

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE I,
ALATHUR.**

Present:- Sri. Induchoodan. A.,
Judicial First Class Magistrate.

Wednesday, this the 25th day of September, 2024.
3rd day of Aswina, 1945 (S.E)

MC 106/2022.

Ajeena, Aged: 22 years, D/o. Sudheer, } Petitioner
Mannamkulambu house, Adiperanda,
Kairady P.O, Chittur taluk, Palakkad. } (BY Adv. Sri. Shibu Shamsudheen)

vs.

1. Reneesh, Aged: 31 years, } Respondents
 S/o. Noushad, Kunnathu house,
 Mayilumpuram, Thottakkara P.O, }
 Ottapalam taluk, Palakkad.
2. Khadeeja, Aged: 50 years, }
 W/o. Noushad, Kunnathu house,
 Mayilumpuram, Thottakkara P.O,
 Ottapalam taluk, Palakkad. } (BY Adv. Sri. K. Sukumaran)

Provision of Law } Punishable u/s. 12 of Protection of
 } Women from Domestic Violence
 } Act, 2005.

Order } Petition is allowed in part.

Date of filing } 16.12.2022.

Date of Order } 25.09.2024.

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The petition having been filed and heard today the court passed the following:

ORDER

This petition has been filed by the petitioner under Sec. 12 of the Protection

from Domestic Violence Act (hereafter P.W.D.V Act) seeking a protection order, maintenance, compensation and return of gold ornaments u/ss.18, 20 and 22 of the Act.

2. Petitioner averments, in brief, are as follows:- The petitioner is the legally wedded wife of the first respondent. The second respondent is the mother-in-law of the petitioner. The marriage between the petitioner and the first respondent was solemnized on 24.01.2021 as per Islam religious rites and ceremonies. Two children named Ayman Yaseed and Aymal Yaseed are born in the wedlock. After marriage, the respondents started to harass her both physically and mentally by stating that the gold ornaments given to her at the time of marriage were not sufficient. The gold ornaments of the petitioner were handed over to the respondents as trustees. In the month of April 2021, the petitioner got pregnant. The doctor advised her to take rest. But the second respondent was forced to do hard labour. Subsequently, the health condition of the petitioner got worse and she had to go to her parental house. In the seventh month of pregnancy, she was admitted in Jubilee Mission Hospital, Thrissur, and on 20.11.2021 she gave birth to the twins. Since it was a premature birth, they were admitted to Neonatal I.C.U. and the above things were informed to the respondents. Thereafter, both the respondents went to the hospital and the second respondent created nuisance and thereafter left the place. The first respondent refused to visit the petitioner and children and provide any amount for the treatment expenses.

All the expenses were met by the father of the petitioner by pledging their house and landed property.

3. The petitioner and her children were hospitalized for three months and an amount of ₹.15,00,000/- (Fifteen lakh rupees) was spent for their treatment expenses. The petitioner preferred a complaint against the first respondent and his sister at Ottappalam police station and Crime 735/2022 was registered.

4. Now the petitioner and the respondents are living separately. The first respondent failed to provide any maintenance amount either to the petitioner or to her children. He is working as a plus two teacher at Mount Zeena School, Pathiripala. He has landed properties and other business and he is earning more than one lakh rupees per month as income. The first respondent is duty-bound to look after the petitioner and the children. He is earning an amount of ₹.1,00,000/- (One lakh rupees) per month from his job, business, and landed properties. The petitioner needs an amount of ₹.10,000/- (Ten thousand rupees) per month towards her food, medicine, clothes, etc. The minor children need an amount of ₹.7,500/- (Seven thousand five hundred rupees) each per month towards their food, medicine, cloth, etc, ie, totalling ₹.25,000/- (Twenty-five thousand rupees) per month. Hence, this petition.

5. The respondent appeared on receipt of the notice and filed counter in CMP 3744/2022, the petition filed for interim maintenance. He denied all the allegations. The petition filed for interim maintenance was allowed. But R1 failed to

make payment. Thereafter the respondents failed to appear before the court on the subsequent posting date. The names of the respondents called absent and they were set ex-parte.

