

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM**

**CR (DV) CASE NO. 100/2018**

**Musstt. Shiriya Khatun  
Wife of Md. Sirajul Islam  
Daughter of Md. Mohar Ali  
Village- Moirabari, Ward No.6  
P.S.- Moirabari,  
Dist- Morigaon, Assam**

**..... Applicant**

**Vs.**

- 1. Md. Sirajul Islam  
Son of Late Abu Hashim**
- 2. Md. Taizul Islam  
Son of Late Abu Hashim**
- 3. Md. Mainul Islam  
Son of Late Abu Hashim**
- 4. Musstt. Taslima Nasrin  
Wife of Md. Shirazul Islam  
Village- Salkati Pathar  
P.S.- Dhing,  
Dist- Nagaon, Assam**

**..... Respondents**

Present: Sri N.K. Das, AJS

Chief Judicial Magistrate, Morigaon

For the applicant: Md. A. Zaman, Advocate

For the respondents: Md. R. Karim, Advocate

Application u/s 12 of the PWDV Act,

2005 filed on: 6-4-2018

Written Statement filed on: 20-8-2018

Evidence recorded on: 6-12-2018, 14-5-2019, 22-8-2019 and  
14-11-2019

Argument heard on: 14-11-2019

Final order delivered on: 28-11-2019

## **FINAL ORDER**

**1.** This final order goes to dispose of the application filed by the applicant above named under section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after the Act), against the respondents above named, seeking reliefs of (i) protection order under section 18 of the Act (ii) alternative residence or rent of Rs.5000/-, per month, under section 19 of the Act (iii) monetary relief of maintenance of Rs.10,000/-, per month, for the applicant and her minor daughter under section 20 of the Act, (iv) compensation of Rs.10,00,000/- under section 22 of the Act from the respondents and (v) Rs.6000/- (Rs.4000/- for the applicant and Rs.2000/- for her minor daughter), as interim maintenance towards cost of legal proceeding under section 23 of the Act.

**2.** The applicant in her application narrated that her marriage was solemnized with the respondent No.1 Md. Sirajul Islam on 6-4-2012, as per Islamic rites on fixing Mohr amount of Rs.1,00,000/-, in presence of members of society. Out of the wedlock a daughter was born, who was named Miss. Sadia Tasmin, who was aged about four years at the time of filing of the application. After some days of the marriage, her husband, at the instigation of the respondent No.2 Md. Taizul Islam and respondent No.3 Md. Mainul Islam, out of unjust greed, demanded a motorcycle and Rs.50,000/-, in cash, as illegal dowry and in connection with the said demand, started beating her and subjected her to physical and mental harassment. Such harassment almost drove the applicant to commit suicide. However, she restrained herself due to the affection of her daughter and considering her future and went on tolerating such harassment. Around nine months prior to filing of this application which has given rise to the present proceeding, the respondent No.1, 2 and 3, on her failure to bring the dowry demanded by them, beat her mercilessly causing severe injuries on her person and drove her out of the matrimonial house. Having no other alternative, she returned to the house of her father and lodged a case in the Dhing police station. After some days of lodging of the case, her husband i.e. respondent No.1

amicably settled the matter with her and promised not to harass her in future and with such promise, brought her to his house.

**3.** Thereafter, she spent a few days in peace. However, soon thereafter, as per the instigation and assistance of respondents No.2 and 3, her husband married the respondent No.4 Musstt. Taslima Nasrin. After the said marriage all the respondents again beat the applicant severely in connection with dowry, hurled obscene abuses at her and harassed her physically and mentally. On 15-12-2017, all the respondents in connection with demand of dowry, mercilessly beat her and as per instruction of respondents No.2 and 3, the other two respondents i.e. respondent No.1 and 4 caught hold of hair of the applicant and drove her, along with her daughter, out of the matrimonial house. Though the applicant requested the respondents to allow her to stay in her husband's house; however, they did not allow her to do so. Having no other alternative, she returned along with her daughter to the house of her father and took shelter therein. According to her, the respondent No.1 possesses lots of landed properties and he is a rich man and earns Rs.50,000/-, per month, from cultivation as well as business. On the other hand, the applicant belongs to a very poor family and she had suffered at the hands of the respondents due to demand of illegally dowry by them. Therefore, she has prayed for the reliefs, as aforementioned.

