

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE
KARUNAGAPPALLY

Present: Sri. MIDHUN. A. SATHEESH., Civil Judge (Junior Division)

Friday, the 7th day of February, 2025
(18th day of Magham, 1946)

C.M.P 2421/2024 in MC 72/2024

Petitioner	1	Thasni N, aged 25, D/o. Janeesa Thattupurackal Puthen Veedu, Puliyoor Vanchi Thekkum muri, Thodiyoor Village, Karunagappally Taluk
	2	Haisa Mariam, aged 5, D/o. Thasni <i>(By Adv. Sri. Y. Sudheer)</i>
CP/Respondent	1	Muhammed Hashim, aged 29, S/.o. M. Shareef, Malavayalil Darul Haisa, Meeyannoor, Palliman Village, Kollam Taluk
	2	M. Shareef, aged 59, S/o. Maitheenkunju - do-
	3	Faseela Beevi, aged 54, W/o. M. Shareef, - do-
	4	Firoz Muhammad, aged 27, S/o. M. Shereef - do-
	5	Muhammed Hafis, aged 25, S/o. M. Shereef - do-
Petition		U/s 23 of The Protection of Women from Domestic Violence Act, 2005
Order		Petition is allowed

This petition having been heard on 03.02.2025 and the court on this day passed the following :

ORDER

1. This is an order in the application filed by the first and the second petitioner in the aforesaid Application under section 23 of the Protection of Women from Domestic Violence Act.
2. The M.C. has been filed by the first petitioner on her own behalf and on behalf of the second minor petitioner under Section 12 of the Act, 2005. This Court, through an ad interim ex-parte protection order dated 01.06.2024, has restrained the respondents from committing any acts of domestic violence, whether physical, sexual, or emotional. Furthermore, the respondents have been prohibited from harassing the petitioner at her residence, its premises, or any other location, including her workplace.
3. In the Section 23 petition, the petitioner states that she entered into a marital relationship with the first respondent on 05.07.2018 and has been living as husband and wife in the first respondent's house. Since 17.07.2023, they have been residing in a jointly owned house named Darulhaisa, which constitutes the shared household in this case. The second petitioner is the minor daughter born from this marriage. The second respondent is the father of the first

respondent, while the third respondent is his mother. The fourth and fifth respondents are the brothers of the first respondent.

4. While residing in the first respondent's house, the petitioner became pregnant and was taken to her parental home for care. On 07.04.2019, the second petitioner was born. Following childbirth, she returned to the first respondent's house for post-pregnancy care. During this period, the respondents complained about not receiving gold or gifts from her parents and subjected her to mental harassment. As the harassment intensified, she left the first respondent's house with the minor second petitioner and returned to her parental home.
5. Due to this incident, the petitioner's parents were compelled to provide 50 sovereigns of gold, which she later took to the first respondent's house. This gold was then used for the construction of a new house. The construction of the said house was funded by both the petitioner's money and financial contributions from her parents. Subsequently, on 06.01.2023, the respondents jointly demanded ₹10,00,000 as dowry from the petitioner's parents to complete the

construction. When the harassment escalated further, she was forced to leave the house once again and return to her parental home with the minor second petitioner.

6. Later, the first and fourth respondents visited the petitioner's parental home under the pretext of seeing the second minor petitioner. During their visit, they reiterated their demand for ₹10,00,000 from her parents. Meanwhile, the first respondent assured the petitioner that he would not engage in any further acts of domestic violence. Trusting this assurance, she returned with him to his house. From 17.09.2023 onwards, the petitioner resided with the first respondent in the shared household named Darulhaisa. However, despite her return, she continued to face harassment as the respondents persistently demanded more dowry from her.

7. One day, in an act of violence, the first respondent struck the petitioner on both shoulders with a brick. Additionally, the first respondent's mother choked her, criminally intimidated her with threats of death, and pushed her, causing her to fall. During this altercation, the fourth

respondent kicked her on the back and forcefully pulled her hands, causing her severe mental anguish.

8. Following this assault, the petitioner sought medical treatment at Kollam District Hospital. She also reported the incident to the Kannanalloor police station, leading to the registration of an FIR under Crime No. 503/2024. The offences were registered under Sections 323, 324, and 498A read with Section 34 of the Indian Penal Code.
9. The petitioner seeks maintenance for herself and the minor second petitioner to support their sustenance. Currently pursuing education at a pharmacy college, she requests a monthly maintenance of ₹20,000 each. She asserts that she has no independent source of income and emphasizes that the first respondent has both a moral and legal obligation to provide for his wife and child. Additionally, she prays for protection orders, residence orders, and other necessary reliefs.
10. In response, the respondents have filed an objection, denying all allegations made against them. They contend that the petition is not maintainable, either in law or on factual grounds. The respondents refute the petitioner's

claim of residing in the first respondent's house after marriage, stating instead that they lived as husband and wife in the family house of the first respondent. They also deny the petitioner's claim to any share in the house named Darulhaisa, asserting that the funds for its construction were raised by the first, second, and fourth respondents through other means and through the sale of a car registered in the second respondent's name.

