

**IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON**

**C.R. DV No. - 104/2019**

**U/S 12 of P.W.D.V. Act**

1. **MUSST. HANUFA KHATUN, W/O.:- MAINUDDIN,  
R/O.:- HABI BARANGABARI, P/S.:- MIKIRBHETA,  
DIST.:- MORIGAON, ASSAM**

**.....Petitioner.**

**VS**

1. **MD. TAMIJAT ALI, S/O.:- LATE TENGA SINGH,**
2. **MD. BAHAJ UDDIN, S/O.:- MD. TAMIJAT ALI,**
3. **MD. MAJIBUR RAHMAN, S/O.:- MD. TAMIJAT ALI,**
4. **MUSST. IYACHIN, W/O.:- MD. BAHAJ UDDIN,  
R/O.:- KALMOWBARI, P/S.:- MIKIRBHETA,  
DIST.:- MORIGAON, ASSAM**

**..... Respondents.**

**PRESENT: SMTI. ANAMIKA BARMAN, LL.M., AJS.**

**JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM**

**ADVOCATE FOR THE PETITIONER: MD. ABDUS SALAM**

**ADVOCATE FOR THE RESPONDENTS: MD. MUSLEHUL ISLAM**

**DATES OF RECORDING EVIDENCE: 04.10.2019, 04.10.2019, 04.10.2019**

**DATE OF HEARING: 19.11.2019, 06.01.2019,**

**DATE OF DELIVERING FINAL ORDER: 06.01.2020**

**FINAL ORDER**

1. This proceeding arose out of a petition u/s 12 of the P.W.D.V. Act filed by the Petitioner, Musstt. Hanufa Khatun, thereby claiming relief u/s 18, 19, 20, 22 and 23 of the said Act.

2. The Petitioner's case, in brief, is that the petitioner got married to the Respondent No.1 Md. Tamijat Ali about 13 (thirteen) years prior to the filing of the complaint petition as per Islamic social rites and rituals by executing *Moharana* of

Rs.1,00,001/-. After the marriage, dowry worth Rs.35, 000/- was given to the Respondent No.1. As a result of their marriage, two children were born to them, namely, Md. Mohidul Islam, aged about 13 (thirteen) years and Taslima Begum, aged about 8 (eight) years 6 (six) months at the time of the filling of the complainant petition. After the birth of the second child the respondent No.1, as per the instigation of the remaining respondents, namely, Md. Bahaj Uddin, Md. Majibur Rahman and Musst. Iyachin, started to inflict physical and mental tortures upon the applicant by demanding better quality furniture, cash of Rs.3 (three) lakh and a motor cycle. The father of the applicant, being an aged and ailing person, gave the respondent No. 1 a total amount of Rs.1 (one) lakh in two instalments for the sake of the future of the applicant. Thereafter, the applicant lived happily with her husband for a few days. However, when the applicant refused to give more dowry to the respondents, they started to inflict more physical and mental tortures upon the applicant. The respondents often used to verbally abuse the applicant and make her starve. They also did not use to provide her with essential commodities. However, the applicant silently tolerated the tortures meted out to her and continued to live in the house of the respondent No. 1 for the sake of the future of her children. Finally, on 23.01.2019, at about 11:00 am, the respondents assaulted the applicant, drove her out of her matrimonial house and also snatched away her ornaments which were her *stridhan*. When the children of the applicant tried to intervene, the respondent No. 1 hit their son Md. Mahidul Islam on his head with a bamboo stick and also drove the children out of his house. Finding no other option the applicant took shelter in her parental house where she is presently leading her life in hardship. The respondent no. 1 is a physically fit and financially sound person having a business, a concrete house and landed properties of 17 (seventeen) "bighas". The monthly income of the respondent No. 1 is around Rs. 50,000/- (Rupees Fifty Thousand only). The respondent No. 1 has not inquired about the whereabouts of the applicant after driving her out of his house. Hence, the case.