**4.** Notice of the application was issued to the respondents. All the four respondents appeared and they submitted written statement through the respondent No.1, wherein they denied the allegations leveled against them. According to the respondents, the applicant has filed the present case without any basis and raising false and baseless allegation, as, according to them no such incident, as narrated by the applicant, took place. According to them, the marriage between the applicant and the respondent No.1 was solemnized on 25-5-2012 as per Islamic rites and out of the wedlock a daughter was born, as already mentioned above. After the marriage, the applicant used to misbehave with the respondent No.1 as well as the other respondents and without their knowledge and permission use to go to her father's house and used to refuse to

come back to her matrimonial house. According to the respondents, the applicant and her mother urged and pressurized the respondent No.1 to remain as a domesticated husband. On refusal by the respondent No.1, the applicant created an unhealthy environment at the house and her mother also came and verbally abused the respondent No.1.

**5.** They have also alleged that the applicant used to have obscene talk with other men till the middle of the night and whenever the respondent No.1 protests such behaviour of the applicant, she used to quarrel with him and threatened to lodge false case against him alleging domestic violence. In 2017, in the month of June, the elder brother of the respondent No.1 took the motorcycle belonging to the respondent No.1 for which the applicant was displeased and quarreled with the respondent No.1 and brought relatives from the house of her father and in absence of the respondent No.1, went away to her father's house. Though the respondent No.1 tried to prevent the applicant over phone; however, she did not pay heed to such urging of her husband and went to her mother's house. While going away, she also took with her gold and silver jewelry amounting to Rs.30,000/- as well as cash amount of Rs.36,000/-. Though respondent No.1 requested the applicant to come back to his house; however, she refused to do so. When the respondent No.1 faced problem in absence of the applicant, he, on 4-7-2017 and 31-7-2017, issued two advocate's notice urging her to come back to his house. However, such notice also did not work and instead the applicant threatened that if she is brought back, she would commit suicide and implicate his family members and thereby send them to jail hajot. Thereafter, though the respondent No.1 and the other respondents went to the house of the applicant to bring her as well as the child back; however, the family members of the applicant misbehaved with them and drove them away. Since then the respondents have not inquired about her and the family members of the applicant also did not sent their daughter to the house of the respondents.

**6.** According to the respondents, the applicant, by taking shelter in her father's house, lodged this false case against her husband and other respondents though there is no truth in her case. He also stated that he has no landed

property and he does not earn Rs.50,000/-, per month, from his business. According to the respondents, the respondent No.1 is a day labourer and earns Rs.200/- to Rs.300/- per day, with which he has to maintain himself. Therefore, according to the respondents, as the case of the applicant is concocted and false, hence, she is not entitled to any relief as prayed for and her application should be dismissed.

**7.** The domestic incident report was not received from the Protection Officer, Morigaon for which same could not be considered.

**8.** The applicant in support of her case submitted written evidence on affidavit of her own as PW-1 and the written evidence on affidavit of her brother Md. Ribbul Islam, as PW-2. They were duly cross-examined and discharged. The respondents refused to adduce any evidence on their behalf.

**9.** I have heard the argument of Md. Anis Uz Jaman, learned counsel for the applicant and the argument of Md. Rajaul Karim, learned counsel for the respondents, perused the case record and considered the same.

**10.** As laid down in Rule 6 (5) of the Protection of Women from Domestic Violence Rules, 2006 the procedure enumerated for deciding a case under section 125 CrPC is required to be followed to decide an application under section 12 of the Act and for that reason section 354(6) CrPC is applicable with respect to disposal of the application.

**11.** Therefore, the following points are formulated for determination:

- (a) Whether the applicant is entitled for relief of protection order under section 18 of the Act?
- (b) Whether the applicant is entitled for alternative residence or rent of Rs.5000/-, per month, under section 19 of the Act?
- (c) Whether the applicant is entitled for monetary relief of maintenance of Rs.10,000/-, per month, under section 20 of the Act?
- (d) Whether the applicant is entitled for relief of compensation of Rs.10,00,000/- under section 22 of the Act?

(e) Whether the applicant is entitled for relief of Rs.6000/- as interim maintenance under section 23 of the Act?

