

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON

C.R. DV No. - 855/2017

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

1. **SMTI. PINKI DAS, W/O MR. RAMEN KAKOTI**
D/O.:- MR. RAMANI DAS, R/O.:- HUJGAON,
P/S:- NAGAON SADAR, NAGAON, ASSAM.

.....Petitioner.

VS

1. **SRI. RAMEN KAKATI, S/O- SRI TARINI KAKATI.**
2. **SMTI. SABITA KAKATI, W/O- SRI TARINI KAKATI.**
3. **SRI. BICHITRA KAKATI, S/O SRI TARINI KAKATI,**
4. **SMTI. AIMONI DAS, W/O- SRI SUNTI DAS.**
ALL R/O.:- BAKHORBORI, P/S-MORIGAON.
DIST.:-MORIGAON, ASSAM.

.....Respondents.

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

JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM.

ADVOCATE FOR THE PETITIONER: MR. N. K. BORA.

ADVOCATE FOR THE RESPONDENTS: MR. A. SALAM.

DATES OF RECORDING EVIDENCE: 22.06.2018, 06.04.2019,

DATE OF HEARING: 16.07.2019, 14.08.2019,

DATE OF DELIVERING FINAL ORDER: 23.10.2019

FINAL ORDER

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

2. The applicant's case, in brief, is that in the year 2008, the respondent No. 1, Sri Ramen Kakati, married the applicant by putting Vermilion on her forehead and executing "*Jurun*" in the presence of his family members. Thereafter, he brought the

applicant to his house as his wife. Thereafter, on the 26th day of the Assamese month of "Bohag" in the year 2009 their marriage was formalized as per Hindu rites and rituals at Kalangpar Shiv Mandir, Nagaon. After 1 ½ (one and half) years of their marriage, a boy child was born to them, namely, Sri Krishna Kakati, aged about 7 (seven) years at the time of filling of the complaint petition. The applicant lived happily with the respondent No.1 for about 2 (two) years after their marriage. The respondent No. 1 used to work in defence department but later he faced trouble doing the job because of which he did not go to his work place again. After the respondent No. 1 stopped going to his work place, he started to consume alcohol and engage in gambling. He also sold his properties and started demanding money from the applicant. When the applicant objected to the same, the respondent No. 1, started torturing the applicant. The remaining respondents, namely, Smt. Sabita Kakati, Sri Bichitra Kakati and Smt. Aimoni Das, instead of objecting to such acts of the respondent No. 1, instigated him. The respondents started pressurizing the applicant to bring money from her parental house. However, the applicant could not fulfil such demands due to the poor financial condition of her father. On her failure to fulfil their demands, the respondents started to inflict mental and physical tortures upon the applicant. Finding no other option, the applicant in the year 2013 brought Rs.55,000/- (Rupees Fifty Five Thousand only) from her father's house and gave it to the respondent No. 1. Thereafter, the respondent No. 1 used to play gambling till late at night and he started to come home late in an inebriated state and torture the applicant with the help of the remaining respondents. The applicant continued to live in the house of the respondents for about 6 (six) years tolerating all the tortures inflicted upon her for the sake of the future of her son. Finally on 20.05.2016, the respondents assaulted the applicant by demanding dowry of Rs.5,00,000/- (Rupees Five Lakh only). When the applicant informed about it to her parents over the phone, her parents went to the house of the respondents and tried to convince them. However, the respondents did not get convinced and refused to keep the applicant in their house until she gave Rs.5,00,000/- (Rupees Five Lakh only) to them and drove the applicant, her boy child and her parents out of the house of the respondents by verbally abusing them with obscene languages. Since then the applicant has been living in her parental house along with her boy child. The applicant waited for 1 (one)

year in the hope that the respondent would take her back for the sake of their child. However, the respondents neither inquired about the whereabouts of the applicant and her son nor gave any maintenance to them. The son of the applicant is a student of class I in Jiten Saikia Primary School at the time of the filing of the complaint petition. At present the applicant is facing financial hardship and she works as a day labourer to earn her livelihood. On the other hand, the respondent No. 1 is a service holder of BSF and his monthly salary is around Rs.30,000/- (Rupees Thirty Thousand only). However, the respondent No. 1 presently stays in house. He also has fair amount of landed properties apart from his salary and he earns around Rs.50,000/- (Rupees Fifty Thousand only) monthly from various sources.

