

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE,
IRINJALAKUDA.**

Present: **Smt. Deepa Mohanan, Judicial First Class Magistrate**

Dated this, Monday, the 06th day of April, 2026/16th Chaithram,

1948 S.E.

MC 77/2022

- Petitioner : 1. Shaija Jose, W/o Jose P A, Now residing at
C/o Meena Pauly,, Alappattu house,
Perinchery post, Cherppu, Thrissur.
2. Mary Eminta, D/o Jose P A, Now residing at
Alappattu house, Perinchery post, Cherppu,
Thrissur.

(By Adv.Lina Joseph)

- Respondent : Jose P A, S/o Antony, Pottakkaran house,
Thoravu village, Thekke thoravu desom,
Pudukkad P O, Thrissur district.

(By Adv. Jio Francis)

This case having been finally heard today, the court passed the following:-

ORDER

1. This is an application filed under Section 12 of The Protection of Women from Domestic Violence Act, 2005.

2. The contentions in the petition are as follows:

First respondent is the husband of the first petitioner. The marriage between them was solemnised on 31/05/2010 as per Christian religious rites and ceremonies. The second petitioner is the only child born in their wedlock. After the marriage they started residing in the shared house owned by the respondent. It is the second marriage of the respondent. After the marriage the respondent had subjected the petitioner to severe mental and physical harassment. The respondent and his children in his earlier marriage had treated the petitioner as a servant and they did not care about the well being of the petitioners. They always behaved in an inimical manner to the petitioners. The respondent never provided proper maintenance to the petitioners. Hence protection order, residence order, order for maintenance, an order for rent and an order directing the respondent to return the belongings of the petitioner are to be granted in favour of the petitioner.

3. The respondent filed objection denying all the averments in the petition and stated that the petitioner is not entitled for any of the reliefs. The marriage between the petitioner and the respondent is admitted. The real fact is that the petitioner was not able to look after the child and the family affairs properly.

The first petitioner is suffering from epilepsy and she always behaved in a very rude manner to the respondent and his children in his earlier marriage. The petitioner had filed a false case against the respondent raising untenable allegations. The petitioner herself had left the matrimonial house on her own will and is residing in the house of her brother. Till the last date the petitioners were residing along with him, he had properly cared for their maintenance and looked after them. He did not commit any sort of domestic violence upon the petitioner. The respondent is a retiree and is earning an amount of Rs.3629/- as pension which is required by him for his treatment and he is depending upon the children in his earlier marriage for his livelihood. Hence the petitioner is not entitled for any reliefs and the petition is liable to be dismissed.

4. Heard both sides and perused relevant records. The following points were raised for determination:

1. Is the petitioner entitled to get protection order restraining the respondent from committing any sort of domestic violence against her?
2. Is the petitioner entitled to get custody of second petitioner?

3. Is the petitioner entitled to get maintenance to the tune of Rs.20,000/- (10,000/- for each petitioners) per month from the respondent?
4. Is there a need of the respondent to move himself from the petition schedule property for the peaceful living of the petitioners?
5. Is the petitioner entitled to get 10 cents of property by registering in her name?
6. Is the petitioner entitled to get an amount of Rs. 10,000/- per month as rent till the registration of the property?
7. Is the petitioner entitled to return the belongings of the petitioner?
8. Reliefs and costs.

5. The petitioner was examined as PW1. PW2 and PW3 were examined and Exhibit P1 to P8 were marked on behalf on behalf of the petitioner. No oral or documentay evidence was adduced by the respondent even after giving sufficient opportunities.

6. Heard both sides.

SUBMISSION

7. Learned counsel for the petitioner submitted the following arguments to substantiate the case of the petitioner.

1. The petition schedule house is the shared house of the petitioner.
2. The petitioner has proved the case and is entitled to get protection order and residence order in her favour.

8. Learned counsel for the respondents has submitted the following arguments to substantiate the case the the respondents.