6. On behalf of the petitioners, the first petitioner has given evidence as PW1. Exbts.P1 to P11 were marked from the side of the petitioners.

7. Heard.

8. The points that arise for consideration are as follows:-

1. Whether the respondents subjected the petitioner to domestic violence as alleged in the petition?
2. Whether the petitioner is entitled for the protection order as prayed for?
3. Whether the petitioner is entitled for the compensation as prayed for?
4. Whether the petitioner is entitled to the monetary relief as prayed for?
5. Whether the petitioner is entitled to return the gold ornaments as prayed for?
6. What is the order to be passed?

9. **Point Nos. (1) to (5)** :- For the sake of brevity and convenience, these points are considered together for discussion. The petitioner was examined as PW1. She filed a proof affidavit reiterating the allegations contained in the petition. It is

stated that the respondents subjected her to physical and mental harassment. As the respondents did not respond to the notice and appear before the court, the only available evidence is that of the petitioner. The unquestioned testimony of the petitioner as to physical and mental harassment has to be believed. She has given evidence that the first respondent is not providing any sort of maintenance to them. The unchallenged evidence of the petitioner would prove that the first respondent has totally neglected the petitioners and is not providing any maintenance. Neglecting the wife without providing any sort of maintenance would definitely come under the definition of Domestic Violence.

10. The petitioner is entitled to lead a life as if they lived with the respondent. The inherent and fundamental principle behind Sec. 12 of the Act is for the amelioration of the financial state of affairs as well as the mental agony and anguish that women suffer when she is compelled to live in the matrimonial home. As per law, she is entitled to lead a life in the similar manner as she would have lived in the house of her husband. If the husband is healthy, able body, and in a position to support himself, he is under the legal obligation to support his wife. The wife's right to receive maintenance unless disqualified is an absolute right. Neglecting the wife and child without providing the necessary amount of maintenance would definitely fall under the definition of Domestic Violence.

11. The petitioner prays for the return of 20 sovereigns of gold ornaments

which were given to her at the time of marriage by her parents. On going through the evidence and materials submitted by the petitioners I find that there are no documents or evidence indicating the specific date on which the petitioner entrusted the gold ornaments to the respondents. In order to assert a valid claim it is crucial to establish a clear timeline and substantiate the claim with substantial evidence. In this case, the petitioner has not adduced any evidence as to the date on which the gold ornaments were handed over to the respondent or any other details as to the manner in which the respondent misappropriated the same. Unless and until sufficient materials and documents are submitted it becomes exceedingly difficult to ascertain the validity of the claim made by the petitioner. It is important to note that no witnesses were examined by the petitioner to support her claim. Considering all I find that there is a significant lack of evidence to support the claim for the return of gold ornaments. Hence, the said prayer cannot be allowed.

12. The petitioner prays for directing the first respondent to provide an amount of ₹.15,00,000/- (Fifteen lakhs rupees) which was spent by her parents for meeting the treatment expenses of the petitioner and her children. To substantiate this, she has produced some medical documents and bill. On perusal of the medical records it is seen that an amount of ₹.5,00,000/- (Five lakhs rupees) was paid due to the medical expenses. Hence, the petitioner is entitled to receive the amount covered by the bill only.

13. Another relief sought by the petitioners is with regard to the compensation for the alleged acts of cruelty committed by the respondents. On analyzing the evidence and materials submitted by the petitioner I do not find any specific instances of cruelty mentioned and proved by the petitioner. There is a lack of substantial evidence demonstrating that the petitioner had endured any form of physical or mental abuse inflicted by the respondent. It is also to be noted that the petitioner had not been admitted to any hospital due to the alleged harassment. It is essential to establish a strong case supported with credible evidence. Considering the same I am of the opinion that the petitioner has not satisfactorily prove that she had in fact suffered any injury or loss due to the harassment of the respondent which entitled her to claim the compensation as sought in the petition.

