

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON

C.R. DV No. - 879/2017

U/S 12 of P.W.D.V. Act

**1. MRS PUJA DEKA, W/O.:- SRI ARUP CHANDRA DEKA,
R/O.:- DARANGIAL GAON, P/S.:- JAGIROAD,
DIST.:- MORIGAON, ASSAM**

.....Petitioner.

VS

**1. SRI ARUP CHANDRA DEKA, S/O.:- SRI BALURAM DEKA,
2. MRS. PUSPA LATA DEKA, W/O.:- SRI BALURAM DEKA,
R/O.:- NA KUCHI (AMCHOI), P/S.:- RAHA,
DIST.:- NAGAON, ASSAM**

..... Respondents.

PRESENT: SMTI. ANAMIKA BARMAN, LL.M., AJS.

JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM

ADVOCATE FOR THE PETITIONER: MR. M. K. NATH

ADVOCATE FOR THE RESPONDENTS: MR. J. RAHMAN

**DATES OF RECORDING EVIDENCE: 23.02.2018, 10.05.2018,
27.07.2018, 22.10.2018, 29.11.2018**

**DATE OF HEARING: 28.12.2018, 19.01.2019,
26.02.2019,**

DATE OF DELIVERING FINAL ORDER: 28.11.2019.

FINAL ORDER

1. This proceeding arose out of a petition u/s 12 of the P.W.D.V. Act filed by the Petitioner, Smt. Puja Deka, thereby claiming relief u/s 18, 19, 20, 22 and 23 of the said Act.

2. The Petitioner's case, in brief, is that the respondent No. 1 Sri Arup Chandra Deka is the husband of the petitioner and the other respondent, namely, Smt. Puspa Lata Deka is the mother of the respondent No. 1. The petitioner got married to the

Respondent No.1 as per Hindu social rites and rituals about 6 (six) years prior to the filling of the complaint petition. After their marriage a boy child, namely, Sri Manash Pratim Deka aged about 5 (five) years at the time of filling of the complaint petition was born. However, after 1 (one) year of their marriage, the respondents started to torture the applicant by demanding dowry and cash from her. Accordingly, the petitioner brought cash, a cow and a cello machine from her parental house and gave the same to the respondents. However, the respondents again started to torture the applicant by demanding dowry of Rs. 50,000/- (Rupees Fifty Thousand only) from the applicant. When the applicant failed to fulfil their demands, the respondents on 19.05.2017, when the applicant was 5 (five) months pregnant, assaulted the applicant and also tried to kill her by strangulating her neck with a rope. The respondents also drove the applicant out of her matrimonial house along with her 5 (five) years old minor son. Thereafter, the applicant took shelter in her paternal house along with her son. After 1 (one) week of driving out the applicant, the respondent No.1 entered into second marriage with another woman. Since then, the applicant has been living in her poor parental house along with her son and the respondent No. 1 has neither enquired about the applicant and her son's whereabouts nor paid any maintenance to them as a result of which the applicant is facing hardship now. The respondent No. 1 is a physically abled person having landed properties, a rice mill, betel nut and betel nut leaf crop and other businesses as well. The monthly income of the respondent No. 1 is around Rs. 40,000/- to Rs. 50,000/- (Rupees Forty Thousand to Fifty Thousand only). On the other hand, the applicant belongs to a poor family. The expected date of delivery of the applicant was in the same month when the complaint petition was filed.

3. Thus, the Petitioner filed the instant case and has prayed for relief u/s 18, 19, 20, 22 and 23 P.W.D.V Act, 2005 by claiming issue of injunction to the respondents from committing any further acts of domestic violence upon her, accommodation order or house rent of Rs.5,000/- (Rupees Five Thousand only) per month, Rs.15,000/- (Rupees Fifteen Thousand only) [Rs.10,000/- (rupees ten thousand) for the applicant and Rs.5,000/- (rupees five thousand) for the son of the applicant] per month as maintenance allowance to the applicant and her son, and also claimed Rs.2 (two) lakh towards expenses incurred and losses suffered. The applicant had also

claimed Rs. 12,000/- (Rupees Twelve Thousand only) per month as interim maintenance during the trial of the case.

