription of ENT Surgeon of General Hospital(Beach) Kozhikode, dated 18/02/12 issued in the name of applicant. Ext.P20 is the Otoendoscopy report of Modern ENT Super Speciality Institute, Kozhikode dated 23/02/12 issued in the name of applicant. Ext.P21 is the Pure Tone Audiogram of Modern ENT Super Speciality Institute, Kozhikode dated 23/02/12 issued in the name of applicant. Ext.P22 is the true copy of complaint filed by the applicant before the Secretary of Army Woman Welfare Association dated 23/01/2013. Ext.P23 is the reply of Officer Commanding, dated 11/03/13. Ext.P24 is the OP Ticker of CHC, Ulliyeri dated 27/11/13 issued in the name of applicant.

6.Heard the learned counsel for the applicant.

7.The following points arise for determination and consideration.

1. Whether the applicant will come under the definition of aggrieved person as defined under the Act ?

2. Whether there is any domestic relationship between the applicant and the respondent?

3. Is the applicant entitled to get an order restraining the respondent from committing any act of physical and mental harassment against the applicant?

4. Is the applicant entitled to get an order restraining the respondent from transacting into the account bearing No.31800614750 of State Bank of India, Kozhikode branch which is a joint account?

5. Is the applicant entitled to get a residence order and for that to get an amount of Rs.10,00,000/- (Rupees Ten Lakh Only) ?

6. Is the applicant entitled to get an amount of Rs.45000/- which was spent by her for her surgery and an amount of Rs.50,000/- for future medical expenses?

7. Is the applicant entitled to get back the 18 sovereigns of gold from the respondent?

8. Whether the applicant is entitled to get half amount of commutation and gratuity which was deposited in the joint

account bearing No.31800614750 ?

9.Is the applicant entitled to get any amount towards maintenance from the respondent ? If so what is the quantum?

10.Is the applicant entitled to get Rs.5,00,000/-(Rupees Five Lakh only) as compensation from the respondent for the pain and sufferings of applicant?

8.Point Nos.1 to 3 :- For the sake of convenience these points are considered together. The applicant filed proof affidavit in lieu of examination in chief. In proof affidavit she had narrated the very same thing as there in the application. From the proof affidavit it is proved that the marriage of the applicant and the respondent was solemnized on 23/01/1999 and their marriage is still subsisting. Further it is revealed from the proof affidavit that the respondent used to mentally and physically harass her demanding more dowry. It is further revealed that the respondent used to harass the applicant after consuming alcohol and she had narrated some incident of assault by the respondent in her proof affidavit. A perusal of the evidence adduced by PW1 will show that she was subjected to mental and physical harassment by the respondent. As the marriage in this case is proved by the applicant I find that there is domestic relationship between the applicant and the respondent. As she has alleged commission of mental and physical harassment I find that she will definitely come under the definition of aggrieved person. In this case the respondent has not appeared

nor had filed any counter. So there is no contra evidence for the evidence adduced by the applicant. So the evidence adduced by the applicant taken into account for answering these points. As she has spoken about the mental and physical harassment committed against her by the respondent I find that she is entitled to get an order restraining the respondent from committing any act of physical and mental harassment against the applicant. Hence these points are answered infavour of the applicant.

9.Point No.4 & 8:- For the sake of convenience these points are considered together. The applicant has sought a relief as to not to use the bank account enjoyed by the applicant and the respondent jointly. She has adduced evidence in tune with her case in the application, as she has filed proof affidavit in lieu of examination in chief. But surprisingly no documents were produced by the applicant to show that the account bearing No.31800614750 of State Bank of India, Calicut branch is in the joint name of applicant and the respondent. Even the branch name of the bank was not specified. Without proof for all those things an order cannot be passed on this point. Before passing an order there should be some proof to show that the account as stated by the applicant is in the joint name of applicant and the respondent and the respondent is now also transacting the same without the permission of the applicant. So after evaluating the evidence I find that the applicant failed to prove that the account as stated by her is in the joint name of

herself and the respondent. Even though she had stated that she is entitled to get half amount of commutation and gratuity which was deposited in the account, she has not produced any documents to prove that such and such amount were in the joint account and the respondent had taken it. Even she has not stated as to what is the amount that was deposited in the account and which was withdrawn by the respondent from the joint account. Without all those things I find that she is not entitled to get any order on these points. Hence these points are found against the applicant.

