

IN THE COURT OF THE ADDITIONAL MAHILA,PERAMBALUR

PRESENT: G.ASHOK PRASATH, B.A.,B.L.,M.S.E.N.,

JUDICIAL MAGISTRATE No:1 PERAMBALUR. (I/C)

ADDITIONAL MAHILA COURT, PERAMBALUR.

Thursday 5<sup>th</sup> day of November 2020.

**DVCase No:01/2020**

*Complainant/Petitioner* : Amutha W/o Subramaniyan

*Name of the Respondent Persons* : 1. Subramaniyan S/o Raththinam  
2. Palaniyammal W/o Subramaniyan  
3. Suresh S/o Subramaniyan

*Advocate for the Petitioner* : Mr.A.P.Swamy

*Advocate for the Respondent* : Mr.T.Pichai,  
Mr.P.Sreekanth

*Evidence recorded on* : 03.11.2020

*Arguments heard on* : 04.11.2020

*Final Order delivered on* : 05.11.2020

**ORDER**

1. The instant proceeding has been initiated by virtue of an application filed by the aggrieved person, Smti. Amutha, under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "The Act") seeking protection order u/S 18 of the said Act, residence order u/S 19 and direction to the respondents to pay maintenance u/S 20 of the Act accordingly.

2. Petitioner's Narrative of the Facts in brief.

2.1. It is stated that the aggrieved person had been residing now at Chinnaru, Sarkarai alai road Veppanthattai Tk,Perambalur Dt. The said aggrieved person had married the 1<sup>st</sup> respondent and the said marriage had solemnized on 4.9.1989 according to the Hindu rites and customs at Arulmigu Tholieswar Temple at Thiruvalanthurai Village. Due to above wedlock, the aggrieved person and her

husband name called Subramanian as 1<sup>st</sup> respondent had blessed with one son name called Balamurugan. The 1<sup>st</sup> respondent had never come and seen his son after procurement of the child by the aggrieved person. The 1<sup>st</sup> respondents sister had brought the aggrieved person to the 1<sup>st</sup> respondents house but he had tortured the aggrieved person. The said aggrieved person had consumed the poison due reason of the above mentioned. After that the aggrieved person had admitted to the hospital for getting treatment. Even after that the 1<sup>st</sup> respondent had snatched the mangal sutra from the aggrieved person. The 1<sup>st</sup> respondent had taken away his son Balamurugan during the period of 5 months old. The said child had struggled for breast milk feeding and the same lead to affect the life of the child. After that the said child had rescued from the 1<sup>st</sup> respondent and admitted the child at Government Hospital at Perambalur for getting treatment. The matter had also taken before the Panchayat for negotiation and compromise in between the 1<sup>st</sup> respondent and the aggrieved person but the 1<sup>st</sup> respondent had not bound before the Panchayat.

2.2. After few months, the 1<sup>st</sup> respondent had called back the aggrieved person and her children. The 1<sup>st</sup> respondent had maintained his wife (Aggrieved person/petitioner) and children for ten days. Thence forth, the 1<sup>st</sup> respondent had stated to the aggrieved person, he had been going to Dubai so he had advised his wife to stay at her mothers house at Tholuthoor. After one year, the 1<sup>st</sup> respondent had written a letter to the aggrieved person and the same stating that he had been coming back from Dubai, against he had given advice to the aggrieved person and her children to go back and stay at the 1<sup>st</sup> respondents house at V.kalathur. The 1<sup>st</sup> respondent had come back from Dubai and thereby within a period of two days, the 1<sup>st</sup> respondent had demanded 1,00,000/- from the aggrieved person and for the same getting that above mentioned amount from her parents. So he had tortured the aggrieved person. Due reasons of torture, the aggrieved persons brother had got a loan amount of Rs 50,000/- along with interest given to the 1<sup>st</sup> respondent. After obtaining the above mentioned money, he had gone back to Dubai and thereby advised the aggrieved person to stay at her parents house.

2.3. The said 1<sup>st</sup> respondent had come back to India after the period of six months. The 1<sup>st</sup> respondent had married the 2<sup>nd</sup> respondent with out knowledge of the aggrieved person. The aggrieved person had inquired about the above said marriage, the 1<sup>st</sup> respondent had stated that the 2<sup>nd</sup> respondent had a servant maid. She had been look after the 1<sup>st</sup> respondents age old mother.

