

IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON

C.R. DV No. - 59/2018

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

1. MUSSTT. JUSHNARA BEGUM, D/O.:- CHAN MIYA,
W/O:- HABIKUL ISLAM,
R.O.:- GARUMARA DALANI,
P.S.:- MAYONG, MORIGAON, ASSAM.

.....Petitioner

VS

1. MD. HABIKUL ISLAM, S/O.:- MD. A. RAJAK,
2. MD. A. RAJAK,S/O.:- LT. AHED ALI,
3. MUSSTT. BANESA BEGUM, W/O.:- MD. AKBAR ALI,
4. MUSSTT. HAJERA KHATUN, W/O.:- MD. A. RAJAK,
5. MD. AKBAR ALI, S/O.:- MD. A. RAJAK,
6. MD. SAFIKUL ISLAM, S/O.:- MD. A. RAJAK,
7. MUSSTT. NOOR JAHAN BEGUM, W/O.:- SAFIKUL ISLAM,
ALL ARE RESDENCE OF DAKHIN KALIKAJARI,
P.S.:- MIKIRBHETA, DIST.:- MORIGAON, ASSAM

.....Respondents

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

JUDICIAL MAGISTRATE FIRST CLASS, MORIGAON, ASSAM

ADVOCATE FOR THE PETITIONER: MR.A. K. AMIN,

ADVOCATE FOR THE RESPONDENTS: MR. A. RASHID,

DATES OF RECORDING EVIDENCE: 05.07.2018

DATE OF HEARING: 28.08.2018,

DATE OF DELIVERING FINAL ORDER: 16.10.2019

FINAL ORDER

1. This proceeding arose out of a petition u/s 12 of the P.W.D.V. Act filed by the Petitioner, Musstt. Jushnara Begum, thereby claiming relief u/s 18, 19, 19(8), 21, 22, and 23(2) of the said Act.
2. The Petitioner's/applicant's case, in brief, is that the Petitioner got married to the Respondent No.1, Md. Habikul Islam, about 12 (twelve) years prior to the filing of the complaint petition as per Islamic social rites and rituals. As a result of their marriage five children were born to them, namely, Md. Rashidul Islam aged about 10 (ten) years, Musstt. Fajina Begum aged about 8 (eight) years, Musstt. Mousumi Begum aged about 6 (six) years, Musstt. Helbina Begum aged about 4 (four) years and Md. Najmul Islam aged about 2 ½ (two and half) years at the time of filing of the complaint petition. After her marriage the applicant started to live happily in the house of the respondent No. 1 with him. However, about 1 (one) year prior to the filling of the complainant petition, the respondent No.1 along with the other respondents, namely, Md. A. Rajak, Musstt. Banesa Begum, Musstt. Hajera Khatun, Md. Akbar Ali, Md. Safikul Islam and Musstt. Noor Jahan Begum started inflicting physical and mental tortures upon the applicant by demanding cash of Rs.50,000/- (Rupees Fifty Thousand only). Unable to bear such tortures, the applicant brought Rs.40,000/- (Rupees Forty Thousand only) from her poor parental house and gave the same to the respondents after which the applicant lived happily in the house of the respondents for a few days. However, the respondents on 30.01.2018 assaulted the applicant and drove her out of her matrimonial house after keeping her two children with them. Thereafter, the applicant took shelter in her parental house along with her three children. Since then, the respondents have not inquired about the applicant's whereabouts. The reason for delay in filling the instant complaint petition is that the applicant waited for the matter to be amicably settled between her and the respondents hoping that the respondents would give back her two children whom they had kept with them while driving out the applicant from their house.
3. The respondent No. 1 is a financially sound person having landed properties and he works out of station and his monthly earning is around Rs.30,000/- (Rupees Thirty Thousand only). On the other hand, the applicant has not source of income of her own and she is leading her life facing immense hardship.
4. Thus, the Petitioner filed the instant case and has prayed for relief U/S 18, 19, 19(8), 21, 22, and 23(2) of 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, order to recover her *stridhan* articles, order for the recovery of her two daughters, namely, Musstt. Mousumi Begum and Musstt. Helbina Begum from the respondents, claimed Rs.10,000/- (Rupees ten Thousand only) per month for her and her children as maintenance allowance, also claimed Rs.5,000/- (Rupees five thousand only) as interim maintenance during the trial of the case.