3. Thus, the applicant 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.6000/- (Rupees Six Thousand only) per month, Rs.15,000/- (Rupees Fifteen Thousand only) per month as maintenance allowance to the applicant, claimed Rs.10 (Ten) lakh towards expenses incurred and losses suffered also claimed Rs.10,000/- (Rupees Ten Thousand only) as interim maintenance during the trial of the case

4. On receipt of notice, the Respondents appeared before the Court and contested the case by filing Written Statement wherein they denied all the allegations laid down by the applicant in her complaint petition except the factum of marriage. It is further stated in the written statement that the applicant has also filed a false case against the respondents to recover her dowry articles from the house of the respondents with intent to harass the respondents. The said case bearing No. CR-856/2017 is pending trial at the Court of Ld. SDJM, Morigaon. The respondents further stated that the applicant did not want to live in the house of the respondents and she wanted the respondent No. 1 to live in her parental house as a live-in son-in-law to which the respondent No. 1 did not agree. Because of this reason the applicant often used to quarrel with the respondent No. 1 and she also used to prevent him from going to his work place. The applicant also used to talk to some unknown person over the phone and when the respondent No. 1 objected to it, she used to quarrel with the respondent No.1. Thereafter, the applicant herself left the house of

the respondents. Thereafter, the respondent No. 1 on 10-15 (ten to fifteen) occasions went to the parental house of the applicant to bring her back. But the applicant neither agreed to come back with the respondent No.1 nor allowed the respondent No. 1 to meet his son. Hence, the respondents prayed to dismiss the instant complaint petition.

5. It is to mention herein that the applicant was granted interim maintenance vide order dated 04.02.2019. However, the respondent No. 1 took various dates for payment of interim maintenance but did not pay the same. Thereafter, DWA was issued against the respondent No. 1 as per the prayer of the applicant. The respondents kept on taking steps but did not pay any amount of interim maintenance to the applicant and subsequently, the case proceeded ex parte against the respondents vide order dated 04.02.2018 at the stage of cross-examination of PWs.

6. The Petitioner adduced evidences on affidavit of 2 (two) witnesses. The petitioner adduced the evidence of herself as PW-1 and that of Smt. Bulu Pava Devi as PW-2.

7. Upon hearing both sides 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, 19, 20&22 of P.W.D.V Act?

DISCUSSION, DECISION AND REASONS THEREOF:

8. PW-1/applicant, Smt. Pinki Das, stated in the same lines in her evidence-on-affidavit as she had stated in her complaint petition. She additionally stated that at the time of filling of the PWs-on-affidavit her son studied in class II and was 8 (eight) years old. However, the PW-1 was not cross examined as the case proceeded ex parte against the respondents.

9. PW-2, Smt. Bulu Prava Devi stated that the applicant is her niece and that the applicant has filed the instant case against her husband and his family members.

She further stated in similar lines in her evidence-on-affidavit as had been stated by the applicant/PW-1 in her evidence-on-affidavit. *During her cross examination*, PW-2 stated that she got married in the year 1991 and since then she has been living at Jaluguti along with her family. She further stated that she has not paid any visit to the village Borbori where the respondents live for 2 (two) years prior to the date of her deposition and as such she does not know had happened. It takes about 1 ½ (one and half) hours to go to Borbori village from Jaluguti. PW-2 got to know from the applicant that the applicant is presently living in her parental house at Nagaon. PW-2 had gone to the house of the respondents in the year 2013, 2014, 2016 and 2017 but she did not see the respondents assaulting the applicant or demanding dowry from her at those times. She does not know the neighbours of the respondents and she also does not know how many neighbours the respondents have. The applicant is PW-2's own niece. The applicant lives with her parents and elder brother in her parental house. The applicant has a younger sister as well but she has already been married off. The aged parents of the respondent No. 1 used to live with him. PW-2 does not know the actual ages of the parents of the respondent No. 1. It is not a fact that PW-2 has deposed falsely for the sake of her niece that the respondents inflicted tortures upon the applicant by demanding dowry. PW-2 does not know for how many years the respondent No. 1 has been going to his service job. It is not a fact that the respondent No. 1 has never had a job. PW-2 has never gone to the work place of the respondent No. 1. It is not a fact that the respondent No. 1 does not do any job and is dependent on his father. It is not a fact that the respondent No. 1 has no source of income of his own. It is not a fact that PW-2 has deposed falsely for the sake of the applicant. It is not a fact that PW-2 has stated falsely in her evidence-on-affidavit.

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

POINT FOR DETERMINATION NO.1:

11. The applicant filed this case alleging that after her marriage with the respondent No. 1, Sri. Ramen Kakati, the said respondent No.1 along with the other

respondents started to torture the applicant both mentally and physically in demand for dowry. The applicant somehow managed to give Rs.55,000/-(Rupees Fifty Five Thousand only) to the respondent No. 1 but even after that, the respondents continued to torture the applicant. The respondents later demanded Rupees 5 (five) lakh from the applicant and when the applicant failed to fulfil such demand, they tortured her. The parents of the applicant went to the matrimonial house of the applicant to convince the respondents that it is not possible for them to give such huge amount. But the respondents misbehaved with the parents of the applicant and drove the applicant out of her matrimonial house along with her parents and her child.