11. Furthermore, the respondents argue that the first respondent diligently fulfilled his responsibilities as a husband, providing proper care for the petitioner during her pregnancy. They categorically deny any physical or mental harassment towards her and reject claims of demanding money from her parents. According to them, all pregnancy related expenses were borne by the respondents. They further allege that the petitioner deserted the first respondent without any valid reason. Lastly, they assert that the case has been falsely fabricated against them with the petitioner's political influence, distorting the true facts.
12. The income of the first respondent to the tune of ₹1,00,000 as stated by the first petitioner is denied in toto by the

respondent. The respondent further stated that the first petitioner is well off and capable of looking after herself and hence the first petitioner is not entitled for a maintenance order. The custody application with relation to the second minor petitioner is pending in the Hon'ble Family Court, Chavara. The respondent denied the allegation that the respondent had tried to take away the minor second petitioner from the position of the first petitioner. It is the first petitioner who is harassing the respondents with the aid and convenience of the parents of the 1st petitioner.

13. The following points were arisen for consideration:

- i. *Whether the petitioner is entitled for an interim protection order u/s.18 (a) of the Act?*
- ii. *Whether the petitioner is entitled for an interim order restraining the respondents from taking away forcefully the minor 2nd petitioner from the custody of the 1st petitioner?*
- iii. *Whether the petitioner is entitled for an interim order restraining the 1st respondent from renouncing his right over the shared household or restraining the respondent from alienating or disposing of the shared household or encumbering the same?*
- iv. *Whether the petitioners are entitled for an interim order directing the respondent to pay*

an amount of Rs.20,000/- to the petitioners as monthly maintenance allowance u/s.20 (d) of the Act?

v. Reliefs and costs?

14. **Point No. (i)** :- There is no dispute regarding the domestic relationship between the first petitioner and the first respondent. A review of the affidavit and petition reveals multiple instances where the petitioner alleges she was subjected to physical and mental domestic violence, with specific dates provided. Additionally, the first petitioner has submitted a photocopy of a wound certificate dated 18.05.2024 as evidence of the alleged assault.
15. While the truth of these allegations can only be established through a full-fledged trial and thorough examination of evidence, there exist prima facie indications of domestic violence by the first respondents. In light of this, the petitioners are entitled to an interim protection order to prevent any further acts of domestic violence. Accordingly, this issue is decided in favor of the petitioner, confirming the earlier order.
16. **Point No. (ii)**:- The fact that a criminal case has been registered against the first respondent raises a significant concern that the respondents might attempt to influence or

manipulate the petitioners, either through coercion or persuasion, potentially undermining the prosecution's case. Given the gravity of the allegations and the pending prosecution against the first respondent for committing serious offences against the first petitioner and the minor second petitioner, the objections and assurances made by the respondents cannot be fully trusted.

17. While it is acknowledged that the respondents have a right to care for the minor second petitioner, the prevailing circumstances do not justify granting the custody. The court has already addressed the allegations of domestic violence in its earlier findings, concluding that at this stage, it would not be appropriate to modify or dismiss the protection order sought by the petitioners. Allowing the respondent to establish contact with the second petitioner could provide an opportunity to exert undue influence, thereby compromising the integrity of the proceedings.
18. In light of these considerations, this court is convinced that the interim custody of the minor 2nd petitioner shall vest with the 1st petitioner. Hence this point is resolved in favor of the 1st petitioner.

19. **Point No. (iii):** The first petitioner sought an interim residence order restraining the respondents from renouncing their right over the shared household or alienating or disposing of the shared household or encumbering the same. According to the 1st petitioner, the shared household was built on property gifted by her parents and is now in the absolute ownership of the respondents, with substantial contributions from her personal resources. Conversely, the 1st respondent argued that the house was constructed using funds he procured through other means and that neither the 1st petitioner nor her parents has pitched in any amounts.
20. This court is of the view that these conflicting claims regarding ownership and financial contributions necessitate a detailed trial until then an order restraining the respondent from alienating or disposing off the shared household or encumbering the same is to be passed in the interest of justice. The matter was concluded accordingly, pending further adjudication during the trial .
21. **Point No. (iv):-** The marriage between the parties is admitted. The 1st petitioner and 1st respondent are living separately. Now, the question to be considered is whether

the respondent has the obligation to provide interim maintenance to the petitioner till the disposal of the main petition.

