

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -III,
NEYYATTINKARA**

**Present: Sri. Albin J. Thomas,
Judicial First Class Magistrate – III**

Dated : Thursday, 12th March, 2026/ 21st Phalguna, 1947

CMP No. 9193/2024 in M.C. No. 178/2024

Petitioner : Annie.A.S, D/o Sunitha,
Annie Bhavan, Kongamkode, Kottukonam,
Kongamkode.P.O, Vellarada, Kunnathukal Village.

Represented by Adv. Gayathri.S.Mohan

Respondents 1. Abaneesh, S/o Santhosh,
Abani Mandiram, Chappath, Kollakonam,
Vilappil Village, Kattakkada Taluk.

2. Santhoshkumar, Abani Mandiram, Chappath,
Kollakonam, Vilappil Village, Kattakkada Taluk.

3. Bindhukumari, Abani Mandiram, Chappath,
Kollakonam, Vilappil Village, Kattakkada Taluk.

Represented by Adv. Rajeena.R.Maxipaul

Petition : U/s.23(2) of the Protection of Women from
Domestic Violence Act, 2005.

Sentence/ order Interim order is allowed in part.

ORDER

1. This is the application filed by the applicant u/s.23 of the Protection of Women from Domestic Violence Act.
2. The averments in the application is as follows: Petitioner is the wife of the 1st respondent. The 2nd respondent is the father of 1st respondent and 3rd respondent is the mother of 1st respondent. The respondent committed domestic violence to the petitioners and the petitioners filed a petition u/s. 12 of the Act seeking various reliefs provided under the Act. Now the petitioner seeks interim protection order, residence order, maintenance and other

ancillary reliefs.

3. Respondents filed objection denying that he had never committed any act of domestic violence. The petition is filed seeking ex parte orders. Nowhere in the petition it was mentioned that the petition is filed seeking interim order. Petitioner is having regular income and it was suppressed in the affidavit of assets and liabilities filed by her. Respondent is not having sufficient income and is currently working as a delivery staff in a pharmaceutical company. 1st respondent is having only monthly income of Rs.6,000/-. He has to maintain himself and his parents using his meager income. Hence the petition is only liable to be dismissed.
4. Heard the learned counsel for the applicant and learned counsel for the respondents. The following point arise for consideration.
 - 1) Whether the applicant is entitled to interim order as provided u/s. 23(1) of Protection of Women from Domestic Violence Act, 2005?
5. The Point:- Section 23(1) of the Act read as follows: *Power to grant interim and ex parte orders – (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.* Learned counsel for respondent argued that the petition is not maintainable since the prayer is only for ex parte ad-interim orders.
6. I have perused the petition. It is true that in the petition the specific prayer is for an ex parte ad-interim order. However it is to be noted that even though in the prayer portion the relief sought was for interim ex parte order, the petition is filed u/s. 23 of the Act and not under section 23(2) of the Act. The ex parte ad-interim order apply only if the petitioner specifically mentioned the portion

u/s. 23(2) of the Act. Since the provision is correctly quoted by the petitioner an error in the prayer is not a reason for answering the application as not maintainable. Moreover the averments in the affidavit also supports the view that the petition was filed seeking interim order provided u/s. 23 of the Act. As per section 23 of the Act, the court can pass interim order which deems just and proper. Hence this court has ample powers to pass interim order pending proceedings under this act. If so the petition is perfectly maintainable. In order to grant interim reliefs under the Act, the court has to consider whether there is any prima facie case in favour of the petitioners. There is no need to decide the reliefs on merit.

7. First and foremost the petitioner and the applicant has to show that she has resided along with the respondent. In order to claim reliefs there must be domestic relationship between the parties. The petitioner in the petition and affidavit specifically stated that she resided along with the respondent. Also the respondents has no case that they have never resided along with the petitioner. Hence domestic relationship is established.
8. The major relief claimed by the petitioner is the protection order defined u/s. 18 of the Act. There is specific mention in the averments of petition that petitioner had been subjected to domestic violence by the respondents. Even though the respondent in his objection contends that he never committed any act of domestic violence on the petitioner, the respondent admitted in his objection that he has no objection in granting interim protection order to the petitioner and her family. It is to be noted that the Act is a beneficial legislation for the well being of women who suffers domestic

violence. Whether there is an act of domestic violence committed or not is to be considered in detail at a later stage after analysis of evidence. At this stage this court is only to look at whether there is a prima facie case of domestic violence. After perusal of materials on record, this court finds it reasonable that an interim protection order as envisaged u/s. 18 of the Act can be granted in favour of the petitioner.

9. The further relief sought by the petitioner is a residential order u/s. 19 of the Act to prohibit the respondents from dispossessing or encumbering 3 ares 74 square metres of property comprised in resurvey No. 178/39 in block No. 39 of Kunnathukal village belonging to the respondents. It is to be noted that the specific relief affects the rights and liabilities of both the parties and the property is not even the shared household. If so this court is of the opinion that the specific relief sought by the petitioner is not to be granted.
10. The petitioner seeks for maintenance of Rs. 25,000/- from the respondent No. 1 as monthly maintenance. Both the petitioner and the respondents filed affidavit of assets and liabilities. I have perused the affidavit of assets and liabilities. The petitioner in her affidavit stated that she is unemployed and is not having any source of income. The 1st respondent in his affidavit stated that he is working in a pharmaceutical company as medicine delivery agent and is having only an income of Rs.10,000/-. The petitioner in the affidavit stated that the respondent is having monthly income of Rs.57,000/-. The learned counsel for respondents argued that petitioner is having a regular job and monthly income. However she suppressed that fact and filed the affidavit. Even though petitioner stated that she has monthly

expense of Rs. 5,000/- for medicine she omitted to produce any documents to support the same. The specific case of respondent is that he is working only as a delivery agent and has no other source of income. Considering the income of both parties his court is of the opinion that a monthly interim maintenance of Rs. 5,000/- to the petitioner will serve the interest of justice.

11. Considering the above discussion the application is allowed in part and the following interim orders are passed.

- a) The respondents are hereby restrained from committing any act of domestic violence against the petitioner ie, mental, physical, sexual, verbal, emotional and economic abuse.
- b) The respondents are hereby restrained from entering into the parental house of the petitioner Annie Bhavan, Kongamkode, Kottukonam, Vellarada and from causing disturbance to the peaceful residence of the petitioners therein.
- c) The 1st respondent is hereby directed to provide an interim maintenance of Rs.5,000/- to the petitioner till the disposal of the case.
- d) The Station House Office, Kanjiramkulam is directed to provide necessary assistance for the enforcement of orders.

Issue notice and copy of this order to the respondent by registered post if petitioner take steps and forward copy of the order to Station House Officer, Vellarada for favour of information and necessary action.

Comply with S.24 of the Act also.

Pronounced by me in open court on this the 12th day of March, 2026.

Sd/-

JUDICIAL FIRST CLASS MAGISTRATE –III,
NEYATTINKARA

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NEYATTINKARA