4. On receipt of notice, the Respondents appeared before the Court and contested the case by filing their Written Statement wherein they denied all the allegations laid down by the Petitioner in her Plaint except from the factum of marriage. They further stated that the Petitioner has filed the instant case with some concocted story. The petitioner had willingly gone to her parental house and subsequently refused to come back to the house of the respondents. However, the respondents do not know the reason behind the same and they are still willing to take back the applicant. The respondent No. 1 has not entered into another marriage till the date of filing of the complaint petition. Hence, the Respondents have prayed for dismissal of the instant case.

5. The Petitioner adduced evidences on affidavit of only 2 (two) witnesses. The petitioner adduced the evidence of herself as P.W. 1 and that of Smt. Premoda Deka as P.W. 2. The Respondents adduced evidence-on-affidavit of only 2 (two) witnesses. The respondents adduced the evidence of the respondent No. 1 as DW-1 and that of one Smt. Prabha Bora as DW-2 in support of their case.

6. Upon hearing and on perusal of materials on record the following points of determination are framed:

(i) Whether the Respondents subjected the Petitioner to domestic violence as defined under section 3 of the Protection of Women from Domestic Violence Act, 2005?

(ii) Whether the Petitioner/Petitioner is entitled to relief U/S 18, 19, 20 & 22 of P.W.D.V Act?

DISCUSSION, DECISION AND REASONS THEREOF:

A point wise discussion by analysing the evidence on record is made in the following lines-

7. P.W.1/Petitioner, Smt. Puja Deka, stated in the same lines in her evidence on affidavit as she had stated in her complaint petition. However, she additionally prayed to allow maintenance for herself and for both of her minor children. *During her cross*

examination, PW-1 stated that she knows the contents of her written PWS-on-Affidavit. She further stated that she has filed the instant case as her husband entered into second marriage with another woman. She used to live in her matrimonial house till the filing of the complaint petition. She has not adduced any documents of the cello machine and the cow which she had brought along with her to the house of the respondents at the time of her marriage. It is not a fact that she falsely stated that the respondent No. 1 had assaulted her by demanding Rs.50,000/- (Rupees Fifty Thousand only) from her. She had informed the village headman that her husband used to torture her but she has not adduced the evidence of the village headman in the instant case. The house of her husband/respondent No. 1 is in a hilly area where wild elephants often show up. It is not a fact that as the house of her husband/respondent No. 1 is in a hilly area where wild elephants often show up, she wanted her husband/respondent no. 1 to stay in her parental house as a live-in son-in-law but when her husband did not agree to it, she willingly left the house of her husband/respondent No. 1. It is not a fact that she had not taken any dowry articles along with her to the house of the respondents at the time of her marriage and that the respondents had never assaulted her by demanding dowry from her. It is not a fact that she has falsely deposed that her husband has entered into second marriage. She has not adduced any document regarding the second marriage of her husband/respondent No. 1. It is not a fact that her husband/respondent No. 1 on various occasions had come to her parental house to take her back but she refused to go with her husband. She further stated that as her husband has entered into second marriage she does not want to go with her husband. It is not a fact that as she willingly left the house of the respondent No. 1, she is not entitled to get the reliefs which she has claimed in this case and her husband is not liable to maintain her. It is not a fact that her husband/respondent No. 1 has no source of income of his own and no landed properties. It is not a fact that she has falsely stated in her complaint petition and in her PWS-on-affidavit in order to harass the respondents.

8. P.W.-2, Smt. Premoda Baruah, stated in her PWS-on-affidavit that the applicant is her daughter. She further stated in the same lines in her PWS-on-Affidavit as had been stated by the applicant in her PWS-on-Affidavit. *During her cross examination*, PW-2 deposed that she knows the contents of her written PWS-on-

affidavit and that she had heard about the same from her daughter/applicant. It is not a fact that the facts written in her PWs-on-Affidavit are false. It is not a fact that her son-in-law/respondent No. 1 has not entered into second marriage, that they had not given any dowry articles along with the applicant at the time of her marriage and that her son-in-law/respondent No. 1 has never tortured her daughter/applicant physically or mentally demanding dowry from her. It is not a fact that she has falsely deposed for the sake of her daughter.