1. The marriage of the petitioner with the respondent is her second marriage.
2. The respondent has no property in his name and the properties were transferred in the name of his son.
3. The respondent has no income.
4. The petitioner had suppressed material facts and she is not entitled for any reliefs claimed by her.

DISCUSSION

9. **POINT NO.1 AND 2:-**

In order to grant any relief under the provisions of Protection of Women from Domestic Violence Act, the petitioner must prove the domestic relationship between the parties and that the respondent had subjected her to domestic violence which would come under the purview of section 3 of the Act. Thus before going to the merits of the contentions the relevant provisions stating the terms, domestic relationship, respondent, shared house hold and domestic violence shall be looked into. For an easy reference the said provisions are hereby extracted as follows:

Section 2(f) :"**domestic relationship**" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

Section 2(q) "**respondent**" means any ¹[adult male] person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner;

Section 2(s) "**shared household**" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Section 3 : Definition of **domestic violence**

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.--For the purposes of this section,--

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes--

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes--

(a) 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 and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.--For the purpose of determining whether any act, omission, commission or conduct of the

respondent constitutes "domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration.

10. A conjoint reading of these provisions would show that in order to grant any reliefs under the Act, the petitioner has to prove that she lives or has lived in the shared house hold at any point of time with the respondent in domestic relationship and he had subjected her to domestic violence under section 3 of the Act.

11. In the case on hand, the first petitioner is the wife of the respondent. Their marriage is an admitted fact. It is also admitted that after the marriage the petitioner had resided in the house of the respondent. Thus the petitioner and the respondents are related to each other through the marriage and the petitioner had resided along with the respondent in the house belonged to the respondent which is thus becomes her shared house. These facts show the domestic relationship between the petitioner and the respondent. Hence the domestic relationship between the parties is found established.

12. The petitioner filed proof affidavit in lieu of examination in chief. The contents of the proof affidavit are in tune with the

averments in the petition. The petitioner was examined as PW1. In the proof affidavit and in the petition the petitioner had raised specific contentions as to the fact of domestic violence committed by the respondent. It is stated that, at the time of the marriage the respondent and his family had agreed that, ten cents of property shall be transferred in the name of the petitioner and they do not have any objection in the petitioner having children. But after the marriage both the respondent and his children in his earlier marriage started behaving rudely to the petitioner. She was treated as a house help and never allowed by the respondent and his children in his earlier marriage to take part in any of the family events. When the petitioner got pregnant the respondent and his children behaved very cruelly and never allowed her to take any rest. She gave birth to the second petitioner and immediately after the child was baptised she returned to the matrimonial house with the child. But the respondent and his children made her to do all the household works and never allowed her to take proper rest.

13. On 4/11/2021, the respondent assaulted the petitioner very badly for the reason that he had seen a cockroach in the house. The petitioner filed complaint at the police station. Exhibit

P8 is the FIR in registered in the alleged incident. The petitioner who was examined as PW1 stood firmly during cross examination and nothing was brought out in cross examination to disbelieve her testimony. PW2 is the sister of the respondent who vouchsafed corroborating the case of the petitioner. She gave evidence corroborating each and every contention of the petitioner and affirmed the fact of harassment of the petitioner by the respondent. Her evidence too is found trustworthy and nothing was brought out in cross examination to disbelieve her testimony. The evidence of PW2 is perfectly in tune with that of PW1 and is corroborating the evidence of PW1. PW2 is the brother of PW1. He too deposed in tune with that of PW1. He gave evidence that at the time of the marriage the respondent had agreed to transfer ten cents of property in the name of the petitioner and to deposit ten lakh rupees in her name. After the marriage both the respondent and the children in his earlier marriage started harassing the petitioner both physically and mentally. The respondent used to manhandle the petitioner very badly and the petitioner filed complaint at the police station. But the act of the petitioner was severely deprecated by the family members of the respondent. The petitioner was treated like a house help. The respondent assaulted the petitioner very cruelly and she was brought

back to the parental house fearing the respondent. The evidence of PW2 is also in tune with that of PW1 and is corroborating her evidence.