12. The respondents appeared before the court and contested the case by filing written objection wherein they denied all the allegations laid down the applicant against them except the factum of marriage between the applicant and the respondent No.1.

13. Perusal of case record reveals that after filing the written objection, the respondents only cross-examined the PW-2 but after that the case proceeded ex parte against the respondents. The respondent side did not cross-examine the applicant to draw any inference in favour of the respondents. The evidence of the applicant on record reveals that the applicant was subjected to domestic violence by the respondents and I find nothing on record to rebut the allegations levelled against the respondents by the applicant. The respondent side only cross-examined the PW-2 but nothing could be elicited in favour of the respondents from it. Though the PW-2 stated in her cross-examination that she had not seen the respondents torturing the applicant or demanding dowry from her, it is to be mentioned herein that such tortures are meted out to the woman within the four walls of the house and as such it cannot be expected that PW-2 would have witnessed the same.

14. The respondents merely denied the allegations laid down in the complaint petition but mere denial is not sufficient. It must be backed by cogent evidence. Thus, the respondents failed to adduce any evidence to rebut the allegations of domestic violence upon the applicant by them.

15. In view of the above, I am of the considered opinion that in the absence of cogent evidence to rebut the allegations of the applicant, I am inclined to belief that

the applicant was subjected to domestic violence as per definition of sec 3 of the Domestic Violence Act.

16. Moreover, the DIR also speaks about incidents of domestic violence upon the petitioner by the respondents.

17. Hence, this point is decided in affirmative and in favour of the applicant.

18. Perusal of case record also reveals that vide order dated 04.02.19, the respondent No. 1 was directed to pay interim maintenance of Rs.1300/-(Rupees Thirteen Hundred only) per month to the applicant and her child till disposal of the case but the respondent No. 1 did not pay the same and thereafter the respondents remained absent after which the case proceeded ex-parte against the respondents. In view of the above, the respondent No. 1 is directed to pay the arrear amount of interim maintenance to the applicant as accrued from 04.02.19 till the date of the disposal of the case.

POINT FOR DETERMINATION NO.2

19. In the backdrop of the discussions made in point for determination No. 1, it is clear that the respondents had committed acts of domestic violence against the aggrieved woman. In result, the aggrieved woman is entitled to reliefs from respondents as claimed for in her application u/s 12 of the Act.

20. The applicant/PW-1 has stated in their complaint petition both the PWs have stated in their respective evidence-on-affidavits that the respondent No. 1 is a service holder of BSF and his monthly salary is around Rs.30,000/- (Rupees Thirty Thousand only). However, the respondent No. 1 presently stays in house. He also has fair amount of landed properties apart from his salary and he earns around Rs.50,000/- (Rupees Fifty Thousand only) monthly from various sources. On the other hand, the applicant is facing financial hardship and she works as a day labourer to earn her livelihood and to maintain her son who is a student of class II. However, the Petitioner/PW-1 and PW-2 have not adduced any document in support of their claim. The aggrieved party 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.

21. Regarding the quantum, there is no clear proof of the actual income of respondent No.1. Therefore, considering the present cost of living an amount of Rs.1000/- (Rupees One Thousand only) per month for the petitioner and Rs.1000 (Rupees One Thousand only) per month for her minor son 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.800/- (Rupees Eight Hundredonly) per month under Section 19 of the said Act.

The Respondent No. 1 is also directed to pay Rs.1,000/- (rupees one thousand) per month to the Petitioner and Rs.1,000/- (rupees one thousand) for the maintenance of the minor son of the petitioner till he attains the age of majority.

The respondents are also directed to pay Rs.6,000/- (Rupees Six Thousand only) to the Petitioner as compensation for mental and economic torture inflicted upon her u/s 22 of the said Act.

The respondent No. 1 is also directed to pay the arrear amount of interim maintenance to the applicant from 04.02.19 till the date of the disposal of the case.

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 is disposed of ex parte. Given under my hand and the seal of this court on this 23rd day of October, 2019.

Miss. Anamika Barman
Judicial Magistrate First Class
Morigaon, Assam

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

APPENDIX

PROSECUTION WITNESS:-

1. P.W.1:- SMTI. PINKI DAS,
2. P.W.2:- SMTI. BULU PRAVA DEVI.

DEFENCE WITNESS:-

NONE

PROSECUTION SIDE EXHIBITS:-

NONE

DEFENCE SIDE EXHIBITS:-

NONE

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