

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

Present: Sri.MANISH. D.A, B.Sc, LL.M

Judl. First Class Magistrate – I

Dated : Tuesday, 20th August, 2019/ 04th Bhadra, 1941

**CMP Nos.2998/2019 and 3457/19
in MC 26/2019**

CMP No.2998/19

Petitioner : Soumya Suresh, aged 32, D/o.Suresh,
Kothettu, Kadappakkada P.O, Kollam

[Rep. by Adv. Sushasubil]

Counter petitioners : 1. Premji Anand, aged 41, Anand Vihar,
Near CPM Office, Kadavattaram,
Neyyattinkara
2. Jagadom, --do-- --do--

[Rep. by Adv.Sivaprasad.S]

Sentence or Order : Petition is partly allowed.

CMP No. 3457/19

Petitioner/ 2nd Respondent : Jagadom, aged 71, D/o.Rossamma, Anand
Vihar, Near Kanara Mandiram, Poovar Road,
Neyyattinkara.

[Rep. by Adv.Sivaprasad.S]

Counter petitioner : Soumya Suresh, aged 32, D/o.Suresh,
Kothettu, Kadappakkada P.O, Kollam

[Rep. by Adv. Sushasubil]

Sentence or Order : Petition is allowed.

These CMPs were heard on 20.08.2019 and this Court passed the following on the same day.

COMMON ORDER

CMP No. 2998/2019

1. The petition was filed by the aggrieved person u/s. 23.of the Protection of Women from Domestic Violence Act, 2005.

2. The averments in the petition, in brief, were as follows:-

The petitioner was a widow having a daughter aged 8 years born out of her wedlock with her earlier husband in the year 2008. Her marriage with the first respondent was solemnized on 23.01.2016 at Kollam. The petitioner had a job at Technopark, Thiruvananthapuram. When the marriage proposal of the first respondent came, he had promised to take care of the daughter of the petitioner and hence she agreed to marry the first respondent. The first respondent was a divorcee.

3. After marriage the petitioner and the first respondent lived together in the family house of the first respondent along with the second respondent. The second respondent was the mother of first respondent. From the next day of marriage itself, the respondents behaved in a strange manner with the petitioner. The first respondent had used filthy language against the petitioner and also behaved in an indifferent manner. The second respondent had always supported the first respondent. The respondents have suspected the petitioner and they had not allowed her to interact with her relatives. The petitioner realized that the first respondent

was an alcoholic and short tempered. When she asked the first respondent about his behaviour he had threatened the petitioner. He had also manhandled the petitioner brutally.

4. The petitioner along with the daughter had gone with the first respondent to Darjelling. He had mentally harassed the petitioner in front of other officers. The first respondent had consumed alcohol and assaulted the petitioner. Mean while the petitioner became pregnant and the first respondent took a house for rent at Thiruvananthapuram. He had left the petitioner and her daughter in that house and went to his work place at Jammu. Whenever the first respondent came to the house during leave, he used to harass the petitioner both physically and mentally. During January 2018 the first respondent after consuming alcohol had evicted the petitioner and her child from the house during midnight. The senior officers of the first respondent had helped the petitioner to reach her house at Thiruvananthapuram. During May 2018, both respondents have harassed the petitioner and sent her to her house at Kollam. During February 2019, the first respondent had misbehaved with the daughter of the petitioner. When she questioned the first respondent about such acts, he had assaulted the petitioner. The parents of the petitioner were facing revenue recovery proceedings against their house at Kollam. So the petitioner was compelled

to go to the family house of the first respondent. During May 2019, the petitioner reached the family house of the first respondent at Neyyattinkara which was the shared household. However she was not allowed to enter the shared household. The petitioner has no job or income to meet the needs of the children. The first respondent is liable to maintain the children. His average income was around 1,85,000/- per month. She has claimed monthly maintenance at the rate of Rs. 75,000/- from the first respondent. Stating as above she has prayed for an interim order of protection, residence and also maintenance.

5. The respondent No.1 filed objection stating as follows:

The petition was not maintainable either in law or on facts. The second respondent was the mother of the first respondent. She is a senior citizen aged 71 years. The entire allegations in the petition were cooked up stories with intention to extort money from the first respondent. The respondents have not committed any harassment against the petitioner. The petitioner had physically and mentally tortured the respondents. The petitioner's first marriage was conducted without the consent of her parents. Her first husband had suffered severe harassment and torture from the petitioner. The first respondent got information from the petitioner that her first husband was drowned to death in suspicious circumstances. The petitioner had threatened the respondents stating that

they would also face similar fate. The petitioner belonged to a financially poor family. She had requested the first respondent to marry her conveying the helpless and other situations faced by her. The petitioner was working in a private firm at Thiruvananthapuram. The matrimonial relationship of the first respondent with his earlier wife was legally separated. The petitioner is suffering from severe mental disorders.

