

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (S),
MORIGAON
C.R.(D.V) Case No.38/19**

Musstt. AjidaKhatun

W/o- Md. Habikul Ali

R/o- 1 No. Kandulimari, PS- Dhing, Dist. Nagaon, Assam.

.....Petitioner/Aggrieved Person

Versus

1. Md. Habikul Ali

S/o Md. Golap Hussain

R/o- ThengkhaliBori, PS- Mikirbheta, Dist. Morigaon, Assam.

2. Md. Golap Hussain

R/o- ThengkhaliBori, PS- Mikirbheta, Dist. Morigaon, Assam.

3. Musstt. SaheraKhatun

W/o Md. Golap Hussain

R/o- ThengkhaliBori, PS- Mikirbheta, Dist. Morigaon, Assam.

.....Respondents

Present: Lohit Kumar Sarmah, SDJM (S), Morigaon

Wednesday the 20th day of November, 2019.

Advocates appeared:

For the petitioner/Aggrieved person: - Ms. M. Rajbongshi

Date of evidence: 2.9.2019

Date of Argument: - 5.11.2019

Date of Final Order: - 20.11.2019

FINAL ORDER

1. The instant proceeding has arisen out of an application u/s 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter called as 'the Act' or 'P.W.D.V. Act') filed by petitioner **Musstt. AjidaKhatun** (hereinafter referred to as 'Aggrieved person') against

HabikulAli, Golap Hussain and SaheraKhatun(hereinafter referred to as respondents).

2. The brief fact of the case as disclosed by the aggrieved person in her petition is that the respondent Habikul Ali is her husband and the other respondents are his parents. The aggrieved person on 5.12.2014 got married socially with the respondent no.1 as per Islamic rites fixing mehr amount @ Rs.50000/-. The respondents soon after marriage started making fun of the petitioner saying her that her stridhana articles are of low quality. Moreover, the respondent no.1 started torturing the petitioner mentally and physically in demands of Rs.100000/-. With no options left, her father arranged Rs.20000/- somehow and provided to the respondent no.1 around 3/4 years prior to filing of the case. Like this it went fine till another 2/3 years when she became mother of a baby boy namely Shariful Islam. Soon after his birth, the tortures upon the petitioner have started increasing daily. Hence the father of the petitioner again gave Rs.10000/- to the respondents. Around one year prior to filing of the case, she became mother of another baby girl namely AshiyaKhatun. Like before, again the tortures upon her started increasing. Hence the father of the petitioner once again gave Rs.10000/- to the respondents. The respondents started abusing the petitioner with filthy language and started beating her due to which she fell sick but the respondent did not make arrangements for her treatment. Finally on 20.8.2018 the respondent no.1 held the hair of petitioner, dragged her and drove her out of her matrimonial house along with her children. He also threatened that until she fulfils the demand of Rs.100000/- they won't take her back. Later the petitioner filed a CR.1057/18 case under 498(A)/34 IPC, which was forwarded to the Mikirbheta police station. As the father of the petitioner is too poor hence she has been taking shelter in her elder sister Anjura Begum's house along with her children. On 15.9.2018 Rahmat Ali and Abdul Kalam went to the house of respondent but they denied taking the petitioner back without the demanded money. Since then the respondent did not inquire anything about the petitioner and her children. The petitioner has no any income source. On the other hand, Respondent no.1 is a healthy person who works as a mason. He also has around 20/30 bighas of cultivable land from which around 200

muns of paddy comes. He also has a fishery. Overall, he earns around 40/50 thousand per month. Hence, the aggrieved person has prayed for granting reliefs as follows:-

- i) Protection order u/s 18 of P.W.D.V. Act;
- ii) Monthly house rent @ Rs.6000/- as per u/s 19 of P.W.D.V. Act;
- iii) Monthly maintenance @Rs.6,000/- per month for herself and @Rs.6000/- for her two children as per section 20 of P.W.D.V Act;
- iv) Compensation amount of Rs.3,00,000/- u/s 22 of P.W.D.V. Act;

3. After receiving notice the respondents appeared before the court and submitted written statement on behalf of respondent no.2 and 3. Though initially all the respondents appeared before the court and filed written statement on 5.3.2019 **but later they remained absent without any steps for which the case proceeded ex-parte against all respondents' vide order dated 1.7.2019.** In the written statement filed by the respondent's no.2 & 3 they have admitted that the aggrieved person is the wife of the respondent no.1 but they have denied all the allegations brought against them by the aggrieved person. That, soon after 6 months of their marriage, the petitioner and the respondent no.1 started living separately from other respondents. The respondent no.1 as per the direction of the petitioner went to Kerala for work and had been sending money to her. But no money was provided to survive daily life of respondent no.2 & 3. They might have thought that respondent no.2 and 3 may file maintenance case against them hence they have mutually filed this case. At present, the respondent no.1 is working in Kerala and has no contact with respondent no.2 & 3. Hence she is not entitled for any relief from respondent no.2 & 3 and hence the respondents prayed to dismiss her petition.

POINTS FOR DETERMINATION:

(i) Whether the aggrieved person has any domestic relationship with the respondents?

(ii) Whether the allegation of domestic violence committed by the respondents is true?

(iii) Whether the aggrieved person is entitled to get any relief/reliefs as prayed for u/s 12 of P.W.D.V. Act?