14. Thus the evidence of PW1 to PW3 proves that the respondent had subjected the petitioner to physical and mental harassment and thereby committed domestic violence upon her. The petitioner is entitled for protection order restraining the respondent from committing any sort of domestic violence upon her. The first point is answered in favour of the petitioner and against the respondent.

15. Hon'ble High Court in **Cesil Jesudas v. Sandhya J.S. 2022 (2) KHC 147**, it is observed that,

The very objective of the D.V. Act is to protect women from violence that occurs within the family and for matters connected therein. In fact, it was not intended to create another forum for adjudication of disputes arising out of matrimonial relationship. So, the proceedings under the Act has to be understood as supplemental provision, besides the right to adjudicate their issues in a competent Civil Court, Family Court or Criminal Court. The protective

measures envisaged under the Act include residence orders, monetary reliefs, custody orders, compensation orders etc. The main objective of such proceedings is to protect the women, rather than adjudicating the disputes.

16. The second petitioner is minor and now the child is with the first petitioner. The second petitioner is a girl child and at the time of filing of the petition she was nine years old. The respondent in his objection had admitted that the second petitioner is now staying with the first petitioner. It is already proved that the respondent had committed domestic violence upon the petitioner. The conduct of the respondent would show that there is every chance that the respondent may continue to harass the petitioner in many ways including taking the forceful custody of the child. Hence if he is not restrained from taking the forceful custody of the child it will cause irreparable injury to the petitioner. It is to be noted that regarding the custody of a minor child the Hon'ble Family Court is retaining jurisdiction over the subject and is the adjudicating authority. The power under section 21 of Protection of Women from Domestic Violence Act can be exercised to the extend of granting temporary custody of the child. Hence the respondent is hereby restrained from forceful custody of the child except in accordance

with the procedure established by law. The point is found in favour of the petitioner and against the respondent.

17. **POINT NO.3-**

The respondent being the husband of the first petitioner and father of the minor child, the second petitioner is duty bound to provide proper maintenance to them. In his objection it is stated that till the petitioner had left the matrimonial house the respondent had been looking after them. He does not have a case that after the petitioner left the matrimonial house he had provided any amount towards their maintenance. Thus the respondent is not paying any amount towards the maintenance of the petitioners. Both parties had filed disclosure affidavits showing their assets and liabilities. The petitioner in her disclosure affidavit affirmed that she does not have any job and is not deriving any income from any source. It is further stated that, the respondent has share investment in share market, shares and fixed deposits in various kuri companies including Public Fund Finance, Ollur and Vattakkuzhi Finance, Amballore, share in properties purchased in Mumbai, deposit in ICL, Irinjalakuda, bank deposits in various banks such as South Indian Bank, Pudukadu, State Bank of India, Pudukadu, Canara Bank Pudukadu, Co-

operative society Pudukadu and 33 cents of property near KSRTC bus stand, Pudukadu sold by the respondent in 2012. Whereas the respondent in his disclosure affidavit stated that, he is residing in the house of his son. He has a total expenditure of ten thousand rupees per month. He has a monthly income from his pension to the tune of Rs. 2629/- and ESI pension of Rs. 1000/-. His affidavit would show that he is not paying any amount towards the maintenance of the petitioners not even for the educational expenses of the minor child. As per him he requires an amount of ten thousand for his expenditure but he earns only 3629/- as pension. He barely affirmed that he does not have any income apart from the pension without even producing any documents to substantiate the claim. He does not have a case that he is unable to do any work. Hence the claims of the petitioner that the respondent has sufficient income to look after the petitioners and he wilfully not furnishing any amount towards their maintenance are found established. The petitioner is claiming an amount of Rs.10,000/- each towards their maintenance. The said amount is just and reasonable. Hence the respondent is hereby directed to pay an amount of Rs.10,000/- each towards the maintenance of the petitioners. The point is answered accordingly.