14. The petitioner pray for an amount of ₹.10,000/- (Ten thousand rupees) per month for her maintenance and an amount of ₹.7,500/- each (Seven thousand five hundred rupees) per moth for the maintenance of the both children ie, totalling ₹.25,000/- (Twenty five thousand rupees) per month. She has claimed that the first respondent is working as Plus two teacher at Mount Zeena School, Pathiripala. He has landed properties and business and is earning an amount of ₹.1,00,000/- (One lakh rupees) per month.

15. It is well established that a husband has a legal and moral obligation to provide maintenance for his wife and children, as stipulated under Section 125 of the

Cr.P.C and reiterated in the **Shamima Farooqui v. Shahid Khan, JT 2015 (3) SC 576 case**. In this case, the Hon'ble Supreme Court emphasized that a husband cannot absolve himself of his duty to maintain his wife by claiming a lack of income without substantial evidence. Further, in **Chaturbhuj v. Sita Bai, AIR 2008 SC 530**, it was held that even if the husband is not employed, he is expected to maintain his wife if he is able-bodied and has the potential to earn a livelihood.

16. As per the order in CMP 3744/2022 dated 12.02.2014, the first respondent was directed to pay an amount of ₹.5,000/- (Five thousand rupees) per month to the petitioner and ₹.2,500/- each (Two thousand five hundred rupees) per month to the children from the date of filing of this petition. No change of circumstances was brought out before this court to enhance the maintenance amount. I find that the respondent is having sufficient income to provide maintenance as claimed by her and the respondent has willfully neglected her.

17. **Point No. (6):-** In the result, the petition is allowed in part in the following terms:

1. The first respondent shall pay an amount of ₹.5,000/- (Five thousand rupees only) per month to the petitioner and an amount of ₹.2,500/- each (Two thousand and five hundred rupees) to both minor children, totalling ₹.10,000/- (Ten thousand rupees) as maintenance from the date of this order u/s. 20 of the P.W.D.V Act. The petitioner is entitled to receive the maintenance amount on

behalf of the minor children.

2. The first respondent shall pay an amount of ₹.5,00,000/- (Five lakhs rupees) towards the treatment expense met by the petitioner and her minor children.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and Pronounced in Open Court on this the 25th day of September, 2024.

sd/-
Judicial First Class Magistrate - I,
Alathur.

APPENDIX

Witnesses examined for Petitioner:-

PW 1 : Ajeena, D/o. Sudheer, Adiperanda, Palakkad.

Exhibits marked for Petitioner:-

Exbt.P1 : Marriage certificate dated 08.11.2022 marked through PW1 on 22.07.2024.

Exbt.P2 : First Information Report in Crime No. 735/2022 of Ottapalam police station dated 24.10.2022 marked through PW1 on 22.07.2024.

Exbt.P3 : Marriage photo marked through PW1 on 22.07.2024.

Exbt.P4 : Discharge summary issued from Jubilee Mission Hospital, Thrissur dated 13.01.2022 marked through PW1 on 22.07.2024.

Exbt.P5 : Discharge summary issued from Jubilee Mission Hospital, Thrissur dated 12.03.2022 marked through PW1 on 22.07.2024.

Exbt.P6 : Discharge summary issued from Jubilee Mission Hospital, Thrissur dated 25.12.2021 marked through PW1 on 22.07.2024.

Exbt.P7 : Treatment certificate issued from Jubilee Mission Hospital, Thrissur dated 10.03.2022 marked through PW1 on 22.07.2024.

Exbt.P8 : Bill issued from Jubilee Mission Hospital, Thrissur dated 08.12.2021

marked through PW1 on 22.07.2024.

Exbt.P9 : Bill issued from Jubilee Mission Hospital, Thrissur dated 25.12.2021
marked through PW1 on 22.07.2024.

Exbt.P10 : Bill issued from Jubilee Mission Hospital, Thrissur dated 13.01.2022
marked through PW1 on 22.07.2024.

Exbt.P11 : Bill issued from Jubilee Mission Hospital, Thrissur dated 12.03.2022
marked through PW1 on 22.07.2024.

Witnesses examined for Respondent:- Nil

Exhibits marked for Respondent:- Nil

//True copy//

sd/-
Judicial First Class Magistrate - I,
Alathur.

Judicial First Class Magistrate - I,
Alathur.