10. Point No.5:-The applicant has claimed Rs.10,00,000/- (Rupees Ten Lakh Only) for her residence. She has adduced evidence in tune with her case in the application. She has stated that she is now residing at her brother's house and she is not having any homestead nor she is having any job. So she need a residence. But surprisingly the prayer is for Rs.10,00,000/- for purchasing a house in her own name. Sec.19(f) of the Act says that if the circumstances so require the court can direct the respondent to secure same level alternative accommodation for the aggrieved person as enjoyed by her in the shared house hold or to pay rent for the same. So the Magistrate can only pass an order directing the respondent to secure same level alternative accommodation for the aggrieved person as enjoyed by her in the shared house hold or to pay the rent for the same if the circumstances so required. So at any rate the Magistrate can pass an order directing the respondent to secure an alternative accommodation as enjoyed by her in the

shared household. If it is not possible directing him to pay the rent for the same. It does not state anywhere that the respondent will have to pay the amount to the applicant for purchasing a house. From her evidence it is revealed that she is not having any homestead. So I find that she is entitled to get an alternative accommodation. Hence the respondent is directed to provide an alternative accommodation as enjoyed by her within one month or to pay a rent of Rs.4000/- (Rupees Four Thousand Only) per month for the house that will be taken by the applicant or the actual rent for the house if any taken by the applicant for rent before 5th of every month. Hence this point is found partly in favour of the applicant.

11. Point No.6:-The petitioner has claimed an amount of Rs.45000/- as her surgery expenses that was done for removing the uterine fibroid. But surprisingly she has not produced any documents to show that she was having uterine fibroid and a surgery was done to remove that. Without any document for the same I find that she is not entitled to get any amount for the medical expenses. She has produced and marked one prescription of Dr.Sri.Somasundaran on 18/02/12 which is marked as Ext.P19 and an Otoendoscopy done from Modern ENT Super Speciality Institute dated 23/02/12 which is marked as Ext.P20 and Pure-Tone Audiogram dated 23/02/12 which is marked as Ext.P21. From all these documents I find that she is having some problem on her left ear and she had undergone some treatment for the left ear. Under section 20(b) the

Magistrate can direct the respondent to pay monetary relief to meet the expenses incurred by the aggrieved person as a result of domestic violence which will include medical expenses. She has adduced evidence in tune with her case in the petition. She has adduced evidence that the respondent beat her on her left ear due to which she sustained severe damage on her left ear. As the respondent is set exparte in this case there is no contra evidence adduced by the respondent. So the evidence of the applicant can be taken into account. The evidence of applicant along with documents produced by the applicant will prove that she was having some ear disease on her left ear and she had treated for the same. What was the amount spent by her was not mentioned. Even though she has claimed Rs.50,000/- rupees for future expenses all those documents produced by the applicant pertains to the year 2012 and no single document is produced to prove that she is continuing her treatment. I find that she has not produced any documents to prove that she is continuing treatment for her ear. As she has proved that she has sustained injury to her left ear, I find that she is entitled to get some amount as medical expenses. This point is found partly in favour of the applicant.

12. Point No.7:- The applicant claims that the respondent has misused 18 sovereigns of gold ornaments belonging to her which were given to her at the time of her marriage. PW1 filed proof affidavit stating the very same things as stated in the petition. She has stated that at the time of marriage the

applicant was given 15 sovereigns of gold and the parents of the applicant has given a chain weighing 3 sovereigns and a ring weighing 1 sovereign to the respondent. The respondent was a soldier. When ever he comes on leave he used to take the gold ornaments from the applicant forcefully and used to sell and the sale proceeds were taken by the respondent and he used to spendthrifted it for his personal use. He used to beat the applicant. Apart from that he has sold all the ornaments belonging to the applicant except one sovereigns of ear ring. Even though no documents were produced on the side of applicant to prove that she was given 15 sovereigns of gold, It is a common practice that at the time of marriage the bride will be given gold and cash. Even though it is a curse to the society this court cannot shut down the eyes against the true realities in life. Not only that in this case the respondent is set exparte and so the evidence of PW1 stands unrebutted. No contra evidence was adduced by the respondent. From the unrebutted evidence of PW1, I find that the applicant proved that the applicant was given 18 sovereigns of gold at the time of her marriage and the respondent has utilized 18 sovereigns of gold belonging to the applicant for his personal use. Hence he is bound to return that property to the applicant or the value of that property. Hence this point is found infavour of the applicant.

13. Point No.9:-The applicant claims an amount of Rs.8000/- (Rupees Eight Thousand Only) per month towards her monthly maintenance. In the proof affidavit filed by the applicant she

has stated that the respondent is a military personal and he has got lot of money as retirement benefit. Apart from that he is having Rs.25,000/-(Rupees Twenty Five Thousand Only) as income from other source. She stated that she had filed a petition for maintenance before the Hon'ble Family Court, Kozhikode as MC.113/10 and as per the order dated 29/07/10 the Hon'ble Family Court has ordered to pay Rs.1500/-(Rupees One Thousand and Five Hundred Only) per month.

