

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
HOSDURG**

**PRESENT: BALU DINESH
JUDICIAL FIRST CLASS MAGISTRATE-II,
HOSDURG**

Dated this the 28th day of September, 2024/ 6 Aswina 1946

MC 86/22

Petitioner : Fathima C P, aged 25 years
D/o Muhammed Kunhi, R/at Darul Amen,
Periyot, Upplikai, Puthukai Village, Hosdurg.
Represented by Adv. T V Vijayan, Hosdurg

Respondent 1 Faizal Puzhakara Moosafil, aged 32 years
S/o Abdulrahiman.
2 Rahmath, aged 47 years
W/o Abdulrahiman.
3 Abdulrahiman, aged 56 years
4 Thashreef, aged 36 years
S/o Abdulrahiman.
5 Najma, aged 38 years
D/o Abdulrahiman.
All are residing at Puzhakara House, Nr.
Chayoth Govt. Higher Secondary School,
Chayyoth, Kinanoor, Karindalam Village.
Hosdurg.
Represented by Adv. Shobhana, Hosdurg

JUDGMENT

1. This is a petition filed by the petitioner under Section 12 of Protection of Women from Domestic Violence Act 2005.

AVERMENTS OF PETITIONER

2. That the petitioner is the legally wedded wife of Respondent No.1. and their marriage was performed on 23-04-2017 from Badariya Juma Mazjid, Uppilikai in Pudukai village as per the custom of their community. There are two children namely Bishral hafi, son, aged 4 years and Mariyam zadan, daughter, aged 10 months. Now the petitioner and her children are residing at her parental House at Uppilikai. The marriage between the petitioner and the 1st respondent was an arranged one and the 2nd respondent is the Mother of the 1st respondent, her husband is 3rd respondent, her son and daughter are the respondents No. 4 and 5 respectively. The respondents were residing together at their house at Kottrachal, Thaikadappuram of Nileshtar village at the time of marriage of the petitioner and 1st respondent. After one month of their marriage the petitioner became pregnant and the respondent No.1 has gone to Dubai after two months of their marriage. The petitioner was compelled to prepare food, cleaning the floor and washing cloths during her feeble condition. Once the 4th respondent who is the elder brother of the 1st respondent assaulted the petitioner for silly reasons like cleaning bath rooms, washing cloths etc. The petitioner has no way to communicate with her parents. So she suffered the entire harassments of the

respondents. The respondent No.1 used to call his mother, 2nd respondent but he never talk with the petitioner. If she got a chance to speak with him then h quarreled and threatened the petitioner as per the advice from the respondents. Th respondent No.2 never enquired about the difficulties of the petitioner who wa carrying her son child and never given any food to her choice. So she requested to respondent No.1 to give some amount as their livelihood but that was not heeded in his mind. Instead of it he used to came to the house late at night. The petitioner was constrained to wait for him till 1 A.M in the night. When she enquired about his late arrival he assaulted with her and bet her mercilessly. So the petitioner left the company of the respondent of the for two years. Thereafter some of the relatives of the both parties interfered in the matter and the respondent No.1 assured to the petitioner and her family that he was ready to provide the petitioner and the child. So the petitioner joined his company_and after that stayed with his parental house at Chayyoth but only for three months after that the respondent started to behave in an indifferent manner towards the petitioner and child and her quarreled and compelled her to bring money from her parents. The petitioner expressed he abeater her incapability, then he mercilessly beaten her and threatened that he would kill her and the child at any time. The petitioner became

unconscious and taken to Hospital there. She realized that she is carrying. The respondents are not ready to communicate or provide maintenance to the petitioner and the children. The brothers of the petitioner who are working abroad interfered in the matter so many time and now they realized that the respondents are intending to dissolve the marital relationship with the petitioner. Though the petitioner tried her level best to live with the respondent for the sake of the children but the respondent was and is not ready to resume the marital relationship. At last in on 22 April, 2022 the petitioner and her children went to the house of the respondent to see and continue the relationship but the respondent was not there and the respondents No.2,3, and 4 told to the petitioner that they are not ready to admit the petitioner and her children. Since they are not ready to take the burden of the respondent No.1 and they also declared that if she tried to contact with the respondent or came to the house they will be sold the property to a third party and escape from the petitioner and her children. The respondent is having enough means such as property and business of his own. Recently the respondent is engaged in washing powder business near Nileshtar Block Panchayth Office and is getting an average monthly income of Rs.50,000/-. He is also getting

commission from the distribution of washing powder. Hence the petitioner had filed this petition.

