

**IN THE COURT OF SUB DIVISIONAL JUDICIAL MAGISTRATE (S),  
MORIGAON**

**C.R.(D.V) Case No.423/18**

**Smti. Gita Moni Devi Engti**

W/o- Gautam Engti

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

.....Petitioner/Aggrieved Person

Versus

**1. Sri Gautam Engti**

S/o Sri Budhen Engti

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

**2. Sri Budhen Engti**

S/o Bilabor Engti

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

**3. Smti. Khuhiti Engti**

S/o Sri Budhen Engti

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

.....Respondents

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

Friday the 15<sup>th</sup> day of November, 2019.

**Advocates appeared:**

For the petitioner/Aggrieved person: - Mr. J. Rahman

Date of evidence: 10.6.2019

Date of Argument: - 30.10.2019

Date of Final Order: - 15.11.2019

**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 **Smti. Gita Moni Devi Engti** (hereinafter referred to as 'Aggrieved person') against **Gautam Engti, Budhen Engti and Khuhiti Engti** (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 Gautam Engti is her husband and the other respondents are his family members. The aggrieved person got married socially with the respondent no.1 as per Hindu rites in the year 2004. At the time of her marriage she took with many wooden furniture. Out of their conjugal life, the petitioner became the mother of three children such as Shiva Engti, 9 years old, Meghna Engti, 7 years old and Kunal Engti, 4 years old. Soon after the birth of all the three children the respondent no.1 started torturing her in demands of dowry cash of Rs.100000/-. With no options left the father of the petitioner borrowed in interest Rs.20000/- and gave to the respondent no.1. Though after that it went fine till one year but then the respondents again started torturing in demands of the balance amount. On being informed the father of the petitioner called for a village bichar in the village of respondents where they assured not repeat such activity again but then after few days later they started the same torture as before. That on 12.2.2016 the respondents for the left out amount tortured the petitioner again and drove her out of her matrimonial house along with her one child keeping her all ornaments. Since then the respondent did not inquire anything about the petitioner and her child. Since then she has been residing in her parental house. Respondents are very rich and have landed properties. Respondent no.1 has around 10/12 bighas of landed property and is a driver by profession. He earns about Rs.10/15 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) Residence order or monthly house rent @ Rs.3000/- as per u/s 19 of P.W.D.V. Act;
- iii) Monthly maintenance @Rs.6000/- per month for herself and @Rs.2000/- per month for her child as per section 20 of P.W.D.V Act;
- iv) Compensation amount of Rs.1,00,000/- u/s 22 of P.W.D.V. Act;

3. After receiving notice the respondents appeared before the court and submitted written statement on their behalf. Though initially all the respondents'

appeared before the court and filed written statement on 3.4.2019 **but later they remained absent without any steps for which the case proceeded in absence of all respondents' vide order dated 30.9.2019.** In the written statement filed by the respondents' no.1, 2 and 3; they have admitted that the aggrieved person became mother of three children after having love affair with the respondent no.1 without any formal marriage but they have denied all the allegations brought against them by the aggrieved person. That, the petitioner since her marriage used to abuse to respondent no.2, 3 and other family members alleging lower caste racial. Till date they have not undergone any social marriage between them as the petitioner and her parents used to abuse them on their racial caste. Soon after few days of their marriage respondents no.2 and 3 started living a separate life from them and since then they have no relation with the petitioner and respondent no.1. Though, the respondent no.1 was a truck labourer earlier but around 5 years back he got injury on his back lifting heavy items and since then he has been surviving working as a day labour lifting only light items. As such, the respondent no.1 could not fulfil the demands of the petitioner and had to listen to her verbal abuse. But around 4 years back the taking the advantage of respondent no.1's absence in the house, the petitioner left her matrimonial house on her own leaving her son Shiva Engti and daughter Meghna Engti in the house of respondent no.1. That, the respondent no.1 tried many times to bring her back but the petitioner denied and she and her family members threatened the respondent no.1 to kill him if he tries to bring her back. Still, the respondents' no.2 and 3 had to look after the left out children. Hence the petitioner is not entitled for any relief from respondents and hence the respondents prayed to dismiss her petition.

#### **4. 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?

5. The aggrieved party adduced evidence of two witnesses including herself as PW1. The respondents' side did not adduce any evidence.

6. 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.

#### **7. DECISION, DISCUSSION AND REASONS FOR THE DECISION:**

##### **8. 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 living together 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.

##### **9. POINT NO. ii)**

PW1, Smti. Gita Moni Engti 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 Soon after the birth of all the three children the respondent no.1 started torturing her in demands of dowry cash of Rs.100000/-. With no options left the father of the petitioner borrowed in interest Rs.20000/- and gave to the respondent no.1. Though after that it went fine with till one year but then the respondents again started torturing in demands of the balance amount. On being informed the father of the petitioner called for a village bichar in the village of respondents where they assured not repeat such activity again but then after few days later they started the same torture as before. That on 12.2.2016 the respondents for the left out amount tortured the petitioner again and drove her out of her matrimonial house along with her one child keeping her

all ornaments. Since then the respondent did not inquire anything about the petitioner and her child. The other one witness Sri Bipul Kr. Nath also deposed on the same lines and corroborated the testimony of the aggrieved party. 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.

In the entirety, 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 father`s house.

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

**10. 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 parents. 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 child. On the other hand, the respondent Gautam Ingti is a healthy and a driver having landed properties. Moreover, the respondent earns Rs.10000/-- Rs. 15000/- a month. 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.

11. 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. 800/- per month for her minor child 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.500/- 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 respondentno.1 is directed to pay monthly house rent @ Rs.500/- 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. 800/- per month to her minor child 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 Protection of Women from Domestic Violence 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.

The case is disposed of on contest.

Given under my hand and seal of this Court on the 15<sup>th</sup> day of November, 2019 at Morigaon.

Lohit Kumar Sarmah  
SDJM (S), Morigaon

## **APPENDIX**

### **Witnesses of the petitioner:**

PW1- Smti. Gita Moni Engti (Aggrieved Person)

PW2- Sri Bipul Kr. nath

### **Exhibits of the petitioner:**

Nil

### **Witnesses of the respondents:**

Nil

### **Exhibits of the respondents:**

Nil

Lohit Kumar Sarmah  
SDJM (S), Morigaon, Assam