5. On receipt of notice, the Respondents had initially taken steps and filed written statement on behalf of respondent Nos. 2, 3, 4, 5, 6 and 7. However, the respondents side subsequently remained absent and hence the case proceeded ex parte against them vide order dated 05.07.2018.

6. The Petitioner adduced the evidence-on-affidavit of only 1 (one) witness in support of her case. The petitioner adduced the evidence of herself as PW-1. However, the said PW was not cross-examined by the respondent side as they remained absent.

7. 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, 19, 19(8), 21, 22, and 23(2) of P.W.D.V Act?

8. 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

9. P.W.1/Petitioner in her evidence-on-affidavit deposed in the same lines as she had stated in her complaint petition. She additionally stated that after driving her out of her matrimonial house, the respondents took back the three children which she had brought with her to her parental house for the purpose of N.R.C. hearing. However, the respondents did not return the three children to the

applicant including her suckling baby. It is further stated that the respondent No. 1, with the support of the remaining respondents, has eloped with the wife of his younger brother and a CR case bearing registration No. 190/2018 is also pending trial against respondent Nos. 1, 3, 5 and one Musstt. Mamoni Begum regarding the matter. The respondents also threatened to kill the applicant at the time of the filling of the complaint petition.

10. Considered the Domestic Incident Report which states of incidence of domestic violence committed by the Respondent No.1 upon the applicant.

11. The Respondent side neither cross-examined the PWs nor adduced any evidence in support their case. But initially the respondents had appeared before the Court and contested the case by filing written objection on behalf of the respondent Nos. 2, 3, 4, 5, 6 and 7 in which they denied all the allegations made by the Petitioner in her complaint petition. In their written statement the respondents stated that after the marriage of the respondent No. 1 with the applicant, they used to live separately from the remaining respondents and since then the remaining respondents have had no relation with the respondent No.1 and the applicant. The house of the applicant and the respondent No. 1 at a distance of one "farlong" from the house of the remaining respondents. The respondent No. 2 is diagnosed with paralysis and he has been bedridden for 7 (seven) months prior to the filing of the written objection. It is further stated in the written statement that due to family-related arguments between the respondent No. 1 and the applicant, the respondent No. 1 has eloped with another woman and at present he is living in an unknown place. The respondent No. 1 has eloped with another daughter-in-law of respondent No. 2 and out of that grudge the applicant has filed the instant case. Hence, the instant complaint petition of the applicant is liable to be dismissed.

12. 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 by the respondent No.1 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

13. 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.

14. The Petitioner/P.W.1 has stated in her complaint petition and in her evidence-on-affidavit that the respondent No. 1 is a financially sound person having landed properties and his monthly earning is around Rs.30,000/- (Rupees Thirty Thousand only). The Petitioner has no source of income of her own. 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.

15. 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.8,00/- (Rupees Eight Hundred only) per month for the petitioner will be a reasonable amount of maintenance. However, from the complaint petition and from the evidence of PW-1 it is found that all the five children of the applicant are presently with the respondents. As such maintenance allowance for the children of the applicant shall not be passed as it is already being borne by the respondents.

16. Also, with regard to the relief sought for u/s 19(8) of the Act by the applicant regarding the recovery of her *stridhan* articles, it is seen that the applicant has neither mentioned in her complaint petition nor in her evidence whether or not she had taken any *stridhan* articles along with her to the house of the respondents at the time of her marriage. As such the relief sought for under the said section seems to be vague and hence rejected.

ORDER

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 also directed to pay Rs.8,00/- (Rupees Eight Hundred only) to the Petitioner 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 is disposed of ex parte. Given under my hand and the seal of this court on this 16th 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:- MUSSTT. JUSHNARA BEGUM,**

Defence Witness-

Nil

Prosecution Side Exhibits-

Nil

Defence Side Exhibits-

Nil

Anamika Barman
Judicial Magistrate First Class
Morigaon, Assam