6. The respondents belonged to reputed, educated and respectable family in their locality. The second respondent has always treated the petitioner as her daughter. Both the children were treated alike by the respondents. The first respondent has discharged all his duties as a loyal husband. It was not correct to state that the first respondent was warned by his superior officers for ill treating the petitioner. The petitioner had undergone treatment by a psychiatrist for her mental disorder.

7. As demanded by the petitioner, a house was taken for rent by the first respondent at Thiruvananthapuram. The petitioner has always maintained a strange approach towards the respondents. The respondents have not uttered any offensive words against the petitioner or her parents. She had also harassed and tortured the children. She admitted that she had attempted to commit suicide several times before the marriage. The

first respondent had always treated both children as his own children. False allegations were made by the petitioner regarding molestation of the child, with intention to obtain huge amount from the first respondent. The first respondent had already filed a petition before the Women's Commission in the year 2018. A petition was also filed by him before the State Commission for Child Rights since the petitioner had tortured the children regularly. She has been receiving all the benefits being the wife of an army personnel. The first respondent has been regularly paying Rs. 25000/- per month from April 2019 to the petitioner. All these facts were purposefully suppressed by the petitioner. The petitioner had manhandled the second respondent with the help of her parents. Under the light of the ex parte residence order, the petitioner entered the house of the second respondent with police aid. She started committing atrocities towards the second respondent and also destroyed the articles in the house. She had also threatened the respondents that she would commit suicide, for which the second respondent would be made liable. She had also threatened the second respondent that she would kill her by poisoning. The second respondent is having a scary life in her own house due to the behavior by the petitioner. The property where the petitioner has obtained an ex parte order was the self acquired property of the second respondent. The second respondent only has absolute right and ownership over the said property and house.

The petitioner cannot claim any right over that house. The intention of the petitioner was to cause disgrace to the first respondent personally and officially. The first respondent has prayed to dismiss the application and to vacate the interim order passed in favour of the petitioner.

8. The respondent No.2 filed objection stating as follows:

The petition was not maintainable either in law or facts. It was filed with ill motives. The entire allegations against the respondents were only cooked up stories. The respondents have not harassed the petitioner in any manner. It was the petitioner who had tortured and harassed the respondents both mentally and physically. She is not entitled for any relief claimed in the application. The first marriage of the petitioner was solemnized without the consent of her parents. She had harassed and tortured her first husband. The petitioner hails from a poor family. She had requested the first respondent to marry her due to her helplessness and poverty. In order to have a peaceful and stable marital life, the first respondent had agreed to marry the petitioner. After marriage the petitioner had made unhealthy allegations against the respondent. The petitioner is suffering from severe mental disorders. The second respondent has treated the petitioner as her own daughter. A son was born to the petitioner out of her wedlock with the first respondent. Both the children

were treated alike by the first respondent. The first respondent has discharged all his duties as a good husband. The first respondent was a disciplined army officer. There was no occasion when he was warned by the superior officers. The first respondent took a house for rent at Pangode, Thiruvananthapuram as demanded by the petitioner. From the initial dates of marriage itself, the petitioner had a strange approach towards the respondents. The respondents never used any abusive or offensive words against the petitioner at any point of time. The petitioner had ill treated and misbehaved with the second respondent. The petitioner with her ill motives had raised false allegations that the first respondent had misbehaved with the child. The petitioner had behaved violently towards children also. The first respondent had filed a petition before the Women's Commission seeking for an order to have counseling for the petitioner. Thereafter he has filed a petition before the State Commission for Child Rights against the petitioner due to her torturing and harassment towards the children. The petitioner has been enjoying all the benefits offered to the first respondent as an army personnel. She is also availing all the benefits including treatment facility as a dependent of the first respondent. The petitioner had obtained the transfer certificate of the daughter from the army school. The first respondent has been regularly paying Rs. 25000/- per month to the petitioner from April 2019 onwards. All these facts were

suppressed by the petitioner.