**Discussion of evidence, decision and reasons therefor:**

**12. Point for determination no. 11(a):** A protection order under section 18 of the Act can be passed only on being satisfied that domestic violence has taken place or is likely to take place. PW-1 Musstt. Shiria Khatun has reiterated in her written evidence on affidavit, the statements made by her in her application regarding her marriage with the respondent No.1, her harassment at the hands of the respondents in connection with demand of dowry and her ordeal of being driven out of the matrimonial house by the respondents. She was supported and corroborated by the PW-2, who is her brother.

**13.** Though they were cross-examined; however, nothing could be elicited from them to show what she wrote in application and written evidence are false. In view of the failure of the respondents to support their written statement by adducing evidence on oath, the written statement remained merely as such i.e. statement untested by cross examination. It is found from the cross-examination of PW-1 and PW-2 that several matters were introduced in their cross examination which were not even indicated in the written statement of the respondents. It is suggested in the cross-examination of PW-1 that the family members of her husband used to prevent her from talking with other men though this statement was not made in the written statement. Further, it is also suggested in her cross-examination that as she was prevented from talking with other men; therefore, she tried to separate her husband from his family members and insisted that he should reside as a domesticated husband. These matters were not indicated in the written statement.

**14.** Likewise, it was also introduced in her cross examination that she threatened the respondents that she would lodge case against them if they do not obey the applicant. These things were not indicated in the written statement. It is also suggested that she threatened to commit suicide, if she was not allowed to live her life in her own terms. Likewise, it was also suggested in her cross

examination that they issued advocate's notice only when her husband and his family failed to bring her back. Whereas, in their written statement it was indicated that the respondent No.1 and other three respondents went to the house of the applicant after when the advocate's notice did not yield any result. Likewise, in the cross-examination of PW-2 also it was indicated that the respondent No.1 went to inquire about the child of the applicant in order to pay money to her when she fell ill. This statement was also not indicated in the written statement. Likewise, it was also suggested to PW-2 that PW-2 and his family members snatched away money from Md. Sirajul Islam i.e. respondent No.1 and beat him. This was also not indicated in their written statement.

**15.** Such attempt on the part of the respondents to put up a case inconsistent with their written statement show that they actually have no defense to make and what the applicant wrote in her application and evidence on affidavit was true.

**16.** It has been found from the evidence that since 15-12-2017, the applicant and her minor daughter have been residing with her father. In the written statement of the respondents also they have admitted that they have not inquired about the applicant and her minor daughter. There is no statement by the respondent No.1 that he paid any maintenance to the applicant and her daughter in spite of the fact that she is his first wife and the daughter of the applicant is his own daughter. The contention of the applicant that she has been residing in her father's house and that she is facing severe hardship is not even denied by the respondents. Needless to say that the applicant without any income source of her own has been facing severe hardship to maintain herself as well as her minor daughter, who is aged about 5 years. Non-payment of maintenance to the wife and daughter by the husband/father is a form of domestic violence. The respondents have also failed to deny the allegations that the respondent No.1 married for the second time. If the respondent No.1 is capable of solemnizing second marriage, he is capable of providing separate maintenance to his first wife and his own daughter. Had it not been so he would not have married for the second time and would have resorted to all legal means

available to him. Therefore, this point for determination is answered in her favour.

**17. Point for determination no. 11(b):** The applicant has sought for Rs.5000/- as rent or as an alternative residence. The fact that the respondent No.1 married for the second time is a sufficient ground for the first wife not to reside with her husband. Therefore, even if she refuses to go back to her husband, she is justified to do so. However, the said refusal itself in view of the domestic violence caused to her would not disentitle her from rent. Therefore, she is also entitled to rent from the respondent No.1.

Therefore, this point is also answered in the affirmative.

**18. Point for determination no. 11(c):** Both the PWs have stated that the applicant, along with her minor daughter, have been residing in the house of her father. The allegation of the applicant that the respondent No.1 has not inquired about her nor paid any maintenance to her is found to be true as it was the respondents themselves who admitted to the same in their written statement. Further, there is no suggestion in the cross-examination of PW-1 and PW-2 that the respondent No.1 has been paying any maintenance to them. Therefore, it is clear that the applicant has been facing severe financial hardship due to non-payment of such maintenance.