4. The aggrieved party adduced evidence of one witness i.e. herself as PW1. The respondents' side did not adduce any evidence.
5. Heard the Learned Counsel of aggrieved party. Having heard the arguments put forwarded by the Learned Counsel of the aggrieved party and after perusal of the materials on record including the Domestic Incident Report let me discuss the points set for determination.

DECISION, DISCUSSION AND REASONS FOR THE DECISION:

6. **POINT NO. i)** As per section 2(f) of the P.W.D.V. Act " **domestic relationship**" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as joint family." In this case, the respondents agreed the marriage of the aggrieved party with respondent No. 1 and agreed the living as husband and wife. It is also agreed that all other respondents were their family members. Hence the provision is attracted against all the respondents. Therefore, the point for determination No. 1 is decided in positive and in favour of the aggrieved party.
7. **POINT NO. ii)** PW1, Musst. Ajida Khatun reiterated almost the same in her examination-in-chief what has been stated in her petition. In this case PW1 has categorically stated in her evidence that on 20.8.2018 the respondent no.1 held the hair of petitioner, dragged her and drove her out of her matrimonial house along with her children. He also threatened that until she fulfils the demand of Rs.100000/- they won't take her back. Later the petitioner filed a CR.1057/18 case under 498(A)/34 IPC, which was forwarded to the Mikirbheta police station. As the father of the petitioner is too poor hence she has been taking shelter in her elder sister Anjura Begum's house along with her children. On 15.9.2018 Rahmat Ali and Abdul Kalam went to the house of respondent but they denied taking the petitioner back without the demanded money. Since then the respondent did not inquire anything about the petitioner and her children. The credibility of the testimony of PW1 could not be shaken by the respondents as she was not chosen to be cross examined by the

respondent. In the written statement the respondents stated that the aggrieved party left the house of the respondent on her own will but did not adduce any evidence in proof of its contention. Hence, I am of the opinion that the aggrieved woman was subjected to domestic violence by the respondents in the form of physical and mental abuse as defined under this Act.

8. In the entirety, we see that the complaint petition and all the evidences regarding violence upon the aggrieved woman corroborated nicely. Such being the case, this court believes that domestic violence was perpetrated upon the aggrieved woman for which she was compelled to leave the society of her husband. In view of the above discussion the balance of probability goes in favour of the aggrieved party and this court is satisfied that the aggrieved party was subjected to domestic violence by the respondents and so she had to take shelter in her relative's house.

Therefore the point for determination No. ii) is decided in positive and in favour of the aggrieved party.

9. **POINT NO. iii)**

PW1 has deposed that since she had to leave her matrimonial home, she has been taking shelter under the roof of her relatives. PW1 stated that as she has no source of income hence she has been facing financial hardship to run her daily life and to maintain her minor children. On the other hand, the respondent Habikul Ali is a healthy and by profession a mason having landed properties and has an income of around 40-50 thousand rupees. Respondents have denied having the income as alleged. Admittedly the aggrieved person has not submitted any document in support of the income and landed property of respondent no.1. Hence the income of the respondent is not proved. However, the respondent No. 1 being the husband of the aggrieved party has an obligation to maintain his wife. As it has already been held that the aggrieved person has been put in domestic violence, as such the aggrieved person is entitled to get relief under the PWDV Act.

10. Considering the social fabric of the parties, present prices of essential commodities in the market including the responsibilities and liabilities of the respondent no.1, I am of the opinion that an amount of Rs.1000/- per month for the aggrieved person and Rs. 600/- per month for each of her

two minor children will be fair maintenance. With regard to compensation for physical and mental torture in my opinion an amount of Rs.10,000/- will be fair amount of compensation. As regard the prayer of residence order, as it has already been held that the aggrieved person was put in domestic violence in the shared household it will not be easy and safe for her to again live in the same house with the person who committed domestic violence on her, hence considering all facts and circumstances I am of the opinion that she should be granted house rent instead of a room in the shared household to live in and an amount of Rs.600/- per month will be fair amount of house rent.

ORDER

In view of the discussion made above and the decisions arrived at the given points, it is held that the aggrieved woman is entitled to the reliefs prayed for.

The respondents are prohibited from committing any act of domestic violence on the aggrieved person u/s 18 of the Act.

The respondent no.1, Habikul Ali is directed to pay monthly house rent @ Rs.600/- per month to the aggrieved person.

The respondent no.1 is directed to pay maintenance amount of Rs.1000/- (Rupees one thousand) only per month to the aggrieved person and Rs. 600/- per month to each of her two minor children u/s-20(1)(d) of the Act.

The respondent no.1 is directed to pay a compensation of Rs.10000/- (Rupees ten thousand) only for causing physical abuse, mental and emotional abuse by the respondents to the aggrieved person/petitioner u/s-22 of the Act.

The reliefs given shall come into force from the date of the order. In the end the petition u/s 12 of the PWDV Act is allowed.

Free copy of the **Final Order** be furnished to the petitioner/respondents free of cost and also be sent to the concerned Protection Officer and the O/C of the concerned P.S. for their kind attention and necessary action.

Given under my hand and seal of this Court on the 20th day of November, 2019 at Morigaon.

Lohit Kumar Sarmah
SDJM (S), Morigaon

APPENDIX

Witnesses of the petitioner:

PW1- Musstt. AjidaKhatun (Aggrieved Person)

Exhibits of the petitioner:

Nil

Witnesses of the respondents:

Nil

Exhibits of the respondents:

Nil

Lohit Kumar Sarmah
SDJM (S), Morigaon, Assam