9. The petitioner has obtained an ex parte residence order by misleading the court. After entering the house, she had created problems by shouting loudly using filthy language and also mentally harassed the second respondent. She had threatened the second respondent stating that she would commit suicide. She had also threatened the second respondent that she would be implicated in false cases by the petitioner. She had also threatened the second respondent that she would kill her by poisoning. She used to come from the house during late night and when the second respondent questioned her she had slapped on the face of the second respondent. After manhandling the second respondent the petitioner had given false complaints before the police against the second respondent. The property stated as the shared household was the self acquired property of the second respondent in which she had constructed the building. Only the second respondent has the right to enjoy that property. The petitioner cannot claim any right over that building and property. Stating as above the 2nd respondent has prayed for dismissal of the petition.

CMP No.3457/2019

10. Petition filed u/s. 25(2) of the Protection of Women from Domestic Violence Act. The averments in brief were as follows:

11. This petition was filed by the second respondent who was the mother of the first respondent. The aggrieved person had approached the court with ill motives. On 12.06.2019 the court has passed an order of residence in the house of the second respondent stating it as a shared household of the petitioner. The aggrieved person has misled the court. The address of the petitioner shown in the petition was the place of her residence. The respondents have never harassed the petitioner under the light of the interim protection order. The petitioner entered the house of the second respondent with the help of the police officials. Thereafter, she had created troubles by mentally and physically harassing the second respondent. She had also hit on the doors, gate and wall of the house and threatened the second respondent that she would try to commit suicide making the second respondent responsible for that. She had threatened the second respondent by inflicting self injuries and stated that the second respondent would be implicated in criminal cases. She threatened the second respondent that she would kill her by poisoning. She had even slapped on the face of the second respondent.

12. From 12.06.2019 onwards the petitioner has been filing false complaints before the police. She had left the second respondent's house before 27.06.2017 and returned to the house on 07.07.2019. After reaching

the house she had brutally manhandled the second respondent who was alone in the house. On 08.07.2019 the petitioner had locked the second respondent inside the house. The second respondent is leading a scary life in her own house due to the petitioner.

13. The property stated as the shared household was the self acquired property of the second respondent. She had constructed the residential building and was living there alone. She is the absolute owner in possession of the said house. The petitioner has no right over the house of the first respondent. The second respondent has prayed to vacate the interim order of residence.

14. The respondent/ aggrieved person filed objection stating as follows:

The petition was not maintainable either in law or on facts. It was filed with intention to save the second respondent from prosecution proceedings. The first respondent is liable to provide shelter and maintenance to the petitioner and her children. Even after obtaining a residence order from the court, the second respondent had made the petitioner to stand outside the house. The respondents were highly influential. The police would not provide necessary help to the petitioner. Whenever the petitioner used to go out of the house, the second respondent would lock the door and would not allow her and the children to enter the

house. She was made to wait outside the house with the children even at late night. On 27-6-2019 the petitioner went to Jaiselmer to give evidence in another case and when she returned on 7-7-2019, the second respondent along with one political leader had harassed the petitioner and also manhandled her. The petitioner was forced to approach the Police. Without taking any action against the second respondent for violation of the protection order, the Sub Inspector had advised the second respondent to file a complaint against the petitioner. It was not correct to state that on 8/7/2019 the petitioner had locked the second respondent in the house. From 8/7/2019 onwards the petitioner was admitted to Govt. Hospital Neyyattinkara. The petitioner has no other place to stay. Her elder daughter is studying in a school at Neyyattinkara. The petitioner has no job at present. Stating as above, the respondent / original petitioner has prayed for dismissal of the application.

15. The points that arise for consideration were as follows :

1. *Whether the aggrieved person is entitled for an interim order for protection and residence as prayed for in CMP No.2998/2019 ?*
2. *Whether the prayer of the petitioner in CMP.3457/2019 can be allowed?*
3. *Findings and order to be passed.*