EVIDENCE BROUGHT ON RECORD

3. The petitioner mounted the box and had deposed as PW1. No documents were marked
4. The respondent did not file counter despite opportunities. Hence the petition proceeded ex parte under Order VIII Rule 10 of Code of Civil Procedure.

POINTS FOR CONSIDERATION

1. Did the respondent physically assault or verbally abuse the petitioner and thereby commit domestic violence against the petitioner.?
2. If so, is the petitioner entitled to an order of protection under Section 18 of Protection of Women from Domestic Violence Act.?
3. If so, is the respondent liable to pay an amount of Rs.10,000/- each per month to the petitioner and her children.?
4. Is the respondent liable to return 40 sovereigns of gold ornaments or its market value to the petitioner?
5. Is the respondent liable entitled to a residence order or order of alternate accommodation.?

6. Is the petitioner entitled to any other reliefs and cost.?

POINTS 1 to 5

5. Petitioner had mounted the box and had deposed in tune with petition. PW1 had stated the specific instances of physical assault committed by the respondent against her. It could be seen from the affidavit in lieu of examination in chief filed by the petitioner that she was subjected to assault by the respondents multiple times. She was also harassed verbally. Thus it could be understood from PW1 that she was subjected to physical abuse and verbal abuse by the respondent. Thus point 1 is found in favour of petitioner. Since the respondents had committed domestic violence against petitioner, the petitioner is entitled to an order of protection under Section 18 of Protection of Women from Domestic Violence Act. Point 2 is found in favour of petitioner. PW1 had stated in her affidavit in lieu of examination in chief that she had two children and she needs an amount of Rs.10,000/- each per month for her and her children. PW1 had stated that the respondent is employed and had been earning an amount of Rs. 50,000/- per month. The respondent is an able bodied man and he is liable to look after the affairs of petitioner and her child. Thus the respondent who had the requisite condition and body to maintain the petitioner and her children should provide adequate maintenance to the

petitioner and her children. The respondent was a Pravasi when petitioner lived with him. She had been accustomed to life of a wife of employee and the respondent had stopped sending money to petitioner. Considering the rising price index and the standard of living of the petitioner to which she has been accustomed, this Court is the opinion that the petitioner and her children is entitled to maintenance of Rs.10,000/-each per month. Point 3 is found in favour of petitioner. The petitioner did not produce any document in evidence along with affidavit in lieu of examination in chief to prove that there was tender of 40 sovereigns of gold ornaments by her to the respondent at time of marriage. No photos or bills have been produced to prove the existence of 40 sovereigns of gold ornaments. Thus the petitioner is not entitled to return of gold as claimed. Point 4 is found against petitioner. The petitioner had sought for a relief restraining the respondents from disposing the shared household and also to secure alternate accommodation to her. The affidavit in lieu of examination in chief shows that petitioner had lived with respondents in the plot having house bearing No. KKP W-I-547 of Kinanoor Panchayat. Thus she is entitled to live in that house. Hence the respondents shall not alienate the same without permission of Court. The petitioner has apprehension of domestic

violence. Hence the respondents shall secure an alternate accommodation. Considering that the petitioner had lived in shared household which was big enough to accommodate six people an alternate accommodation with sufficient facilities shall be arranged by the first respondent. The first respondent shall pay rent of the same. Point 5 is answered accordingly.

POINT 6

6. In the result the petitioner is entitled to an order of protection, residence and maintenance. Point 6 is answered accordingly. In the result this petition is allowed in part as follows.

1. The respondents shall not commit any act of domestic violence against the petitioner.
2. The first respondent shall pay monthly maintenance of Rs.10,000/- each(Rupees ten thousand only) each to petitioner and her children from the date of this petition. The monthly maintenance shall be paid before the 10th day of every month.
3. The arrears of maintenance payable by the respondent to the petitioner and her child shall be paid with in 30 days from the date of this order.
4. The respondents shall not alienate or encumber shared household bearing No. KKP W-I-547 Kinannor Panchayat. The first respondent

shall arrange same level of alternate accommodation to the petitioner and pay its rent before 10th day of every month.

5. This is a matrimonial dispute I am not inclined to award costs.

Dictated to CA and transcribed by her and verified by me and pronounced by me in open Court on 28th day of September, 2024.

Sd/-
JUDICIAL FIRST CLASS MAGISTRATE-II
HOSDURG
//True copy//

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APPENDIX

Witnesses examined for the Prosecution

PW1 : Petitioner

Exhibits marked for the Prosecution

<u>Exhibits</u>	<u>Date</u>	<u>Documents</u>
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Witnesses examined for the defence : Nil

Exhibits marked for the defence : Nil

Material Objects marked : Nil

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