

Respondent vs Smi. V. Mona on 18 February, 2021

IN THE COURT OF METROPOLITAN MAGISTRATE TRAFFIC
COURT-I AT MAYOHALL, BENGALURU.

DATED THIS THE 18th DAY OF FEBRUARY 2021.

Present : Smt. Sharmila Kamath. K. B.A L.L.M
Metropolitan Magistrate,
Traffic Court-I, Bengaluru.

Petitioner:

Respondent:

smi. V. Mona,
W/o Sri. R.Vijaykumar,
Aged about 42 years,
Rfat No. 75, 3rd Cross,
Jain Jawan Nagar,
Chikkabanasavadi,
Bangalore-560033.
(Represented by Adv. Sri H.P.M.)

V/s
Sri. R. Vijaykumar,
S/o B. Ramachandra
Aged about 56 years,
R/at No.7,
24" Main, D cross
Near Muneshwara Swamy Temple.
Ejipura Vivek Nagar Post,
Bangalore-560047.
{Represented by Adv Sri:H.J.)

ORDER

The petitioner filed this petition U/sec 12 of Protection of Women From Domestic Violence Act by seeking protection order, residence order, maintenace of Rs. 40500/- and litigation expenses of Rs. 1,00,000 /-

2. The brief facts of petition are as follows:-

The marriage between petitioner and respondent was solemnized on 13/11/1988 and out of their wedlock two female and one male children were born. After the marriage petitioner was never treated one among the family of respondent. Petitioner was harassed both physically and mentally petitioner was not allowed to participate in any rituals and she was prevented from visiting her home town and meeting her

mother. Respondent having illicit affair with one Smt. Roopa. When petitioner started to oppose the illicit relationship the harassment to petitioner increased. With regard to harassment petitioner lodged complaint at Karnataka State Women Commission on 13-12-2010. For the sake of children petitioner tolerated -- ill-treatment given by respondent. Despite of repeated warning respondent did not mend his behaviour. Respondent picked up quarrel with petitioner with regard to his illicit relationship with Roopa and beaten petitioner. Therefore petitioner left matrimonial home and started to reside separately, 'The respondent is working as a 'D' group employee in Transport Department at M.S. Building. Father of petitioner gave a financial assistance to purchase property No. 70 measuring 792 Sq. feet at Mackan Road Bengaluru. The respondent is getting rental income of Rs.1,75,000/- per month. The respondent who is duty bound to maintain petitioner and their children deserted petitioner and her children without providing basic necessities, Hence the petition.

3. After service of notice respondent appeared through his counsel and filed objection by contending that he had no illicit relationship with Smt. Roopa as alleged by petitioner and respondent has taken care of petitioner and children in the best possible manner. Respondent not subjected petitioner to any kind of cruelty. He admitted his daughter to Baldwin college for PUC by paying fee of Rs 29,455/-. Respondent is ready and willing to take care of petitioner and children and it is petitioner who is creating unnecessary problems. It is the contention of respondent that petitioner had withdrawn Rs.17,000/- from their joint account without knowledge of respondent. Respondent paid Rs.5,00,000/- to petitioner and of said amount Rs.2,00,000/- paid by petitioner to her landlord and Rs.3,00,000/- is with her. The 1st daughter of petitioner and respondent is working in HP company and son is working in Infosys. Both children drawing handsome salary and taking care of petitioner. This petition is filed by petitioner in order to extract money. Respondent denied all the allegations levelled against him and prays to dismiss the petition.

4, The petitioner in order to prove her case examined herself as PW-1 and documents Exs.P. 1 to 18 got marked. The respondent examined himself as RW-1 and documents Exs.R, 1 to 18 got marked.

5. Both the counsels filed written arguments.

6. On basis of the above mentioned averments the following points do arise for my consideration:

Point.No.1. Whether petitioner proves that the respondent has committed domestic violence upon the petitioner?

Point No.2. Whether the petitioner proves that she is entitled for the reliefs as sought for?

Point No.3. What order?

My answer to the above points.

Point No.1; In the Affirmative.

Point No.2: Partly in the affirmative.

Points No.3: As per final order for the following:

8. Point No.1: The petitioner sought relief U/sec 18 to restrain the respondent from committing any act of domestic violence. In order to get relief under the provisions of Protection of Women From Domestic Violence Act the petitioner has to prove that she had domestic relationship and a shared household with the respondent.