9. The Respondent No.1, Mr Arup Ch. Deka, who is the husband of the petitioner, adduced his evidence as DW-1 and deposed in his evidence on affidavit that he is the respondent No.1 of the instant case and the remaining respondents are his family member. He further stated that he got married to the applicant about 6 (six) years prior to the date of filling of his DWs-on-Affidavit and they have a child as well. He used to live separately from his remaining family members. After his marriage, the applicant used to stay at her parental house most of the times as the village of the DW-1 is in a forest area. Often wild elephants used to come out of the forest and show up in his village at night and out of that fear the applicant has willingly left the DW-1 and went to her parental house. After the applicant had left his house, the DW-1 on several occasions went to the parental house of the applicant along with the witnesses to bring the applicant back, but the applicant on every such occasion refused to come back with him. The case of the applicant is fabricated and the applicant has filed the case only to harass the DW-1. It is further stated that the neither DW-1 nor his family members tortured the applicant by demanding dowry from her and that the applicant never gave him any dowry money. As the applicant willingly left his house, he is not liable to maintain her. DW-1 is a day labourer and he does not have any landed property and he also has to maintain his mother.

10. *During his cross examination*, DW-1 stated that he knows the contents of his written DWs-on-affidavit. He further stated that he had married the applicant about 6 ½ (six and half) years prior to the date of his deposition and he has a son and a daughter. The age of his son is about 5 (five) years and the age his daughter is about 1 (one) year at the time of his deposition. It is not a fact that the facts written in his DWs-on-affidavit are false. He further stated his children are living with the applicant at present.

11. D.W.-2 Smt. Prabha Deka, stated in the same lines in her evidence-on-affidavit as had been stated by the DW-1 in his evidence-on-affidavit. *During her cross examination*, DW-2 deposed that the respondent No. 1 is the elder brother of her late husband. She further stated that her marriage and the marriage of the respondent No. 1 were solemnised at the same time. She is living in her husband's house after her husband passed away. She and the respondent No. 1 live in the same house but their kitchens are separate. Applicant has a son and a daughter and both the children are with the applicant. It is not a fact that DW-2 falsely stated that as the house of the respondent No. 1 is in a forest area, the applicant willingly left the house of the respondent No. 1. She further stated that the marriage ceremony of the respondent No. 1 had taken place before her marriage ceremony. It is not a fact that the applicant is entitled to get the reliefs as claimed for in this case as the respondent No. 1 had assaulted the applicant by demanding dowry and he also drove her out of his house. It is not a fact that the respondent No. 1 has entered into second marriage.

POINTS FOR DETERMINATION

(i) Whether the Respondents subjected the Petitioner to domestic violence as defined under section 3 of the Protection of Women from Domestic Violence Act, 2005?

(ii) Whether the Petitioner/Petitioner is entitled to relief U/S 18, 19, 20 & 22 of P.W.D.V Act?

POINT FOR DETERMINATION NO: 1

12. Now, what needs to be decided in this case is whether the respondents subjected the petitioner to any kind of domestic violence as defined under Section 3 of the Act. The PWDV Act was enacted to provide for more effective protection of the rights of women guaranteed under the Constitution of India who are victims of violence of any kind occurring within the family and for matters connected there with or incidental thereto. In this case, evidence reveals that the applicant has stated in

her complaint petition as well as in her evidence-on-affidavit that after one year of her marriage, the respondents started to torture the applicant in demand for dowry and cash. The respondents even tried to kill her by strangulating her neck on her failure to meet the unlawful demands of her husband and later drove her out of her matrimonial house along with her child. Since then, the applicant has been residing at her parental house facing financial hardships to maintain herself as well as her child. In view of the above, the respondent side thoroughly cross-examined the prosecution witnesses but nothing could be elicited in favour of the respondents. The PWs during their cross-examinations stoutly denied all the suggestions put to them. The respondent side in their written objection, cross-examination of PWs and the evidences-on-affidavit basically emphasised on the point that the applicant had willingly left her matrimonial house. The respondent side also raised the fact that the applicant has failed to adduce any evidence with regard to the second marriage of the respondent No.1 as alleged in the application. To this, this court does not find any cogent evidence from the applicant side to prove her allegations regarding the second marriage of the respondent No.1. But this does not shift the onus of proof upon the applicant. The burden to prove that the respondents had not subjected the applicant to any kind of domestic violence as per sec 3 of the Act still lies on the respondent side. But the respondent side failed to satisfy this court that the applicant was not subjected to domestic violence.