Under section 20(1)(d) of the Act the maintenance that can be awarded under this act can be given in addition to an order of maintenance u/s.125 of The Code of Criminal Procedure 1973 or any other law for the time being in force. In this case it is stated that the Hon'ble Family Court, Kozhikode has already granted Rs.1500/-per month to the applicant. She has no income or job for maintaining herself. The respondent is set exparte and he has not denied the allegation levelled against him. Not only that the respondent has not adduced any evidence to show that he does not have this much income as alleged by the applicant. Even though no documents are produced by the applicant to prove that the respondent is getting an income of Rs.25,000/- from other source, but as he is set exparte I find that he is having the means to maintain the applicant.

Sec.20(2) of the Act provides that "monetary relief to be granted under the act shall be adequate, fare, reasonable and consistent with the standard of living of both the parties". The applicant

has no case that they have lived in luxuries manner. Considering the facts and circumstances of the case I find that an amount of Rs.2000/- (Rupees Two Thousand Only) to the applicant would be reasonable and adequate for the maintenance of the applicant . Hence this point is answered infavour of the applicant.

14. Point No.10:- The applicant had claimed Rs.5,00,000/- (Rupees Five Lakh Only) towards the mental agony suffered by her by the act of domestic violence committed against her by the respondent. PW1 has adduced evidence in tune with her case in the application. She has stated in her proof affidavit that when ever the respondent comes to home on leave he used to mentally and physically harass her demanding more dowry. On 26/02/08 while the respondent and his friends were consuming alcohol the respondent asked the applicant to supply alcohol to his friends for which she was not amenable. At that time the respondent beat her and criminally intimidated her that he will kill her. She further stated that the respondent used to go to some place 3 to 4 days in every month and on enquiry she found some tickets from the pockets of the respondent and when she enquired about it the respondent told her that he is having another wife at Coimbatore and so he does not need her. When she questioned about it he beat her and had dropped her near her house. The respondent has not cared the applicant which caused emotional stress and mental injury to her. The approach of the respondent towards the applicant certainly

created mental agony to the applicant and so I find that she is entitled to get compensation. Section 22 of the Act is in addition to other reliefs under the act for which a separate application is required as per sec.22 of the Act. In this case even though the applicant has not filed a separate application for the relief under sec.22 of the Act as she has proved mental stress and mental agony, I find that she is entitled to get an amount of Rs.25,000/- as compensation for the mental stress and mental injury sustained to her. Hence this point is found partly infavour of the applicant .

In the result,

The petition is answered in part and following orders are passed;

1) The respondent is hereby restrained from committing any act of mental or physical harassment against the applicant.

2)The respondent is directed to pay an amount of Rs.2000/-(Rupees Two Thousand Only) per month to the applicant from the date of order (15/07/19) as maintenance. The amount shall be given on or before 3rd of every month.

3)The respondent is directed to provide alternative accommodation within one month from today or to pay an amount of Rs.4000/-(Rupees Four Thousand Only) per month as rent for the house that will be taken by the

applicant or to pay the actual amount for the house if any taken by the applicant on 5th of every month but not exceeding Rs.4000/-.

4)The respondent is directed to return 18 sovereigns of gold to the applicant or the value of gold at the time of deposit.

5)The respondent is directed to pay an amount of Rs.25000/- (Rupees Twenty Five Thousand Only) as compensation for the mental stress and mental agony suffered by her.

6)The respondent is directed to pay an amount of Rs.20000/- (Rupees Twenty Thousand Only) as medical expenses

(Dictated to CA, transcribed by her, corrected and pronounced by me in open court on this the 15th day of July, 2019)

(sd/-)

Judicial First Class Magistrate-II,
Perambra

APPENDIX:

Witnesses examined on the side of Applicant:

PW1 : Sreeja, D/o.Shekharan (Petitioner)

Exhibits marked:

Ext.P1 to P18	Photocopies of medical bill issued in the name of PW1 from Santhi Hospital, Omassery
P19-dt: 18/02/12	Prescription of ENT Surgeon of General Hospital(Beach) Kozhikode,

issued in the name of PW1
(Marked through PW1 Sreeja)

- P20- dt: 23/02/12 Otoendoscopy report of Modern ENT Super Speciality Institute, Kozhikode issued in the name of PW1 (Marked through PW1 Sreeja)
- P21 dt: 23/02/12 Pure Tone Audiogram of Modern ENT Super Speciality Institute, Kozhikode issued in the name of PW1 (Marked through PW1 Sreeja).
- P22 dt: 23/01/13 Photocopy of complaint filed by the applicant before the Secretary of Army Woman Welfare Association. (Marked through PW1 Sreeja).
- P23dt: 11/03/13 Reply of Officer Commanding, (Marked through PW1 Sreeja).
- P24dt: 27/11/13 OP Ticker of CHC, Ulliyeri issued in the name of PW1 (Marked through PW1 Sreeja).

Witnesses examined on the side of Respondent:

NIL

Exhibits marked:-

NIL

(sd/)

Judicial First Class Magistrate-II
Perambra.

/True copy/

Judicial First Class Magistrate-II
Perambra.