**19.** So far as the earning of the respondent No.1 is concerned, the applicant though wrote in her application as well as in her written evidence that the respondent No.1 earns Rs.50,000/-, per month, and is a rich man having landed property; however, the PW-1 has admitted in her cross-examination that her husband i.e. respondent No.1 has no education and do not have any Govt. job. The respondents have admitted in their written statement that the respondent No.1 is a day labourer and earns Rs.200/- to Rs.300/-, per day. Further, it has been revealed in cross-examination of PW-2 Md. Ribbul Islam that the respondent No.1 Md. Sirajul read up to Class-VIII and went searching for job to Nagaon. Therefore, it appears that the exact earning of the respondent No.1 is not proved. However, we have to keep in mind that the said respondent No.1, in spite of having first wife and a daughter, married the respondent No.4. His

second marriage is sufficient enough to indicate that he earns enough to provide for his second wife.

Therefore, this point for determination is answered in favour of the applicant

**20. Point for determination no. 11(d):** In view of the domestic violence which the applicant had to suffer at the hands of the respondents, she is found entitled to monetary compensation.

Therefore, this point for determination is answered in her favour.

**21. Point for determination no. 11(e):** This point has already been determined in favour of the applicant vide order dated 10-4-2019, whereby the respondent No.1 was directed to pay interim monetary relief of Rs.1500/-, per month, to the aggrieved person, for her maintenance and maintenance of her child.

**22.** In the statement of objects and reasons it is provided that the Act was enacted keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victim of domestic violence and to prevent the occurrence of domestic violence in the society.

**23.** From the discussion above, we find that the evidence on record clearly established the fact that the applicant was subjected to domestic violence by the respondents and she has not been looked after by the respondent no.1 as, primarily, it is the husband whose duty it is to provide maintenance to his wife and child, who are unable to maintain themselves. She has no any income source of her own. There is every likelihood that the applicant may be subjected to domestic violence in future. The conduct of the respondents clearly comes within the purview of section 3 of the Act.

**24. Accordingly, it is ordered as follows:**

- i. Protection order, under Section 18 of the Act, is passed in favour of the applicant Musstt. Shiriya Khatun and all the respondents namely Md. Sirajul Islam, Md. Taizul Islam, Md. Mainul Islam, Musstt. Taslima Nasrin are: (a) prohibited from committing any**

**act of domestic violence to her (b) prohibited from causing violence to the other relatives or any other person who give the aggrieved woman assistance from domestic violence.**

- ii. The respondent no.1 Md. Sirajul Islam is directed, so far as relief under section 19 of the Act is concerned, to pay a sum of Rs.500/-(Rupees five hundred), per month, to the applicant, as rent, w.e.f. the date of this order.**
  - iii. The respondent no.1 Md. Sirajul Islam is directed, so far as relief under section 20 of the Act is concerned, to pay a sum of Rs.1500/-(Rupees one thousand five hundred), per month, to the applicant, at the rate of Rs.1000/- and Rs.500/-, for her maintenance and the maintenance of her child, respectively, w.e.f. the date of this order.**
  - iv. All the respondents are also directed, under section 22 of the Act, to pay a compensation of Rs. 8,000/-(Rupees eight thousand), at the rate of Rs.2000/- each, to the applicant for the domestic violence caused to her.**
- 25.** In terms of section 24 of the Act, send a copy of this order to the O/C, Moirabari police station, Morigaon as well as to the O/C, Dhing police station, Nagaon to assist the applicant in the implementation of the order.
- 26.** Free copies of this final order be furnished to the parties.
- 27.** This final order is passed on contest, pronounced in open court and given under my hand and seal on this 28<sup>th</sup> day of November, 2019 at Morigaon, Assam.

Chief Judicial Magistrate, Morigaon

## **APPENDIX**

**(A) PROSECUTION EXHIBITS:**

None

**(B) DEFENCE EXHIBITS:**

None

**(C) EXHIBITS PRODUCED BY WITNESSES:**

None

**(D) COURT EXHIBITS:**

None

**(E) PROSECUTION WITNESSES:**

P.W.-1: Musstt. Shiriya Khatun

P.W.-2: Md. Ribbul Islam

**(F) DEFENCE WITNESSES:**

None

**(G) COURT WITNESSES:**

None

Chief Judicial Magistrate, Morigaon