13. It is worth mentioning that the PWDV Act is a beneficiary legislation and as such the burden remains on the respondent side unless contrary is proved in the light of cogent evidence. The fact stated by the respondent No. 1 that the applicant had wilfully left her matrimonial house is not acceptable for the reason that no married woman will jeopardize her marital life and the future of her child without any reasonable cause.

14. Thus the respondent side has failed to adduce any cogent evidence to show that the respondents had not subjected the applicant to domestic violence. That apart, the respondent side has also failed to rebut the testimonies of the prosecution witnesses in a credible manner to warrant any contrary inference against the claim of the applicant. The evidence of the PWs remained unshaken during their cross-examination.

15. Moreover, the DIR also speaks about incidents of domestic violence upon the petitioner by the respondent No.1.

16. In the backdrop of the above discussions, it is clear that the applicant had been subjected to domestic violence by the respondent No.1.

17. In view of the above, this point is decided in affirmative and in favour of the aggrieved.

POINT FOR DETERMINATION NO: 2

18. In the backdrop of the discussions made in point for determination No. 1, it is clear that the respondent No.1 had committed acts of domestic violence against the aggrieved woman. In result, the aggrieved woman is entitled to reliefs only from respondents as claimed for in her application u/s 12 of the Act.

19. The Petitioner/PW-1 and PW-2 have stated in their respective evidence-on-affidavits that the respondent No. 1 is a physically abled person having landed properties, a rice mill, betel nut and betel nut leaf crop and other businesses as well. The monthly income of the respondent No. 1 is around Rs. 40,000/- to Rs. 50,000/- (Rupees Forty Thousand to Fifty Thousand only). On the other hand, the applicant belongs to a poor family. However, the Petitioner/PW-1 and PW-2 have not adduced any document in support of their claim. The aggrieved party has not been able to clearly establish the income of the Respondent No.1. Hence, apart from the bare assertion of the Petitioner/PW-1 and PW-2 about the source of income of Respondent No.1, there is no evidence in support of the same.

20. Regarding the quantum, there is no clear proof of the actual income of respondent No.1. Therefore, considering the present cost of living an amount of Rs.1,000/- (Rupees One Thousand only) per month for the aggrieved party and Rs.800/- (Rupees Eight Hundred only) for each of her two minor children (total Rupees Two Thousand Six Hundred only) will be a reasonable amount of maintenance.

O R D E R

The respondents are further directed:

- (1) Not to commit any acts of domestic violence on the Petitioner.
- (2) Not to disturb the peace of the Petitioner.

The Respondent No.1 is to provide alternate residential accommodation to the Aggrieved Party or rented accommodation and he has to pay the rent for the same which shall be Rs.1,000/- (Rupees One Thousand only) per month under Section 19 of the said Act.

The Respondent No.1 is also directed to pay monthly Rs.26,00/- (Rupees twenty six hundred) [(Rupees one thousand only) to the Petitioner and Rs.800/- (Rupees eight hundred only) each to both the minor children of the applicant] to the applicant and her minor children as maintenance under Section 20 of the said Act.

The respondent No.1 is also directed to pay Rs. 8,000/- (Rupees Eight Thousand only) to the Petitioner as compensation for mental and economic torture inflicted upon her u/s 22 of the said Act.

Send a copy of this order to the O.C. of concerned P.S. for compliance.

Also send a copy of this order to the concerned Protection Officer.

Case disposed of.

Given under my hand and the seal of this court on this 28th day of November, 2019.

Anamika Barman
Judicial Magistrate First Class
Morigaon, Assam

APPENDIX

Petitioner's Witnesses:-

- 1. P.W.1:- SMTI. PUJA DEKA,**
- 2. P.W.2:- SMTI. PREMODA BARUAH,**

Respondents' Witnesses:-

- 1. D.W.1:- MD. ARUP CHANDRA DEKA,**
- 2. D.W.2:- MD. PRABHA DEKA**

Exhibits:-

None

Miss Anamika Barman
Judicial Magistrate First Class
Morigaon, Assam