

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, MORIGAON, ASSAM

CR (DV) Case No.225/2019

**Musstt Mahmuda Begum
D/O-Md. Hafizuddin
W/O. Md. Khairul Islam
Vill-Phaliamari Pathar
P.S-Bhuragaon
District-Morigaon, Assam**

.....Applicant

Vs.

- 1. Md. Khairul Islam,
S/O-Late Mofizuddin**
- 2. Musstt. Sahera Begum
W/O-Late Mofizuddin**
- 3. Md. Sofiqul Islam,
S/O-Late Mofizuddin**
- 4. Md. Harun Rashid
S/O-Late Mofizuddin
All are residents of village- Bagaliparagaon
Ward No.3, P.S. Laharighat
District-Morigaon, Assam**

.....Respondents

Present: Sri N.K. Das, AJS
Chief Judicial Magistrate, Morigaon, Assam

For the applicant: Md. Anis Uz Jaman, Advocate

For the respondent: Md. B. Hussain, Advocate

Application u/s 12 of PWDV Act, 2005 filed on: 19-6-2019
Written Statement filed on: 17-7-2019
Evidence recorded on: 4-10-2019
Argument heard on: 8-11-2019
Final order delivered on: 19-11-2019

Final Order (ex parte)

1. This final order disposes of the application filed by the applicant above named, against the respondents above named, under section 12 of the Protection of Women from Domestic Violence Act, 2005 (herein after 'the Act') seeking reliefs of

(i) protection order under section 18 of the Act, (ii) alternative residence or house rent at the rate of Rs.5000/-, per month, under section 19 of the Act, (iii) monetary relief of maintenance at the rate of Rs.8,000/- (Rs.5000/-, for the applicant and Rs.3000/-, for her minor daughter), per month, under section 20 of the Act, (iv) compensation of Rs.8,00,000/- under section 22 of the Act and (v) Rs.6,000/- (Rs.4000/-, for the applicant and Rs.2000/-, for her minor daughter) as interim maintenance and cost of proceeding under section 23 of the Act from the respondents.

2. On receipt of the notice of the application, the respondents at sl. no. 2, 3 and 4 above appeared and submitted written statement on their behalf. The remaining respondent i.e. respondent No.1 Md. Khairul Islam, in spite of receipt of notice, neglected or refused to appear before the court for which it was decided to proceed ex-parte against him. Subsequently, however, on failure of the other three respondents also to appear before the court, the case proceeded ex-parte against them also.

3. In her application, the applicant has stated that her marriage was solemnized around two years four months prior to filing of the application with Md. Khairul Islam as per Islamic rites on fixing Mohr amount of Rs.50,000/-. Out of the wedlock a daughter was born, who was named Miss Tamanna Siddika and was aged about 14 months at the time of filing of the application. After some days of the marriage, the aforementioned respondents, out of unjust greed, subjected the applicant to harassment in connection with demand of illegal dowry, money etc. from her father. Having no other alternative, the applicant informed her father regarding the demand of the respondents after which her father, in order to secure happiness in her conjugal life, paid Rs.50,000/-, in cash, to her husband. After some days of the payment of the said amount, the applicant was again subjected to physical and mental harassment in connection with demand of Rs.1,50,000/-. For the demand of the money, the applicant was beaten severely and she was deprived of food, clothes etc.

4. Lastly, on her failure to pay the demanded money, the respondents, by hatching a conspiracy and falsely accusing her that she was not suitable to them,

caught hold of her hair and drove her out of the matrimonial house and at that time she was carrying one month pregnancy. Though she requested the respondents to allow her to stay in their house; however, on their refusal and having no other shelter, she returned to the house of her father and took shelter therein. Since then the respondents have not inquired about her nor paid any maintenance to her.

5. Around 15 days, prior to filing of the application, the respondent Nos.2, 3 and 4 arranged second marriage of the respondent No.1 with another girl. After solemnization of the said marriage, both respondent No.1 and his second wife started their conjugal life. According to the applicant, the respondents, by hatching a conspiracy, destroyed her life. The applicant has been aggrieved by the action of the respondents for their demand of illegal dowry. The applicant is a member of a poor family; however, the respondents are rich persons having landed and other properties. Respondent No.1, from his cultivation as well as other business, earns Rs.40,000/- to Rs.50,000/- per month. Therefore, she has prayed for the reliefs, as aforementioned.

6. In the written statement filed by the respondents No.2, 3 and 4, they had denied all the allegations leveled against them. According to the answering respondents, they have been residing separately at a distance of about half kilometer from the respondent No.1. According to them, the application filed by the applicant is fabricated, concocted and therefore, liable to be dismissed.

7. The Domestic Incident Report was not received from the Protection Officer, Morigaon and therefore, the same could not be considered.