3. Thus, the Petitioner filed the instant case and has prayed for relief u/s 18, 19, 20, 22 and 23 P.W.D.V Act, 2005 by claiming issue of injunction to the respondents from committing any further acts of domestic violence upon her, accommodation order or house rent of Rs. 5,000/- (Rupees Five Thousand only) per month, Rs.

20,000/- (Rupees Twenty Thousand only) [Rs.10000/- (rupees ten thousand for the applicant and Rs.5,000/- each to both the children of the applicant) per month as maintenance allowance to the applicant and her children, claimed Rs.5 (Five) lakh towards expenses incurred and losses suffered and also claimed Rs. 15,000/- (fifteen thousand) as monthly interim maintenance during the trial of the case.

4. **On receipt of notice, the Respondents side had initially taken steps and filed written statement. However, 14.08.2019, when the date was fixed for hearing on petition filed by the applicant seeking interim maintenance, the respondent No. 1 filed hajira showing the remaining respondents on representation but neither the respondent No. 1 nor the Learned Counsel for the respondents were found on repeated calls till 04:00 pm that day and hence the case proceeded ex parte against them vide order dated 14.08.2019. Thereafter, the respondent no. 1 remained absent with steps on subsequent dates but did not take any step to vacate the ex parte order passed against them.**

5. The Petitioner adduced evidence-on-affidavit of 3 (three) witnesses in support of her case. The petitioner adduced the evidence of herself as PW-1, the evidence of her father Md. Mainuddin as PW-2 and the evidence of her brother Md. Ali Hussain as PW-3. However, the said PWs were not cross-examined by the respondent side as the case proceeded ex parte against them.

6. **Upon hearing and on perusal of materials on record the following points of determination are framed:**

***(i) Whether the Respondents subjected the Petitioner to domestic violence as defined under section 3 of the Protection of Women from Domestic Violence Act, 2005?***

***(ii) Whether the Petitioner/Petitioner is entitled to relief U/S 18, 20, 22 & 23 of P.W.D.V Act?***

7. **DISCUSSION, DECISION AND REASONS THEREOF:**

A point wise discussion by analysing the evidence on record is made in the following lines-

### **Point of Determination No. I**

8. P.W.1/Petitioner in her evidence-on-affidavit deposed in the same lines as she had stated in her complaint petition. P.W.-2 Md. Mainuddina and P.W.-3 Md. Ali Hussain, who are the father and brother of the applicant respectively, also stated in the same lines as stated by the applicant in her PWs-on-affidavit.

9. Considered the Domestic Incident Report which states of incidence of domestic violence upon the applicant by the respondents.

10. The Respondent side neither cross-examined the PWs nor adduced any evidence in support their case. But initially they had appeared before the Court and contested the case by filing written objection wherein they denied all the allegations laid down by the Petitioner in her complaint petition except the factum of marriage of the applicant with the respondent No. 1 and their two children. It is further stated in the written statement that the applicant willingly went to her parental house along with her children after having a verbal argument with the respondent No. 1 on 23.01.2019 as on that day the respondent No. 1 had threatened his son Md. Mahidur Rahman with a stick (*bat*) due to his mischief. Thereafter, the respondent side on various occasions went to the parental house of the applicant to bring her back but the applicant refused to come back with the respondents. It is further stated in the written statement that the respondent No. 1 married the applicant after his first wife had expired and the children from the side of his first wife got married and started staying separately from him. The respondent No. 1 and the applicant have no relation with the remaining respondents. The respondent No. 1 is a 60 (sixty) years old aged person having no source of income of his own and is a patient of hypertension and heart disease as well. The respondent No. 1 could not manage his medical expenses and he also could not maintain the applicant and her children for which the applicant used to misbehave with the respondent No. 1 quite often. The respondents have also adduced a copy of medical certificate of the respondent No. 1 Md. Tamijat Ali along with the written statement. Hence, the respondent No. 1 prayed to dismiss the case.