*In the year of 1993, the 1<sup>st</sup> and 2<sup>nd</sup> respondent had tortured the aggrieved person and thereby drive away the aggrieved person and her 3 years old child.*

*2.4. The aggrieved person had worked as a coliee and she had maintained her children. After that the aggrieved person children had completed the 12<sup>th</sup> standard. She had given advice to her son to go to foreign country but the aggrieved persons sister had helped the aggrieved person son to study the Polytechnic course at Dhanalaksmi Sreenivasan Polytechnic college. The 1<sup>st</sup> respondent had prepared a visa for the aggrieved person son and thereby he had taken to Dubai without the knowledge of aggrieved person. The said aggrieved person son had engaged in the sewer work by the 1<sup>st</sup> respondent. Further more that the 1<sup>st</sup> respondent had obtained the salary amout from the aggrieved person son and he never give any money even for his fundamental neccissities. The 1<sup>st</sup> respondent had come back to India and thereby he had tortured the aggrieved person and also induce the aggrieved person to commit suicide.*

*2.5. The aggrieved person son had come back to India. After that the aggrieved person's son had completed his Polytechnic course at polytechnic college and thereby her son had got the job on the same above mentioned college.*

*2.6. The aggrieved person son had right over the ancestral properties. So the 1<sup>st</sup> respondent had cheated his son and thereby the 1<sup>st</sup> respondent selling his son's partition rights over the above mentioned properties to the 3<sup>rd</sup> person. The aggrieved person son had asked his right over his partition in the ancestral properties but the 1<sup>st</sup> respondent had refused.*

*2.7. The 1<sup>st</sup> respondent had executed a registered settlement deed dated 29.11.2011 in favour of the 2<sup>nd</sup> respondent. In the amidst, the 1<sup>st</sup> respondent had totrured the aggrieved person and her son. The 1<sup>st</sup> respondent had filed the H..M.O.P No:88/2011 against the aggrieved person. The 1 to3 respondent had driven away the aggrieved person and her son from the 1<sup>st</sup> respondents house. The above mentioned H..M.O.P No:88/2011 had dismissed. Then again the 1<sup>st</sup> respondent had preferred an CMA.No:7/2015 and for the same dismissed on 28.6.2019. The aggrieved persons son had filed the O.S.No:1/2012 and for the same decreed in favour of her son. The appeal had preferred against the above mentioned suit and for the same pending.*

2.8. The aggrieved person son had got married and seperated. Now he had a child and running his own family and livelihood with his own earnings. The said aggrieved person had been struggling lonely for her daily needs and livelihood.

2.9. The aggrieved person had wanted to stay in the 1<sup>st</sup> respondents house so she approached the V.Kalathur Police station but the said Sub Inspector of Police from the V.kalathur police station had refused to examine the court order and the same he had not obeyed the court orders. So he had threatened to file a case against the aggrieved person.

2.10. The 1<sup>st</sup> respondent had demolished the portion of terraced house where she had been residing. The remaining portions had given for rent by the 1<sup>st</sup> respondent. The said 1<sup>st</sup> respondent had locked his house always because she will come back to the house of the 1<sup>st</sup> respondent.

2.11. The 1<sup>st</sup> respondent had been earing an amount of Rs 50,000/- from his rental house , shops and as well as from the Agriculture activities. He had been earning his annual income of Rs 5,00,000/-

2.12. This accusation acted as a precursor to a long duration of mental and physically torture including deprivation of adequate necessities for living as well as much required medical treatment which culminated in her finally 1<sup>st</sup> respondent had forced to leaving her to struggle lonely. The 1<sup>st</sup> respondent had not been maintaining the aggrieved person. Hence she had praying a maintianance amount of Rs 15,000/- for her daily needs and livelihood and as well as her medical expenses along with the prayer of seeking protection from the respondents and to stay in the share house hold of the residence of the 1<sup>st</sup> respondent.

3. Upon receipt of the Domestic Incident Report (D.I.R), notice was served upon the respondents to file written objection, The Respondents had appeared in order to file their Written Statement/objections on 14/10/2020. In the written statements/objections, the respondent had stated to deny all the allegations mentioned in the petition. The aggrieved person had tortured the 1<sup>st</sup> respondent and thereby case also been registered against her in Cr.No:105/2013 in V.Kalathur Police station and for the same pending. The aggrieved persons son had been earning in lakhs. The aggrieved person and her son had been running a tiffin shop and they had been earing an amount of Rs 3000/- per day from the above mentioned shop. The 2<sup>nd</sup>

and 3<sup>rd</sup> respondent had no way connected with this case. The 2<sup>nd</sup> and 3<sup>rd</sup> respondent had been residing in their ancestral house at Poondi. The srithana properties had given to the 3<sup>rd</sup> respondent by his father in law and the same had in the above mentioned house.