Petitioner must prove that she was subjected to domestic violence. In order to prove her case petitioner examined herself as PW1 by filing affidavit in Heu of examination- in.

-chief. In her affidavit she has reiterated the petition avement and got marked documents ExP] to 18. .

9. Per contra respondent in order to prove his contentions examined himself as RW1 and got marked document Ex.R to 18. In his affidavit respondent has reiterated objections averments. Further submitted that petitioner left him without any reasons. Respondent submitted that he had paid to the LIC policies of his children. It is his contention of respondent that petitioner left him only for the reasons that he opposed the love affair of his elder daughter. Petitioner is interested in his property. Petitioner is withdrawing interest amount of Rs.46,250/- per annum and drawing Rs.17,000/- per month from his salary account. Petitioner can Stay at a house of 1st floor No. 70 of Mackdon Road. Bengaluru.

10. It is undisputed fact that petitioner and respondent married on 03-11-1988 and out of their wedlock three children were born. It is undisputed fact that respondent is working in Transport Department, The fact of domestic relationship between petitioner and respondent and they resided in a shared household is admitted.

11. It is specific allegation of petitioner that respondent is having illicit relationship with Smt Roopa who is working in State Carriage DSA Section MS building. It is submitted that petitioner opposed the illicit relationship and with regard to same respondent picked up quarrel with her, and also beaten her. It is the contention of respondent that he opposed the love affair of his 1st daughter hence petitioner picked up quarrel with him. During the cross examination of PW1 she admitted that opposition by RW1 and further submitted that respondent assaulted their daughter and the boy with whom their daughter had love affair. Further the respondent snatched the vehicle from then) 'But neither petitioner nor respondent in their pleadings have not Stated when such incident taken Place. The burden is on the respondent to show that the opposition of respondent to the love affair of his daughter is sole reason for petitioner to leave the company of respondent.

12. During the cross of RW1 Ex.P.17 and 18 got marked Ex.P. 17 is the FIS lodged by petitioner and Ex.P.18 is the undertaking given by respondent both Ex.P 17 and 18 are document subsequent to the

filing of this petition, Such document are not helpful to prove the version of petitioner in her petition.

13. It is pertinent to note that petitioner has not specifically stated when she left the company of respondent but in the cross examination of RW1 suggestion is made to RW1 that in the year 2013 when petitioner left the house she had no amount with her. It is settled principle of law that suggestion in a case of party who made it. Therefore it is clear that the year 2013 petitioner left its company of respondent. Thus the contention of respondent that petitioner left the company of respondent for the sole reason that he opposed the love affair of their daughter does not survive for consideration.

14. Petitioner produced Ex.P. 2 to 4 three photos of woman. It is not the contention of respondent that the women in Ex.P.2 to 4 is not Smt.Roopa as alleged by petitioner. Respondent denied the contention of illegal relationship of respondent that Ex.P.2 to 4 are created documents. During the cross examination of RW1 he admitted that he called over mobile to Smt Roopa on several occasions and such calls made during office hours. It is elicited in the cross examination of RW1 that the mobile No.988640631 was in the name of his deceased brother. It is not the contention Respondent that ExP2 to 4 are not taken from the mobile phone used by him. It is the contention of respondent that he had not seen in the said ExP2 to 4. It is evident that in Ex.P2 to 4 the respondent had not seen but respondent has not explained why he took the Ex.P.2 to 4 photos. As per Sec.106 of evidence act burden of proving fact especially within knowledge. In the case on hand respondent not explained why he had taken photos as per ExP2 to 4. The respondent failed to prove the allegations made by petitioner with regard to illicit relationship with Smt Roopa.

15. it is the contention of petitioner that he father gave financial assistance to purchase property as mentioned in Ex.P.6 and 7. As per version of PW1 in the cross examination her father died in the year 1977, EXP.6 and 7 are executed in the year 2003 and 1999 respectively. Hence the contention of petitioner so as financial assistance given by her father to purchase property mentioned in Ex.P.6 and 7 is not proved. Per contra respondent not denied that he owns properties mentioned in Ex.P.6 and 7.

16. It is the contention of petitioner that as respondent left the company of respondent because he subjected petitioner to domestic violence. Respondent failed to prove the allegation of his illicit relationship. This shows that petitioner subjected to domestic violence. Hence I answer point No.1 in the Affirmative.

