

**IN THE COURT OF THE SESSIONS JUDGE :: :: MORIGAON**

*Present: Sri S. K. Poddar,  
Sessions Judge  
Morigaon, Assam.*

**CRIMINAL APPEAL NO. 19/2018**

Md. Merajul Islam .....Appellant

**-VS-**

Musstt. Asmina Begum .....Respondent

**Advocates appeared:**

Mr. M. Islam, Ld. Advocate ----- for the appellant  
Mr. A. Salam, Ld. Advocate ----- for the respondent

Date of Hearing : 07.01.2020

Date of Judgment : 30.01.2020

**J U D G M E N T**

**1.** This appeal has been filed U/S 29 of Protection of Women from Domestic Violence Act, 2005 (herein-after referred as D.V. Act) against the order and judgment dated 03.01.2018, passed by the Ld. JMFC, Morigaon in CR (DV) Case No. 1123/2015.

**2.** By the impugned judgment and order dated 03.01.2018, learned JMFC, Morigaon has directed the appellant to provide a room in the shared household or to pay rent at the rate of Rs. 1000/- (Rupees one thousand) per month to the aggrieved party/respondent, to pay maintenance of Rs. 2000/- (Rupees two thousand) per month to the aggrieved party/respondent and to pay a compensation of Rs. 10,000/- (Rupees ten thousand) for causing physical abuse, mental and emotional abuse upon the aggrieved person from

the date of order and also prohibited the appellant from committing any act of domestic violence to the aggrieved person.

**3.** On receipt of the appeal memo, notice was sent to the respondent and she has entered appearance and contested the proceeding through her engaged Advocate. The trial court record was called for and perused.

**4.** The fact leading to filing of the CR (DV) Case No. 1123/2015, in brief is that, the aggrieved party, the respondent herein Asmina Begum (here-in-after referred as the aggrieved party) was married to Merajul Islam (here-in-after referred as appellant/husband) about 4 months back of filing the complaint on 19.11.2015, by fixing Moharana of Rs. 50,000/-. After marriage, she started her marital life at the residence of the accused. After about one month, her husband on being instigated by the other two accused persons Mamtaz Ali and Sarifa Begum demanded Rs. 1,00,000/- as dowry and on her failure to pay the amount, she was subjected to cruelty. Ultimately, she was driven out from her matrimonial home and under compelling circumstances she took shelter at her paternal home. After driving her out, her husband did not pay any maintenance inspite of having 30/35 bighas of land and 2/3 fisheries as his income sources. By filing the petition u/s 12 PWDV Act, the aggrieved party had claimed protection u/s 18, accommodation or rent of Rs. 5000/- u/s 19, monthly maintenance of Rs. 6000/- for herself and Rs. 5000/- for her child u/s 20, compensation of Rs. 3,00,000/- u/s 22 and interim monthly maintenance of Rs. 5000/- per month u/s 23 of the Protection of Woman from Domestic Violence Act.

**5.** On receipt of the above petition, notice was served on the husband and upon receipt of the same he has submitted his written statement by simply denying the allegations leveled in the petition and further pleaded that is a stranger to him and she was not his married wife and as such, she is not entitled for any reliefs.

**6.** Case record shows that during pendency of the proceeding, on 16.05.2017, at the stage of evidence, the aggrieved party has filed a petition for interim maintenance. Aggrieved party has examined herself and three others as witness. The husband failed to adduce evidence inspite of taking several dates.

**7.** Learned JMFC, Morigaon upon perusal of the evidence adduced by the petitioner side and upon discussing the materials on record was pleased to dispose the proceeding by directing the husband to provide various reliefs' as mentioned here-in-before.

**8.** Being highly aggrieved and dissatisfied with the above order dated 03.01.2018, the appellant/husband has filed the instant appeal on the following 2 grounds only.

*(i) That the learned Trial Court has failed to appreciate the materials on records on its proper perspective.*

*(ii) That the learned Trial Court failed to appreciate the cross-examination of the PWs.*

**9.** I have learned advocates of both the sides on this appeal. During hearing on this appeal, learned counsel for the appellant by assailing the findings of the learned Trial Court has submitted that the learned Trial Court has failed to consider the discrepancies in the evidence on the point of marriage and that there is no evidence of income of the opposite party/husband and as such, the petitioner is not entitled for any reliefs.

**10.** On the other hand, learned counsel for the respondent/wife has argued that by adducing evidence they have proved the fact of marriage and the fact of domestic violence on the victim as well as income of the opposite party and as such the instant appeal has no merit and should be dismissed.

**11.** The point for determination in this appeal is whether the impugned judgment and order needs any interference or same deserved to be upheld?