3.1. The 1<sup>st</sup> respondent had been residing at ancestral house at V.kalathur where cctv camera had installed. Some times the 1<sup>st</sup> respondent had gone from his above mentioned native place. While the 1<sup>st</sup> respondent had out of station, at the time, the aggrieved person and her family members had broken the lock of the above mentioned house and they had entered into that house which had belonged to the 1<sup>st</sup> respondent situated at V.Kalathur. The aggrieved person had threatened to kill the 1<sup>st</sup> respondent with the help of hencmen. The appeal civil suit had been pending before the Honourable High court of Madras. The HMOP had been pending before the Honourable Supreme court of India. The aggrieved person had been claiming her rights agaisnt the 1<sup>st</sup> respondents after the period of 28 years. So she had been giving her tortures to the 1<sup>st</sup> respondents by mentally and physically. Hence this petition had not maintainable one and the same to be dismissed.

4. The instant case proceeded to the stage of evidence and the petitioner filed her sole evidence on affidavit and she had examined as PW1 and thereby ExP1 to ExP3 had marked on the side of the petitioner /aggrieved person side. The 1<sup>st</sup> and 2<sup>nd</sup> respondents themselves made an endorsment as no evidence on their side. With regarding to the 3<sup>rd</sup> respondent had not come forward to procure the evidences on his side and also no representation from his counsel also.

4.1. Due to the absence of the respondents counsel her cross-examination was dispensed with but the Junior Mr.Sakthi vel had present but he had not comeforward to cross examined the PW1 and and the respondents also not comeforward to cross examined the PW1. Hence the matter proceeded.

## 5. Undisputed Facts:

5.1. In order to fairly adjudicate a petition u/S 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "the Act") a few essential ingredients need to be proved.7. Firstly, in order to constitute an offense under this Act, the parties must have or have had a domestic relationship with each other. Section 2 clause (f) of the Act defines the phrase "domestic relationship" as a, "relationship between two person 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.”*

*5.2. Secondly, “shared household” means “a household where the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the respondent...”*

*6. A thorough perusal of the Petition and the Written Statement/objections as well as the Evidence in chief of the petitioner/aggrieved person has revealed that the factum of marriage between the two parties, solemnized on 4.9.1989 as well as of cohabitation in a shared household at V.Kalathur has admitted and uncontested by the Respondents.*

*7. Points for Determination: Noting at the spousal relationship between the aggrieved person is being the legally wedded wife of the respondent No. 1 is admitted, this court directly come to the following points of determination:*

*(i) Whether acts of domestic violence as defined u/S 3 of the Act has been committed by the Respondent upon the aggrieved person?*

*(ii) Whether the aggrieved person is entitled to the reliefs u/S 18, 19, 20 of the Act as prayed for, from the respondents?*

## *8. ANALYSIS OF EVIDENCE ,DISCUSSIONS, DECISIONS AND REASONS THEREOF*

*This court have heard the argument forwarded by the engaged Counsel for the aggrieved person. None appeared on behalf of the respondent’s side for the hearing and the aggrieved person, standing as P.W-1 was also not cross-examined. In her evidence in chief on affidavit, the aggrieved person as P.W-1 has narrated the same facts as stated in her application u/S 12 of the Act.*

### *8.1. Point for Determination No. (i)*

*The aggrieved persons in her petition as well as in her evidence in chief had alleged that the respondent nos. 1 to 3, being her husband and the 1<sup>st</sup> respondents second*

wife 2<sup>nd</sup> respondent and their son 3<sup>rd</sup> respondent had verbally and physically abused her by accusing her of bearing child out of the wedlock and deprived her of adequate sustenance as well as much needed medical attention and daily and fundamental needs. Even after 1<sup>st</sup> respondent son was born, 1<sup>st</sup> respondent continued to commit such acts of abuse which finally forced her to leave her matrimonial house. A careful perusal of the Domestic Incident Report called for also confirms her allegations of mistreatment.

These allegations stand un-rebutted by any explanations or evidence on behalf of the respondents in the light of their absence during the trial in spite of notice being duly served upon them. Thus, in the dearth of any evidence to the contrary, it is only prudent to presume that the accusations of domestic violence cast upon the respondents by the aggrieved person are true to their word and the respondents are liable for the same. Therefore, point no. (i) is decided in affirmative and goes in favour of the aggrieved person.

#### 8.2. Point for Determination no. (ii)

Considering the discussion made above, this court is having an opinion that the aggrieved person is entitled to the following reliefs:

##### (a) Protection Order u/S 18 of the P.W.D.V Act:

From the evidence deposed by P.W-1, Amutha, it can be gleaned that the respondents had harassed her with verbal taunts and aspersions on her character as a woman accusing her and also physically abusing her while she was still trying to residing at her matrimonial home but the 1<sup>st</sup> respondent had not permitted her. In the absence of the any evidence to the contrary, the statement of the aggrieved person remains un-rebutted. Therefore, the respondents are hereby prohibited from committing any further acts of domestic violence amounting to physical, mental, verbal, and economic or any other kind of abuse or aid or abet similar acts upon the aggrieved person.