17. Point No.2: As petitioner proved that she was subjected to domestic violence she is entitled for protection order as enunciated U/sec 18 (a) and (b)

18. Petitioner sought reliefs U/sec 19 to direct respondent to move out of house at No.7 24th main 'D' Cross near Muneshwara Temple Ejipura Bengaluru and petitioner also sought alternative relief of rent of Rs.20,500/- and 2,00,000/- towards security deposit for rented house and 20,000/- per month as maintenance.

19. It is undisputed fact that respondent is a 'D' group employees in Transport department. It is not the contention of respondent that petitioner is having independent income sufficient to maintain herself. It is the contention of respondent that the elder daughter and son of petitioner and respondent were working in H.P. and Infosys respectively and: getting handsome salary. By taking such contention respondent cannot absolve from liability of maintaining the petitioner. It is pertinent to note here in that petitioner filed affidavit regarding her assets and liabilities but the said affidavits is not sworn. Hence the same cannot be taken into consideration.

20. The respondent not filed assets and liability affidavit. On perusal of evidence of RW1 he stated during cross examination that he is getting Rs.30,000/- per month{i.e on 29-04-2016}. Further during his cross examination({i.e on 10-06-2016) stated that from the 2 shops and 2 houses at Shivajinagar he is getting Rs.32,000/- rental amount. PW1 during the cross examination admitted that she was drawing Rs.15,000/- per month from the joint account of petitioner and respondent. Further respondent. taken contention that he paid college fee of thier daughter. In this case petitioner not claimed any maintenance to her third daughter. As per version of RWI he is having monthly income of Rs.62,000/- respondent not produced any document to show dependents on him except this petitioner. As noted above respondent has not submitted his assets and liabilities affidavits. The version of RW1 shows that he in owner of several buildings which fetches rental income. To suggestions that petitioner is not drawing any amount from account of petitioner and respondent from the date of petition, the respondent answered that that he was retired from service, This version clearly shows that petitioner not recieved any maintenance from the date of petition. In this case also no interim maintenance order passed. By considering the income of respondent and standard of living of both parties it is just and proper to direct the respondent to pay maintenance of Rs.10,000/- from the date of petition till the date of order and Rs.20,000/- from the date of order till her life time. As there is no convincing evidence regarding direct the respondent to move out of residence mentioned in No.7 24" main 'D' corss near Muneshwara Swamy Temple this court declined to pass such order. Hence | answer point No 2 partly in the affirmative.

21. Point No.3: In view of reasons and discussions made in point No.1 and 2,1 proceed to pass the following ORDER The petitioner filed by the petitioner U/sec 12 of Protection of Women Domestic Violence Act 2005 is hereby partly allowed.

The respondent is hereby directed to pay maintenance of Rs. 10,000/- (Rupees Ten Thousand only) per month to the petitioner from the date of petition till the date of this order and Rs. 20,000/- (Rupees Twenty Thousand only} per month from the date of this order till her lifetime.

The respondent is hereby prohibited from committing any act of domestic violence upon the petitioner.

The other reliefs claimed by the petitioner is hereby dismissed.

The office is hereby directed to issue free copy of order to both the parties.

(Dictated to the stenographer, directly on the computer, typed by her, corrected and then pronounced by me in the open court on this the 18th day of february 2021.) : (Smt. Sharmila Kamath.K) MMTC-1, MAYOHALL UNIT, Ex.P.1; Family Photo Ex.P.2 to 4 Ex.P.5 to 7 Ex.P.8 Ex.P.9 Ex.P.10 Ex.P.11 Ex.P.12 Ex.P.13 iex.P.14 Ex.P.15 Ex.P.16 Ex.P.17 Ex.P.18 EX.R2 to 4 EX.R5 to 8 Ex. R9 to 10 EX R11 and 12 Ex.R13 and 16 EX.R.14 Photo of Smt.Roopa Certified copies of sale deeds Photo of house at Ejipura Photo of a house The photo of another property at Ejipura C.D. Copy of Complaint given by petitioner Undertaking given by respondent.

: Certified copy of LIC policies : Receipts of LIC premium : Receipts for payment of LIC premium : Receipts of Vijayabank : 3.B, Passbook of Sanjeetha V. > Copy of letter written by respondent to the manager of SBB and J.

Ex.R.15 Ex.R.17 : Copies of Cheques and Receipts : 2 Copies of Statement of SB account Standing in the name of respondent.

Ex.R.18 : Medical document of Kum.Sanjeeth.V. MMTC-I, MAYOHALL UNIT