16. **Points Nos. 1 and 2** :- These points are considered together in order to avoid repetition of facts and evidence and for the sake of convenience. CMP.2998/2019 was filed by the aggrieved person u/s 23 of the Protection of Women from Domestic Violence Act. The first respondent was her husband. The second respondent was the mother of the first respondent. The marriage between the petitioner and the first respondent was solemnized on 23.1.2016. At the time of marriage, she had a daughter aged 8 years, born out of her wedlock with her first husband. The first respondent was working in defence service. After marriage, the petitioner and first respondent lived together in the family house of the first respondent with the second respondent. It was stated in the supporting affidavit by the petitioner that immediately after the marriage, the respondents started behaving in a strange manner and illtreated her. The first respondent had not allowed the petitioner to interact her with relatives. She stated about the incidents which happened when she stayed with first respondent at his work place in North India. She had made allegations regarding physical assault and verbal abuse against the first respondent. She stated about a rented house taken by the first respondent at Pangode, Thiruvananthapuram and her stay in that house with her daughter when the first respondent went for job at Jammu. She admitted that a complaint was given by the first respondent against her for child

abuse. It was also stated that an FIR was registered against the first respondent alleging offence punishable under the provisions of POCSO Act with allegation that he had abused the child. According to the petitioner, when she went to the shared household, the respondents have not allowed her to enter the house. She further stated that she has no other place to reside and also that she was jobless. She had no income to meet her needs and the needs of the children.

17. Per contra, both respondents have refuted the entire allegations by the petitioner in their objection and stated that the present petition was filed with ill motives. The second respondent was a senior citizen aged 70 years. According to the respondents, immediately after the marriage, the petitioner started misbehaving with them and had even gone to the extent of manhandling the second respondent. It was stated in the counter affidavit filed by the first respondent that the petitioner has been suffering from mental disorder. It was contended by the respondents that the building described as the shared household was the absolute property which belonged to the second respondent. It was stated that the house was constructed by the second respondent by using her funds. According to both respondents, after obtaining an interim exparte order by the petitioner, she entered the house of the second respondent and created

troubles. It was alleged that the petitioner had threatened the second respondent stating that she would commit suicide and also that she would kill the second respondent by giving poison. It was submitted by the respondents that considering the strained relationship between the parties, the petitioner may not be allowed to continue her stay in the house of the second respondent. The learned counsel for the respondent has relied on the decision of the **Hon'ble High Court of Kerala in Hashim v. Shima, 2015 (2) KLT 919** and argued that the residence belonging to the mother in law would not be a shared household. In the above said decision the Honble High Court has discussed the Judgment passed by the Hon'ble Supreme Court in **S.R.Batra v. Taruna Batra, (2007) 3 SCC 169**. The Hon'ble Supreme Court in para. 26 of the Judgment observed as follows:

“26. If the aforesaid submission is accepted, then it will mean that wherever the husband and wife lived together in the past, that property becomes a shared household. It is quite possible that the husband and wife may have lived together in dozens of places e.g. with the husband's father, husband's paternal grandparents, his maternal parents, uncles, aunts, brothers, sisters, nephews, nieces etc. If the interpretation canvassed by the learned counsel for the respondent is accepted, all these houses of the husband's relatives will be shared households and the wife can well insist in living in all these houses of her husband's relatives merely because she had

stayed with her husband for some time in those houses in the past. Such a view would lead to chaos and would be absurd.”

18. The Hon’ble High Court further observed that the Hon’ble Supreme Court in S.R.Batra's case held that a residence order cannot be passed to enforce residence of the wife in the house belonging to her mother in law. The Hon’ble Supreme court also noticed that the definition of shared household was not happily worded and it was the result of a clumsy drafting.

19. The respondents have not denied the fact of marriage. The domestic relationship between the petitioner and the respondents is an admitted fact. As per Section 2(f) of the Protection of Women from DV Act, 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. The term shared household is defined under Sec.2(s) as 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 enquiry 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. The petitioner in her affidavit has stated about the rented house taken by the first respondent at Pangode, Thiruvananthapuram and her stay in that house. It was also contended by her that after marriage, she resided in the family house of the first respondent along with the second respondent. The learned counsel for the petitioner submitted that even if the second respondent was the owner of the house, it would come within the definition of the shared household and the petitioner is entitled to live in that house. During the course of arguments the certified copy of sale deed No.1053/1987 in favour of the second respondent was produced and marked as Ext.D1 for reference. Ext.D2 was the true copy of the tax receipt dated 24-6-2019 in the name of the second respondent. The true copy of the property tax receipt dated 24-6-2019 issued by the Neyyattinkara Municipality in favour of the second respondent was marked as Ext.D3. In Ext.D3 the building number was mentioned as XV/61. Relying on exhibits D1 to D3 the learned counsel for the respondents argued that the house was constructed by using the fund of the second respondent and the petitioner has no right over that property.