11. The Respondent side has neither cross-examined the PWs nor adduced any witness in support of its case. So in the absence of any rebuttal or contradictory evidence adduced by the Respondent side, we have to accept the evidence adduced

by the petitioner, if the same is found reliable and cogent. In this instant case, the witness adduced by the petitioner is found cogent; there is nothing on record to disbelieve the petitioner. So, we have to accept the evidence of the PWs. Domestic Incident Report also speaks of domestic violence committed upon the applicant. Accordingly, held that the Respondent No.1 subjected the applicant to domestic violence as defined in Section 3 of the Protection of Women from Domestic Violence Act, 2005. As such this point is determined in affirmative in favour of the Petitioner.

### **Point of Determination No.II**

12. In view of the decision of point No.1, it is decided that the applicant is entitled to get the reliefs as prayed for in the petition from respondents. Hence, the Petitioner is entitled to get the reliefs, however, with no cost.

13. The Petitioner/P.W.-1, P.W.-3 and P.W.-2 have stated in their complaint petition as well as in their evidence-on-affidavit that the respondent No. 1 is a physically fit and financially sound person having a business, a concrete house and landed properties of 17 (seventeen) "bighas". The monthly income of the respondent No. 1 is around Rs.50,000/- (Rupees Fifty Thousand only). The children of the applicant are students and the applicant has to work in the houses of other people as day labourer to earn her livelihood. However, the Petitioner has not adduced any document in support of her claim. The aggrieved person has not been able to clearly establish the income of the Respondent No.1. Hence, apart from the bare assertion of the Petitioner/PW-1 and PW-2 about the source of income of Respondent No.1, there is no evidence in support of the same.

14. Regarding the quantum, there is no clear proof of the actual income of the respondent No.1. Therefore, considering the present cost of living an amount of Rs.2,000/- (Rupees two thousand only) [Rs. 1000/- (rupees one thousand only) for the applicant and Rs. 500/- (rupees five hundred only) each for both the children of the applicant] per month for the petitioner and her children will be a reasonable amount of maintenance.

## **O R D E R**

The respondents are further directed:

- (1) Not to commit any acts of domestic violence on the Petitioner.
- (2) Not to disturb the peace of the Petitioner.

The Respondent No.1 is to provide alternate residential accommodation to the Aggrieved Party or rented accommodation and he has to pay the rent for the same which shall be Rs.5,00/- (Rupees five hundred only) per month under Section 19 of the said Act.

The Respondent No.1 is directed to pay Rs.2,000/- (Rupees two thousand only) [Rs. 1000/- (rupees one thousand only) for the applicant and Rs. 500/- (rupees five hundred only) each for both the children of the applicant] per month for the petitioner and her children as maintenance.

The respondent No.1 is also directed to pay Rs.5,000/- (Rupees Five Thousand only) to the Petitioner as compensation for mental and economic torture inflicted upon her u/s 22 of the said Act.

Send a copy of this order to the O.C. of concerned P.S. for compliance.

Also send a copy of this order to the concerned Protection Officer.

Case disposed of. Given under my hand and the seal of this court on this 6<sup>th</sup> day of January, 2020.

Miss. Anamika Barman  
Judicial Magistrate First Class  
Morigaon, Assam

Dictated and corrected by me  
(Miss. Anamika Barman)  
Judicial Magistrate First Class, Morigaon

## **APPENDIX**

### **Petitioner's Witnesses:-**

- 1. P.W.1:- MUSSTT. HANUFA KHATUN,**
- 2. P.W.2:- MAINUDDIN,**
- 3. P.W.3:- ALI HUSSAIN,**

### **Respondents' Witnesses:-**

**NONE**

### **Exhibits:-**

**NONE**

**Miss Anamika Barman**  
**Judicial Magistrate First Class**  
**Morigaon, Assam**