(b) Residence Order u/S 19 of the Act: From the evidence on record it can also be gleaned that because of continued merciless verbal and physical abuse meted out upon her, the aggrieved person was forced to leave her matrimonial home and take shelter in her maternal home with her parents. Now she had been struggling lonely. Even though the respondents side stating that aggrieved person and her son had been

*running a tiffin shop and thereby earning an amount of RS 3000/- per day and also stating that the aggrieved person had been claiming her rights after the 28 years had crossed, but there is no documentary evidence to prove that the petitioner regularly earning Rs.3000/- not established by the respondent side this court views that the ExP1 to ExP2 exposes clearly the nature of relationship in between them. Moreover that still the 1<sup>st</sup> wife is legally wedded wife. So the 1<sup>st</sup> respondent as a husband, hence he has bounden duty to maintain her wife at any cost rather than the aggrieved person had go for a divorce or adultery and second marriage but here in this matter still the aggrieved person had ready to lead the conjugal life with the 1<sup>st</sup> respondent and the same revealed through ExP1 and ExP2. It is the responsibility of the husband and the father of the children to support and take care of his children.*

*Therefore, in the light of the above, the respondent No. 1 herein has directed to provide a room in his house for the comfortable habitation of the aggrieved person or secure an alternate accommodation of the same level as was enjoyed by the aggrieved person in their shared household and pay the rent thereof.*

*(c) Monetary relief u/S 20 of the Act: As nothing in the record suggests that the aggrieved person is financially independent and instead that after moving back into her parental abode she has been struggling for daily needs and her medical expenses as well as maintenance of herself. It is thus clear that she requires a certain amount to meet her basic necessities. It has also been submitted in the evidence in chief that the respondent no. 1 is a cultivator by occupation growing rice, sugarcane, maravelli near by his residence and earning about Rs. 50,000/- per month, but there is no documentary evidence to prove that the respondents regularly earn Rs.50,000/- per month from his above mentioned cultivations. Also pertinent to be noted that this juncture is that the parties having a son aged about 30 years old and also he had settled now and thereby running his own family seperatedly. Moreover that the respondents side themselves stated that there is no evidence of oral and documentary proof on their side to disprove the contention of the aggrieved person. Therefore, keeping in view the medical expenses of the aggrieved person as well as the growing market prices of daily consumer goods and basic amenities and as such the cost of living, thsi court has hereby directed the respondent No. 1 to pay a monthly maintenance of Rs. 5000/- towards the sustenance and maintenance of the aggrieved person and other requirements, in total being Rs.5000/- only.*

**ORDER**

14. In the light of the discussions made above and the decisions arrived at, the respondents are hereby directed to do the following:

i. The respondents are prohibited from committing any further act of domestic violence upon the aggrieved/petitioner or aiding or abetting such acts upon her.

ii. The respondents are directed to provide a room in their house for the comfortable habitation of the aggrieved person or secure an alternate accommodation of the same level as was enjoyed by the aggrieved person in their shared household and pay the rent thereof.

iii. The Respondent No.1 is also directed to pay a monthly maintenance of Rs. 5000/- per month to the aggrieved person from the date of this order. The total amount having been given towards the sustenance and maintenance of the aggrieved person and other requirements.

iv. The respondent shall comply with the aforesaid Order within one (1) month from the date of intimation of the instant Order.

Let copy of this judgment/final order be provided free of cost to the petitioner/aggrieved and also copies of the judgment be forwarded to the respondent, the Protection Officer and the Officer-In-Charge of the concerned Police Station for intimation and/or compliance.

Pronounced by me in this open Court, on this 5<sup>th</sup> day of November, 2020  
(Thursday) under my hand and seal of this Court. Typed and corrected by me

Sd/-. G.ASHOKPRASATH,  
JUDICIAL MAGISTRATE No.1, (I/C)  
ADDITIONAL MAHILA COURT  
PERAMBALUR.

Annexures:-

List of Witnesses on the side of the Petitioner:-

1.PW1-Thirumathi.Amutha

*List of Documents on the side of the Petitioner:-*

- 1.ExP1- Hindu Marriage Original Petition no.88/2011(PW1)*
- 2.ExP2-Civil Miscellaneous Appeal No.7/2015(PW1)*
- 3.ExP3-Gift settlement Document(PW1)*

*List of Witnesses and Documents on the side of the Respondent:NIL*

*Sd/- G.ASHOKPRASATH,  
JUDICIAL MAGISTRATE No.I (I/C)  
ADDITIONAL MAHILA COURT  
PERAMBALUR.*

*/ True Copy /*

*JUDICIAL MAGISTRATE No.I  
(I/C) ADDITIONAL MAHILA COURT  
PERAMBALUR.*