18. **POINT NO.4 TO 6 :**

The petitioner is now residing in the house of her brother and not in the shared house. This fact is admitted by both parties. The evidence of PW1 to PW3 would show that that petitioner had left the shared house for the reason of severe harassment by the respondent. In point no.1 it is found that the respondent had subjected the petitioner to domestic violence. This would show that if the petitioner resumes her residence in the shared house there is every chance that the respondent will again manhandle her and the minor child. For the said reason it is only appropriate to direct the respondent to arrange alternate accommodation for the petitioners and to pay rent to the tune of ten thousand rupees per month.

19. Regarding the relief of directing the respondent to transfer ten cents of property in the name of the petitioner as promised by him at the time of the marriage, this fact is consistently deposed by PW1 to PW3. Their evidence would show that, at the time of the marriage there is an arrangement made between the parties to the effect that the respondent shall transfer ten cents of property in the name of the petitioner. But the respondent did not materialise his promise as evident from the evidence of PW1 to PW3. But

directing the respondent to transfer ten cents of property in the name of the petition is a relief, execution of the same is not possible to be monitored by the Court. The remedy will not fall within the jurisdiction of a criminal court. Being so the said relief is hereby rejected.

20. Petitioner is claiming the relief of directing the respondent to return the articles belong to the petitioner such as, almirah, books, utensils and apparels, which are kept in the shared house. Respondent did not state that the said articles do not belong to the petitioner and are not being kept in the shared house. Being so the claim of the petitioner is hereby allowed directing the respondent to return the almirah, books, utensils and apparels of the petitioner which are kept in the shared house within two months from the date of the order. The points are answered accordingly.

RESULT

21. **POINT NO.6:-**

In the result, the petition is hereby allowed as follows;

- 1) The respondent is restrained from from committing any sort of domestic violence upon the petitioner.
- 2) The petitioner is hereby granted temporary custody of

the minor child and the respondent is hereby restrained from taking forceful custody of the child except in accordance with the procedure established by law.

- 3) The respondent is hereby directed to pay an amount of Rs.10,000/- each towards the maintenance of the petitioners.
- 4) The respondent is hereby directed to arrange alternate accommodation for the petitioners and to pay rent to the tune of ten thousand rupees per month.
- 5) The respondent is hereby directed to return the almirah, books, utensils and apparels of the petitioner which are kept in the shared house within two months from the date of the order.
- 6) Issue free copy of the order to the petitioner and respondent.

(Pronounced in open court on this, the 06th day of April, 2026.)

Sd/-
Deepa Mohanan
Judicial First Class Magistrate
Irinjalakuda

APPENDIX

List of Witnesses examined

Petitioner's Witnesses :

PW1	Shaija	First petitioner
PW2	Kusumam	Other witness
PW3	Jojo	Other witness

Respondent's Witness : Nil

Court Witnesses : Nil

List of Exhibits marked

Petitioner's Exhibits :

1	Exhibit P1/PW1	Copy of marriage certificate, dated 14-07-2010
2	Exhibit P2/PW1	Birth certificate of Mary Eminda J., issued from Thrissur Corporation.
3	Exhibit P3/PW1	OP Ticket from Taluk Hospital, Pudukkad, dated 05-11-2021.
4	Exhibit P4/PW1	Discharge summary, dated 22-07-2022.
5	Exhibit P5/PW1	Computed Tomography – Brain (Plain) report, dated 20-07-2022.
6	Exhibit P6/PW1	Receipt from Modern Neuro centre, dated 21-07-2022.
7	Exhibit P7/PW1	Medicine bill, dated 03-10-2023.
8	Exhibit P8/PW1	FI Statement in Crime No.643/2021 of Pudukkad police station.

Respondent's Exhibits : Nil

Court Exhibits : Nil

Sd/-

Judicial First Class Magistrate
Irinjalakuda

// True copy //

Sd/-

Deepa Mohanan
Judicial First Class Magistrate
Irinjalakuda