**12.** On perusal of the record, it appears that in the present case in hand, PW-1, PW-3 and PW-4 in their evidence claimed that the aggrieved party was married to the appellant/husband and Mr. Hussain Ali was the Moullabi who performed the marriage. Said Hussain Ali was examined as PW-2 and in his evidence he has stated that marriage was performed between the appellant/husband and the aggrieved party as per Muslim Law fixing Mohorana of Rs. 50,000/- and after the marriage the aggrieved party stayed at the residence of the appellant/husband. During cross-examination, except suggestions of denial, the respondent/husband failed to cast any doubt on the marriage. Even he did not adduce any evidence to show that the petitioner was not married to him. The evidence of PW-1, PW-2, PW-3 and PW-4 are fully reliable and trustworthy, so far marriage of the petitioner is concerned with the respondent. The argument that as per the petitioner, Akbar Ali and Sahid Ali are the witnesses of marriage and but as per PW-3, Taharuddin was the witness will make no difference probably when the very person who performed the marriage has supported the fact of marriage. Akbar Ali and Abdul Sahid as claimed by the petitioner were examined as PW-3 and PW-4 and they have supported the fact of solemnization of marriage. The learned Trial Court considered the evidence on proper perspective and rightly held that the aggrieved party was married to appellant/husband and after marriage she lived with the respondent/husband in their household. I find no illegality on this aspect.

**13.** So far, the allegation of domestic violence is concerned, the aggrieved party in her evidence has categorically stated that during one month of her marriage she was subjected to cruelty by the appellant/husband and she was driven out from the matrimonial home. Virtually no challenge was made on this aspect except denial. There is ample evidence to the fact that after marriage she lived for about one month at the residence of the appellant/husband and thereafter on being driven out she took shelter at her paternal home. There cannot be any more cruelty when the very marital status of the aggrieved party was denied by her husband. No further proof any other

cruelty is even necessary. Admittedly, while living in her paternal home no maintenance was provided to aggrieved party and this also amounts to cruelty. Thus, it appears that victim was subjected to domestic violence by the appellant/husband and the learned Trial Court has rightly decided this point.

**14.** So far monetary reliefs are concerned the petitioner in her evidence claims that her husband, the respondent earns Rs. 50,000/- per month having landed properties and fisheries. In the written statement, the appellant/husband did not utter a single word regarding his financial capacity who is the best person to do so.

**15.** Section 106 of the Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In this case, the appellant/husband is the best person to say about his income in detail. Though PW-3 and PW-4 in their evidence stated about income of the respondent/husband but in cross-examination, PW-2 and PW-3 admitted that, after marriage they did not visit the house of the respondent/husband and as such, their evidence regarding income cannot be relied upon. PW-4 has stated that after marriage, he visited the residence of the respondent on two occasions. As such, his evidence on property has some relevance which supports the claim of the petitioner. Even in absence of any documentary evidence on income, presuming that the appellant/husband being an able bodied man, it can easily be presumed that he can earn Rs. 300/- to Rs. 400/- per day by working as a labour and thus earn about Rs. 10,000/- per month for his survival.

**16.** The reliefs granted so far, the rent of Rs. 1000/- per month or a room in the shared household and maintenance of Rs. 2000/- for the petitioner wife is considered to be just and proper within the paying capacity of the appellant/husband. I find no illegality or perversity in the above aspects.

**17.** So far the protection order is concerned, as domestic violence is proved, in the event of shared household, the petitioner/wife is entitled for protection u/s 18 of the DV Act.

**18.** So far, the compensation of Rs. 10,000/- is concerned for causing domestic violence, no specific ground was taken for challenging this above amount. As held earlier, denial the marriage by the husband can be treated as high degree of mental cruelty for a married woman which shakes her entire status and on this count alone, the husband is liable to pay compensation. As such, I find no reason to interfere with the order on this count also.

**19.** Considering the above, I am of the opinion that the appeal has no merit and liable to be dismissed which I do accordingly.

**20.** The impugned order dated 03.01.2018, passed by the learned JMFC, Morigaon in CR (DV) Case No. 1123/2015, is hereby upheld and confirmed.

**21.** The appellant/husband is directed to clear the arrears amount along with the monthly maintenance/rent amount and compensation so awarded within next 2 months else trial court shall be at liberty to take coercive measure to realize the arrear amounts including monthly due amount.

**22.** The instant appeal is disposed of on contest without costs. Parties shall bear their own costs.

**23.** Send back the Case record along with a copy of this judgment to learned JMFC, Morigaon immediately.

**24.** Judgment pronounced in the open court.

Given under my hand & Seal of this Court on this the, 30<sup>th</sup> day of January, 2020 at Morigaon.

Sessions Judge,  
Morigaon