22. In Chaturbhuj v. Sita Bai (2008 2 SCC 316), the Honourable Supreme Court held that granting maintenance to a wife is a form of social justice meant to prevent destitution and vagrancy. The purpose is to provide swift relief in the form of food, clothing, and shelter to a deserted wife, upholding fundamental rights and natural duties.
23. Addressing the respondent's claim of insufficient income to provide the requested maintenance, the Hon'ble Supreme Court's stance is evident in Shamima Farooqui v. Shahid Khan (AIR 2015 SC 2025):

"Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able-bodied and is in a position to support himself, he is under the legal obligation to support his wife, for the wife's right to receive maintenance under S.125 CrPC, unless disqualified, is an absolute right."

24. For determining the appropriate maintenance amount, the court must consider various factors, including the status and needs of the parties, the husband's financial capacity while accounting for his personal expenses and legal obligations, and other statutory deductions. The maintenance should enable the wife to live in reasonable comfort, reflecting her prior lifestyle and marital circumstances, without feeling disadvantaged in pursuing her case. Failure to provide adequate resources for a wife's maintenance constitutes domestic violence under the law.
25. Upon thorough examination, it is evident that the respondent's actions have subjected the petitioner to instances of domestic violence. The materials presented before the court do not sufficiently justify denying the petitioner's request for interim maintenance. The respondent, being an able-bodied individual capable of earning a livelihood, cannot shirk his responsibility to maintain his wife. Petitioner has filed an assets and liability certificate. Despite giving ample opportunities, the respondent has failed to file his assets and liabilities. According to the Assets and Liabilities certificate submitted by the petitioner, it is evident that the petitioner is living in her parents house and she is seeking an amount of ₹20,000 each as general expenses, including house rent, other house expenses, medical bill,

transportation charges, etc. Her affidavit further reveals that no maintenance amount has been awarded by any other courts and she has the second minor petitioner as her dependent. She is seeking an amount of ₹20,000 for her dependent minor second petitioner. The petition reveals that the first petitioner is unemployed and she has no means to take care of herself. In order to substantiate her view, she had produced her bank statements which show that her monthly average balance is on the lowest side. Further, the petition reveals that she has a liability of ₹5,00,000 to a car loan with equated monthly installments of ₹14,250 per month for the vehicle bearing registration number KL-23-V-3981. As per the affidavit of the 1st petitioner, the respondent is earning one lakh per month by doing business. The onus is on the husband to establish with necessary material that there are sufficient grounds to show that he is unable to maintain the family, and discharge his legal obligations for reasons beyond his control. If the husband does not disclose the exact amount of his income, an adverse inference may be drawn.

26. However, there is no evidence to suggest that the petitioner has any independent income to support herself. The petitioner has requested interim maintenance of ₹20,000 herself and a like

amount to the 2nd petitioner. Considering the petitioner's lifestyle and standard of living during her marriage, the court finds it reasonable to direct the 1st respondent to pay ₹10,000 per month to the first petitioner and ₹5,000 per month to the second petitioner. This amount would enable the petitioners to maintain a lifestyle that reasonably aligns with their prior circumstances till the case is finally decided.

27. **Point No. (iv):-** In the result, the petition is allowed on the following terms:

1. The respondents are hereby restrained from committing any act of domestic violence against the petitioner including physical, sexual, verbal or emotional;
2. The respondents are further prohibited from harassing the petitioners at her house or its premises or at any other place including her place of employment, education if any;
3. The 1st respondent is hereby restrained from renouncing his right over the shared household and the respondents are restrained from alienating or disposing of the shared household or encumbering the same until further orders.
4. The 1st Respondent is hereby directed to provide maintenance of ₹10,000 per month to the first petitioner and ₹5,000 per month to the second

petitioner. The amount shall be credited in the account of the 1st petitioner on or before 6th of every month. The first petitioner is entitled to receive the maintenance amount of the 2nd minor petitioner for his behalf

5. The jurisdictional Station House Officer, as mandated under S.19(7) of The Protection of Women from Domestic Violence Act 2005 is hereby directed to assist the petitioner for the effective implementation of the order *stricto sensu*.
6. The office of this court is directed to comply with S.24 of the Act.

Dictated to the Confidential Assistant transcribed and typed by her, corrected by me and pronounced in open court on this the 7th day of February, 2025.

Sd/-

**Judicial First Class Magistrate,
Karunagappally**

// True Copy //

**Judicial First Class Magistrate,
Karunagappally**