

IN THE COURT OF THE ADDITIONAL MAHILA JUDICIAL MAGISTRATE,
PERAMBALUR.

PRESENT: G.MUNIKUMAR, Bsc., B.L.
ADDITIONAL MAHILA JUDICIAL MAGISTRATE,
PERAMBALUR.

Wednesday, the 20th day of October 2021

D.V Case No. 4 of 2019

(Under Section 12 of the Protection of Women from Domestic Violence Act, 2005)

Petitioner : *Smti..Thilagavathi*

Respondents : *1.Sri Balumahendran(Died)*
2. Tmt. .Periyakkal

Advocate for the Petitioner : *Mr.A.Oomadurai*

Advocate for the Respondent : *Nil*

Evidence recorded on : *08.09.2021*

Arguments heard on : *1.10.2021*

Final Order delivered on : *20.10.2021*

ORDER

The instant proceeding has been initiated by virtue of an application filed by the aggrieved person under section 12 of the Protection of women from Domestic violence Act seeking protection order under section 18 of the said Act, and the residential order under section 19 of the Act against the respondents.

1.The compendious of the Petition is as follows that:-

The Petitioner state that the marriage between the petitioner and the 1st Respondent solemnized on 03.02.2002 at 1st Respondent house, Esanai. Due the above said marriage they have three children namely pughalenth, Kesanvan and Bharathi. In

the year 2008 1st Respondent *beated the petitioner daily and scolded her in filthy languages with the inducement 2nd respondent. Due to the harassment of the 1st Respondent, the petitioner and her children living separately from 2012. The respondent refused to the setridhana utensils. The petitioner give a complainant against respondents on 16.08.2012 before the AWPS, Perambalur. They give CSR NO.273 but no action was taken against respondent. The petitioner parents gave three cents of land setridhana. On 10.10.2018 the petitioner went to that land along with her children, at the time the respondents came to that place and threatening them. The Petitioner has no income for their lively hood. Hence filed the petition before the social welfare officer, Perambalur for seeking the relief of protection and residential orders.*

2 According to the case made out by the applicant, It is stated that the Petitioners husband had tortured the petitioner Thilagavasthy mentally physically and economically. Owing to above effect of consequences, there had some domestic violence had happened in between the petitioner and the respondents. Hence the Petitioner prays for protection order under section 18 of DV Act and residential orders under section 19 of D.V.Act and thereby pass orders deem necessary and fit to this case.

3. As per Section 25(2) of DV Act, this magistrate shall endeavor to dispose of every application made sub section (1) within a period of sixty days from the date of its first hearing. Since sufficient time and opportunity had already given to the respondent side to file the counter, but here in instant matter they had not come forward to file the counter, hence the Respondent called absent and set exparte. On the side of the Petitioner side, PW1 and PW2 had examined and ExP1 to ExP4 had marked on the side of the Petitioner.

4.POINTS FOR DETERMINATION:-

1.Point for Determination No:1; Whether the Petitioner is eligible to get protection orders under section 18 of Domestic violence Act?

2.Point for Determination No:2; Whether the Petitioner is eligible to get residential orders under section 19 of Domestic violence Act? and also the petitioner is entitled to the get back of srithana from the respondents?

5.On hearing Petitioner sides this court has to determine the following points for consideration.

6.To prove the case against the accused under 18, and 19 of the Domestic Violence Act, the Applicant/Petitioner was required to prove the following facts:

In this case, the court views that section 18 of Domestic violence Act says that 18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from :-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependents, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order

Section 19. Residence orders.—

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order—

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

7.ANALYSIS OF EVIDENCE, DISCUSSIONS, DECISIONS AND REASONS THEREOF :-

For the sake of convenience, the Above Points are clubbed together,

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

(a)Protection Order under section 18 of the Act:

This court appends that the ExpP1 is a complaint given to District Collector,Perambalur,ExpP2 is a Family card. ExpP3 is a Adhar Card of the petitioner. On perusing the ExpP2 and ExpP3 shows that the petitioner and the 1st respondent are husband and wife. From the evidence of the Pw1 and Pw2 marriage was solemnized between the petitioner and the 1st respondent on 3.2.2002 and they have three children namely Bharath, Kesavan and Pugazhenthiran. Due to inducement of the 2nd respondent the 1st respondent had beaten the petitioner and scolded her in filthy languages. Due to harassment of the respondents the petitioner and her children were residing sepaately at peramblur from the year 2012. In continuation of above effect of consequences, there was a complaint lodged before theDistrict Collector,Perambalur in respect of family quarrel. So the aggrieved person/petitioner had been in domestic relationship. Hence as per section 2(a) of the Act, domestic violence had taken place or is likely to taken place. As per section 2(f) of the Act says that domestic relation ship means a relationship between two persons who live or have at any point of time lived together in a shared house hold when they are related by consanguinity, marriage or through a relation ship in the nature of marriage adoption or are family members living together as a joint family.

Here in this instant matter, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or likely to take place. In continuation of connected fact of an issue,

Here the respondents had set exparte and they had never raised any kind of objections in respect of this present matter. So the Respondents admitting the version of the complaint/petitioner side stand. At the time of evidence the petitioner mentioned that the 1st respondent was died. Therefore, the 2nd respondent is 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 under section 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 counsel on record for the petitioner had stated that the aggrieved person had been staying separately at perambaluu with her children. The petitioner in her evidence deposed that after giving complaint against the respondents they refused to return back the household utensils and the All Women Police has not taken any steps for her complaint. PW1 had deposed in her evidence that the 1st respondent owning house in S.No.142/1 at Esanai Village. Pw2 also stated that the 1st respondent owing house at Esanai. The 1st respondent died on 24.02.2021. On perusal of evidence of the petitioner and domestic violence report came to know that the 2nd respondent has not returned the stridhana house hold utensils and 3 sovereign gold jewel to the petitioner Hence the petitioner is entitled to claim the relief of protection order, accommodation in the shared household and she is entitled to get back the stridhana house hold utensils as per list submitted by the petitioner along with this petition and also entitled to get back the 3 sovereign of gold jewel from the 2nd respondent.

ORDER

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

I) The 2nd respondent is Prohibited from committing any further act of domestic violence upon the aggrieved/petitioner or aiding or abetting such acts upon her.

ii) The 2nd respondent is directed to provide a room in the 1st respondent house for the comfortable habitation of the aggrieved person and her three children. The 2nd respondent has also directed to return back the Sridhana house hold utensils and 3 sovereign of gold jewel to the petitioner.

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 final order be provided free of cost to the petitioner/aggrieved and also copies of the final order 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 20th day of October, 2021 (Wednesday) under my hand and seal of this Court. Typed and corrected by me.

*Sd/- G.Munikumar,
JUDICIAL MAGISTRATE
ADDITIONAL MAHILA COURT
PERAMBALUR.*

Annexures:-

List of Witnesses on the side of the Petitioner :-

1.PW1 -Tmt. Thilagavthi.

2. PW2 – Tmt. Nalini.

List of Documents on the side of the Petitioner :-

1.ExP1 - Petition given to District Collector, Perambalur.

2.ExP2 - Copy of Family card

3.ExP3- Copy of Adhar Card

List of Witnesses and Documents on the side of the Respondents :- NIL.

*Sd/- G.Munikumar,
JUDICIAL MAGISTRATE
ADDITIONAL MAHILA COURT
PERAMBALUR.*