20. In support of her arguments, the petitioner has relied on decision of the Hon'ble High Court of Delhi in **Preeti Satija v. Raj Kumari and Anr., 2014 KHC 2321**. In the above said decision the Hon'ble High court has considered a suit for possession, injunction and mesne profits filed by the wife against her son and mother in law. The Hon'ble High court of Delhi observed that the obligation not to disturb the right to residence in the shared household would continue even if the mother in law does not have any right, title or interest, but is a tenant, or entitled to equity in those premises. The daughter in law is entitled to protection from dispossession though her husband never had any ownership rights in the premises. The right is not dependent on title but the mere factum of residence. Thus even if the mother in law is a tenant on that ground or someone having equity, she can be enjoined from dispossessing the daughter in law. In case the mother in law is the owner the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. However that was not a case where the absolute title or ownership of the shared household was adjudicated in favour of the mother in law. The said facts are not squarely applicable to the present case.

21. The learned counsel for the aggrieved person has relied on the

decision of the Honble High Court of Bombay in **Sarika Mahendra Sureka v. Mahendra Rajkumar Sureka and Another, 2017 KHC 2120** and submitted that the decision of the Hon'ble Supreme Court in S.R.Batra's case (supra) must be read as applicable to the particular facts of that case. Those observations cannot be made applicable in each and every case. The Hon'ble High Court of Bombay further observed that there was no evidence to show that since date of marriage, the wife had continuously resided in the shared household with her mother in law. Coming to the facts of the present case, the petitioner herself admitted that she resided along with the first respondent at her work places in North India and also that they have resided together in a rented house at Pangode, Thiruvananthapuram. That itself shows that her residence in the house belonged to the second respondent was not continuous. The respondents in their objection stated that the petitioner had entered the house of the second respondent stating it to be the shared household after passing of the interim order and threatened the second respondent. The petitioner has no case that the first respondent is at present residing in the house with the second respondent. Both parties have made rival contentions against each in their affidavit and counter affidavit. At present there was no evidence adduced by the parties. Only the petitions and the documents produced for reference are before court. As already discussed above, the relationship between the parties

was admitted. The matrimonial relationship still subsists. The first respondent, being the husband cannot be absolved from his liability to provide residence to the petitioner. As laid down by the Honble High Court of Kerala in **Hashir v.Shima** (supra), the house of the second respondent would not be a shared household. The averments in the petition prima facie discloses the ingredients of acts of domestic violence. Hence the respondents Nos.1 and 2 can be restrained from committing any sort of physical or mental harassment towards the petitioner. At the same time, there is no reason to pass any residence order in favour of the petitioner for her residence in the house which belonged the second respondent, situated on the property obtained as per Ext.D1. It is satisfied that the interim order of residence already passed on 11-6-2019 can be altered or modified. However, the first respondent / husband is directed to provide same level of alternate accommodation for the petitioner as enjoyed by her earlier, or to pay rent for the same, as per the choice of the petitioner, u/s 19 (1)(f) of the Act. At present, there is no order passed regarding any interim maintenance, as claimed in the petition. The said point is left open to be determined later since the parties have stressed their arguments now mainly on the aspect of protection and residence. Hence CMP No.2998/2019 is partly allowed in favour of the petitioner and CMP No.3457/2019 is allowed in favour of the second respondent. These points are answered accordingly.

22. **Point No.3** : See the relief portion.

In the result,

1. *CMP No. 2998/2019 is partly allowed directing the respondents 1 and 2*

not to commit any sort of physical or mental harassment to the petitioner and her children.

2. CMP No. 3457/2019 is allowed, vacating the interim order of residence dated 11-6-2019. The first respondent is directed u/s 19(1)(f) of the Act to provide same level of alternate accommodation for the petitioner and her children as enjoyed by her earlier and as per her choice or to pay rent for the same.

(Dictated by me to the Confidential Assistant, transcribed and corrected by me and pronounced in open court this the 20th day of August, 2019).

JUDL. FIRST CLASS MAGISTRATE – I,
Neyyattinkara

APPENDIX

Witness for the petitioner : Nil

Exhibits for the Petitioner : Nil

Witness for the Respondents : Nil

Exhibits for the Respondents :

Ext.D1 : Certified copy of Sale deed No.1053/1987 dated 03.07.1987
Ext.D2 : Copy of Tax Receipt dated 24.06.19
Ext.D3 : Copy of Property tax receipt dated 24.06.19

JUDL. FIRST CLASS MAGISTRATE – I,
Neyyattinkara