8. 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. Therefore, the following points are formulated for determination:

- i. Whether the applicant is entitled for relief of protection order under section 18 of the Act?
- ii. Whether the applicant is entitled for alternative residence or Rs.5000/- , per month, as rent, under section 19 of the Act?

- iii. Whether the applicant is entitled for monetary relief of maintenance at the rate of Rs.8000/- (Rs.5000/-, for the applicant and Rs.3000/-, for her minor daughter), per month, under section 20 of the Act?
- iv. Whether the applicant is entitled for relief of compensation of Rs. 8,00,000/- under section 22 of the Act?
- v. Whether the applicant is entitled for relief of Rs.6,000/- (Rs.4000/-, for the applicant and Rs.2000/-, for her minor daughter), as interim maintenance and cost of proceeding under section 23 of the Act?

9. For convenience, all the points for determination are taken up together for discussion. In support of her application, the applicant has submitted written evidence on affidavit of her own as PW-1. In the evidence of the PW-1 the statements made by the applicant in her application are reiterated. According to the applicant, she has been residing along with her minor daughter in the house of her parents. She has no source of income of her own and she has been leading her life with severe financial hardship. The respondent No.1 never inquired about her nor about her daughter nor paid any maintenance to the applicant and her minor daughter since the day of driving her out. It is also clear from her evidence that the respondent No.1 has not paid any maintenance, as, primarily, it is the duty of the husband to provide for his wife and children.

10. In view of willful neglect of the respondents to contest the application, the evidence of the PW-1 remained intact and unchallenged. Refusal to maintain one's own wife and child is a form of a domestic violence. The fact that the applicant was forced to reside in her father's house makes it clear that there has not been any attempt on the part of the respondents to bring her back to the matrimonial house rather the respondents No.2, 3 and 4 solemnized second marriage of respondent No.1 and respondent No.1 is leading conjugal life with his second wife, as stated by the applicant in her application as well as in her written evidence on affidavit. The statements made by the respondents in their written statement are merely statements as the maker thereof are not tested by cross examination. The fact that the applicant was driven out of the matrimonial house and thereafter respondent no.1 solemnized second marriage also indicates that he is not interested to restore the conjugal life with the applicant.

11. The provisions of the Act is a social measure 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 victims of domestic violence and to prevent the occurrence of domestic violence in the society.

12. It is proved from the evidence that the respondents caused domestic violence to the applicant. The fact that the applicant had to take shelter in the house of her parents, along with her minor daughter, is ample proof of the fact that she was driven out of the matrimonial house by her husband i.e respondent No.1 and the remaining respondents. No mother would risk an uncertain future with a minor daughter by leaving the house of her husband willfully unless there is compelling reasons to do so. In this case she was driven out of the house by the respondents. It appears that her husband has almost abandoned her and her daughter. It appears that the respondents are least concerned regarding the present plight of the applicant and her minor daughter.

13. Though the applicant has stated in her evidence that the respondent No.1 i.e. her husband has landed property and earns Rs.40,000/- to Rs.50,000/-, per month, the same appears to be a guess work. No document is submitted to support the earnings. Therefore, the exact earnings of her husband is not available on record. However, even a day labourer earns approximately rupees six thousand to seven thousand five hundred per month, if we treat his earning at the rate of rupees three hundred per day, after treating five to ten days as no work days. In that view of the matter also her husband is liable to pay maintenance to the applicant and her daughter. There is no evidence to show that the respondent No.1 suffers from any illness rendering him incapable of earning. His second marriage also goes to show that he is capable of earning and providing for two families.

14. For the aforesaid reasons and discussion the points for determination, except the point for determination no.v, are answered in favour of the applicant. The point for determination no.v is answered in the negative as the case has already reached its final stage.

15. Accordingly, it is ordered as follows:

i. Protection order, under Section 18 of the Act, is passed in favour of the applicant Musstt Mahmuda Begum and the respondents 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. Respondent No.1 Md. Khairul Islam is also directed, so far as reliefs under sections 19 and 20 of the Act are concerned, to pay a consolidated sum of Rupees 1000/- (Rupees one thousand), per month, for the maintenance of the applicant and Rs.500/- (Rupees five hundred), per month, for the maintenance of Musstt Tamanna Siddika i.e. the minor daughter of the applicant, w.e.f. the date of this order.

iii. The respondents are also directed, under section 22 of the Act, to pay a compensation of Rupees 5000/-(Rupees five thousand) to the applicant for the domestic violence caused to her.

16. In terms of section 24 of the Act, send a copy of this order to the O/C, Bhuragaon police station and the O/C, Laharighat police station, to assist the applicant in the implementation of the order.

17. Furnish free copies of this final order to the parties concerned.

18. This final order is passed ex parte and pronounced in open court and given under my hand and seal on this 19th 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 Mahmuda Begum

(F) DEFENCE WITNESSES:

None

(G) COURT WITNESSES:

None

Chief Judicial Magistrate, Morigaon